IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APL) NO.1593 OF 2023

1. Indira Namdeo Padole,
   Aged 52 Years,
   Occupation : Business,

2. Namdeo Bhaiyyaji Padole,
   Aged 58 Years,
   Occupation : Business,
   Both R/o. 202, Apartment,
   Vikram Sambhaji Chowk,
   Nagpur – 440022. **.... APPLICANTS**

// VERSUS //

1. State of Maharashtra,
   Through Police Station Officer,
   Hingna Police Station,
   Taluka Hingna, District Nagpur.

2. Sumit Rameshrao Khadekar,
   Aged about 39 Years,
   Occupation : Business,
   R/o. Amgaon, Taluka Hingna,
   District Nagpur. **....NON-APPLICANTS**

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Mr. Abhay Sambre, Advocate for applicants.
Mr. N. H. Joshi, APP for non-applicant No.1/State.
Mr. Atharva S. Manohar, Advocate for intervenor.

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CORAM : URMILA JOSHI-PHALKE, J.
DATED : 10/03/2026

ORAL JUDGMENT :

1. The Criminal Application (APPP) No.549/2024 is for intervention by the various applicants, who are the prospective purchasers.

2. In view of the reasons mentioned in the application, they are permitted to intervene in the said application.

3. The Criminal Application (APPP) No.549/2024 is **disposed of**.

CRIMINAL APPLICATION (APL) NO.1593 OF 2023

1. Heard.

2. **Admit**.

3. Heard finally with the consent of the learned Counsel for the applicants, learned APP for the State and learned counsel for the non-applicant No.2.

4. By this application, the applicants are seeking quashing of the FIR in connection with Crime No.615/2023 registered with Police Station, Hingna, District Nagpur for the offence punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code and the consequent proceeding arising out of the same bearing RCC No.317/2025.

5. Heard learned counsel for the applicants, who submitted that the complainant has lodged the report alleging that the applicants/accused with common intention in the name of M/s Indrayani Developers, Nagpur, agreed to sell plot No.29 which were carved out in field Survey No.391-A and 391-B of

Mouza Hingna, District Nagpur. The agreed consideration for the said plot was Rs.18,02,310/- out of which, an amount of Rs.6,00,000/- was deposited by the informant at the time of agreement of sale. However, thereafter, the informant has many times requested the applicants/accused to get the sale deed executed, but the applicants avoided for the same for one or other reasons. Subsequently, his plot number was changed as from Plot No.29 to Plot No.24. It is further alleged that the applicants have not only duped him, but also instead of giving him Plot No.29 gave him Plot No.24 of the different areas and thereby committed an offence punishable under Sections 406 and 420 of the Indian Penal Code.

6. Heard learned counsel for the applicants, who submitted that the applicants were the owner of part of Gut No.391-B and the complainant was owner of part of Gut No.391-A. The common measurement was carried out of the said plot and it revealed that there is an encroachment by the complainant on the land of the present applicants to the extent of 0.6 R, thereafter the said order of encroachment is set aside by the Deputy Superintendent of Land Records, Hingana. The land was subsequently developed by the present applicants under the name and style as 'M/s Indrayani Developers, Nagpur.' The complainant agreed to purchase the plot No.29 from the said land. Accordingly, agreement to sale was executed. As per the

said agreement to sale, it was specifically mentioned that there may be a change of the plot as well as area, but location would be the same. After understanding the said terms and conditions, he entered into an agreement and the consideration amount was paid. After sanction of the map the Plot No.29 of the present applicants was changed as Plot No.24 with the same location, but after two months of the sale, the present complainant filed this complaint. He submitted that even accepting the allegation as it is, at the most, in view of the agreement of sale also, the complainant can file a suit for specific performance. By no stretch of imagination, the offence under Sections 420 or 406 of IPC is made out. He submitted that even if the allegation is taken into consideration, the offence under Sections 406 and 420 will not co-exist together. For all above these grounds, he prayed for quashing of the FIR as well as the consequent proceeding.

7. Per contra, learned APP and learned counsel for intervenor submitted that there was an entrustment of property as well as the present applicants have obtained the consideration amount and various investors or the proposed purchasers were duped by the present applicants, and therefore, the application deserves to be rejected.

8. After hearing both the sides and on perusal of the entire investigation papers, there is no dispute as to the fact that part of the land of 391-B was owned by the applicants, whereas the part of the land of 391-A was owned by the complainant. It is also not in dispute that land was measured and some encroachment was shown by the complainant on the land of the present applicant, but the said order was subsequently set aside by the Deputy Superintendent of Land Records. Thereafter, the land 391-B was developed by the present applicants under the name and style of M/s. Indrayani Developers. The complainant as well as the Intervenors entered into an agreement. The agreement of sale is on record, wherein it is specifically mentioned that after the sanctioned of the map, there may be change in the area as well as change in the plot numbers. By understanding the said aspects, all the intervenors as well as the complainant entered into an agreement. The copy of the agreement is on record. The clause of the agreement i.e. clause No.13 specifically shows that there may be change in the plot number and the area, but the location would be same and if any dispute arises regarding the same, the parties are at liberty to file a civil suit for the specific performance. But thereafter, instead of plot No.29, plot No.24 was allotted to the complainant therefore, he filed FIR against the present applicants. Thus,

apparently, the nature of the transactions shows that it is a civil dispute between the parties.

9. In order to constitute a criminal breach of trust under Section 406 of IPC:

> *(1) There must be entrustment with person for property or dominion over the property, and*
>
> *(2) The person entrusted:*
>
> *(a) Dishonestly misappropriated or converted property to his own use, or (b) Dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:*
>
> > *(i) Any direction of law prescribing the method in which the trust is discharged; or*
> >
> > *(ii) Legal contract touching the discharge of trust.*

10. Similarly to constitute an offence under Section 420 of IPC there has to be (1) Deception of any person, either by making a false or misleading representation or by other action or by omission; (2) Fraudulently or dishonestly inducing any person to deliver any property, or (3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

11. In both the aforesaid Sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

12. On the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. If it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of IPC, punishable under Section 420 of IPC.

13. In the case of **Delhi Race Club (1940) Limited & Ors., Vs. State of Uttar Pradesh & Anr., (2024) 10 SCC 690**, wherein the Hon'ble Apex Court held in para 39 which read as under:

> *"39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in* ***Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823*** *as under:*
>
> > *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that*

the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

14. To put it in other words, the case of cheating dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

15. The Hon'ble Apex Court in catena of judgment has considered the distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

16. In the light of the above facts and circumstances of the case, as observed earlier that when the complainant has come with a case that he entered into an agreement to purchase the plot and he has specifically agreed as to the conditions imposed in the said agreement subsequently, he cannot said that there is a breach of agreement. As observed earlier that the deception as well as criminal breach of trust both the sections cannot co-exist together. Moreover, considering the fact that the complaint was filed after two months of the said incident is also requires to be taken into consideration. In view of the observations of the Hon'ble Apex Court in the case of **Paramjeet Batra Vs. State of Uttarakhand & Ors., (2013) 11 SCC 673** wherein it is observed that while exercising the jurisdiction under

Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

17. As observed earlier and for all the above discussions, it is apparent that offence under Sections 406 and 420 cannot co-exist together. The transactions which entered into by the complainant and the present applicants is civil in nature. In view of that, no offence is made out against the present applicants and therefore, the application deserves to be allowed. Accordingly, I proceed to pass following order:

ORDER

(i) The application is **allowed**.

(ii) The FIR in connection with Crime No.615/2023 registered with Police Station, Hingna, District Nagpur for the offence punishable under Sections 420 and 406 read with Section 34 of the Indian Penal Code and the consequent proceeding arising out of the same bearing RCC No.317/2025, are hereby quashed and set aside to the extent of the present applicants.

The application is disposed of.

(URMILA JOSHI-PHALKE, J)

Sarkate.