



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

CRIMINAL APPLICATION (APL) NO. 581 OF 2025

Rajnish S/o Ashok Khanorkar,
Aged about 47 years, Occ-Business,
R/o 65/1, Ruikar Road, Mahal,
Nagpur.

APPLICANT

Versus

1. The State of Maharashtra,
through Police Station Officer, Police
Station Hudkeshwar, Nagpur City.
2. The Incharge Police Officer,
Economic Offence Wing of Crime
Branch, Civil Lines, Nagpur-440 001.
3. Vilas S/o Ramchandra Ladikar,
Aged about 50 years,
R/o Ladikar Layout, Near Ram
Mandir, Ayodhya Nagar, Nagpur.

NON-APPLICANTS

WITH

CRIMINAL APPLICATION (APL) NO. 370 OF 2025

1. Sanjay S/o Gunwant Band,
Aged: 62 years, Occ: Business,
R/o Plot No. 10, Jaiprakash Nagar,
Khamla Nagpur – 440025.
2. Vikram S/o Khubchand Nankani,
Aged: 40 years, Occ: Self Employed,
R/o 345, Near Chowdhary Chowk,
Jaripatka, Nagpur.

APPLICANTS

Versus

1. State of Maharashtra,
Through Police Station Officer,
Hudkeshwar Police Station, Nagpur.
2. Deputy Commissioner of Police,
Zone-4, Nagpur.
3. Vilas S/o Ramchandra Ladikar,
Aged about 50 years, Occ: Business,
R/o Ladikar Layout, Ayodhya Nagar,
Ram Mandir, Nagpur.

NON-APPLICANTS

Mr. V.S. Dhobe, Advocate for the Applicant in APL No.581/2025.
Mr. S.D. Dewani, Advocate for the Applicants in
APL No.370/2025.
Mr. N.B. Jawade, APP for the Non-applicant Nos. 1 & 2/State.
Mr. A.P. Bhuihar, Advocate for the Non-applicant No.3.

CORAM : URMILA JOSHI PHALKE, J.

RESERVED ON : 16th JANUARY, 2026.

PRONOUNCED ON : 30th JANUARY, 2026.

ORAL JUDGMENT :-

1. Heard.
2. **ADMIT.** Heard finally by the consent of learned
Counsel for the respective parties.

3. Both these Applications are preferred by the Applicants for quashing of the First Information Report (“FIR” for short) in connection with Crime No.167/2025 registered with Police Station Hudkeshwar, Nagpur City for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code (“IPC” for short).

4. The brief facts which are necessary for the disposal of the present Applications are as under:-

4(i). The Non-applicant No.3 is the original Complainant who lodged the FIR against the present Applicants at Hudkeshwar Police Station alleging that in the year 1997 he got contract for construction of a bridge over Kamptee-Yervada Road. He had availed loan of Rs.25 Lakhs but he could not repay the same. Therefore, he received notice from the Bank for repayment of loan, therefore he was in need for financial assistance. The Applicant No.1/Sanjay Band in Criminal Application (APL) No.370/2025 was known to him as he was the customer of Complainant running a shop of hardware. He communicated with the Applicant/Sanjay Band and Sanjay Band agreed to give him financial assistance and agreed to give

a loan of Rs. 30 Lakhs by way of security. The Complainant executed the agreement of sale in favour of Sanjay Band of Plot Nos. 71, 72, 73 and 74 out of Khasra No. 85/7 admeasuring 1960.94 sq.mtrs., against the said transaction as a security. Sanjay Band issued a cheque of Rs. 5.50 Lakhs in the name of Ladikar Construction, however he could not pay the remaining amount of Rs. 25 Lakhs. Subsequently, Sanjay Band shows his inability to pay the amount and suggested the name of Applicant Rajnish Khanorkar and one Krishna Khanorkar and the Complainant executed the consent agreement. The Complainant got executed general Power of Attorney on 05.05.2004 with Rajnish Khanorkar and got executed an agreement to sell in favour of the mother of Rajnish Khanorkar i.e. Kumud Khanorkar on 06.05.2004 and the Complainant was given an amount of Rs. 10 Lakhs as a loan.

4(ii). As per the contentions of the Complainant despite he repaid the loan amount to Rajnish Khanorkar by cheque and cancelling Power of Attorney, which was communicated to the Applicants as well as also published in newspaper on 26.07.2005. The said Rajnish Khanorkar executed sale deed in

favour of his mother and wife. Thus, the Applicants though the Power of Attorney executed in their favour was cancelled and they were knowing about the same and executed the sale deed in favour of their relatives with fraudulent intention and thereby committed an offence punishable under Sections 406 and 420 of IPC.

5. Heard Mr. Dewani, learned Counsel for the Applicants in Criminal Application (APL) No. 370/2025, Mr. Dhobe, learned Counsel for the Applicant in Criminal Application (APL) No. 581/2025, Mr. Jawade, learned APP for the Non-applicant Nos. 1 and 2/State and Mr. Bhuibhar, learned Counsel for the Non-applicant No.3/Complainant.

6. Mr. Dewani, learned Counsel submitted that, there is no dispute that the Complainant entered into an agreement with the Applicants which is the agreement of sale. The said agreement of sale is a registered document. The consent agreement is also executed in favour of Sanjay Band. Subsequently, the finance was obtained from Rajnish Khanorkar and agreement of sale was executed in favour of said Rajnish Khanrokar. The Power of Attorney was also executed in favour

of said Rajnish Khanorkar, and therefore, said Rajnish Khanorkar has executed the sale deed as he was having a Power of Attorney.

7. He submitted that, the entire nature of dispute is civil in nature, and therefore, no offence is made out against the present Applicants. He further invited my attention towards the order passed by the Magistrate, which shows that the original Complainant has also preferred a private complaint. The Magistrate has called the report under Section 202 of the Code of Criminal Procedure ("Cr.P.C." for short). On perusal of the said report under Section 202 of Cr.P.C., the Magistrate has observed the nature of the dispute is civil in nature and no offence is made out and dismissed the complaint. The said complaint was dismissed on 11.07.2024. Subsequent to the dismissal of the said complaint this FIR came to be lodged on 13.03.2025. While lodging the FIR the order passed by the Magistrate is suppressed and it was not disclosed that initially a private complaint was filed against the present Applicants, which came to be dismissed. Thus, the Complainant has not come with the clean hands.

8. He further invited my attention towards Section 154 of Cr.P.C., and submitted that, the entire procedure followed by the Complainant is erroneous and illegal. The law is settled as to approaching the Police. In view of Section 154 of Cr.P.C., if on lodging of the FIR the Police fails to take cognizance, the aggrieved person requires to approach the Superior Police Officers and if they failed to take any action against the person against whom the grievance is made then the aggrieved person can take a resort of filing the Application under Section 156(3) of Cr.P.C. Thus, the entire procedure followed by the Complainant is wrong, erroneous and illegal, and therefore, on that ground also the FIR in question deserves to be quashed and set aside.

9. He further submitted that, the Trial Court has called the report under Section 202 of Cr.P.C., and thereafter dismissed the complaint. On the same ground FIR came to be lodged. Moreover, from the recitals of the FIR and entire documents it reveals that, the dispute between the Applicants and Complainant is of civil nature and no offence is made out under Sections 406 and 420 of IPC. He further submitted that,

Sections 406 and 420 of IPC cannot exist together, on that ground also the Applications deserve to be allowed.

10. Mr. Dhobe, learned Counsel, also endorsed the same contentions and submitted that as far as his Applicant is concerned, absolutely there is no role attributed to him and no specific allegation is levelled against him. In view of that, the Applications deserve to be allowed.

11. *Per contra*, Mr. Bhuibhar, learned Counsel for the Complainant submitted that, there is no dispute that the agreement to sale was executed in between the present Applicants and the Complainant. The Power of Attorney is also executed in favour of the Applicants but subsequently it was cancelled. He submitted that, the general Power of Attorney by all original owners was executed in favour of Rajnish Khanorkar on 06.05.2004. As per the said Power of Attorney, the authority was given to Rajnish Khanorkar. The agreement to sale between the original owner and Kumud Khanorkar and Sangita Khanorkar is dated 06.05.2004. The Power of Attorney was cancelled by the wife of the Complainant on 06.08.2005 and the public notice was given on 26.07.2005. The notice to Rajnish

Khanorkar was given on 18.07.2005 and thereafter the sale deed of all the plots was executed on 12.12.2006. Thus, after the knowledge to Rajnish Khanorkar the said sale deed was executed by him with fraudulent intention, and therefore, at this stage there is *prima facie* material to connect the present Applicants with the alleged offence. In view of that the Applications deserve to be rejected.

12. Mr. Jawade, learned APP for the State supported the contentions of the learned Counsel for the Complainant and submitted that, considering the parameters laid down for quashing of the FIR, at this stage there is a *prima facie* material to connect the present Applicants with the alleged offence. In view of that, the Applications deserve to be rejected.

13. On hearing both the sides and on perusal of the entire recitals of the FIR and record it is undisputed that, the original Complainant, his wife Sangita Vilas Ladikar, Krunal S/o Rajendrarao Ladikar and Vijay S/o Kashiram Bangade were the owners of Plot Nos. 71, 72, 73 and 74 out of Khasra No. 85/7 admeasuring 1960.94 sq.mtrs. The undisputed facts are that, in the year 1997 the Complainant was in need of financial

assistance, and therefore, he availed loan of Rs. 25 Lakhs from Bank. As he could not repay the said loan amount he received a notice from Bank for repayment of loan, therefore he was in need of financial assistance. Thereafter, he came into contact with Sanjay Band as Sanjay Band was his customer. The agreement to sale was executed between the Complainant and Sanjay Band. Sanjay Band agreed to give him Rs. 30 Lakhs by way of loan. Against the said transaction, by way of security, agreement to sale was executed in favour of Sanjay Band by mortgaging the above stated property. However, said Sanjay Band could only pay Rs. 5.50 Lakhs and subsequently shown his inability to pay the remaining amount. With the mediation of said Sanjay Band, the Complainant came in contact with Rajnish Khanorkar and one Krishna Khanorkar. The consent agreement was executed by said Sanjay Band in favour of the said Rajnish Khanorkar. Subsequently the general Power of Attorney was executed in favour of said Rajnish Khanorkar on 05.05.2004 as well as an agreement of sale in favour of his mother Kumud Khanorkar on 06.05.2024 and the amount of Rs. 10 Lakhs was given to the Complainant as loan. It is also the undisputed fact that, the said Power of Attorneys were executed in favour of

Rajnish Khanorkar and were cancelled on 06.08.2005 by the wife of Complainant as well as the other owners of the plots. The said cancellation was published by public notice on 26.07.2005. The notice to Rajnish Khanorkar was also given on 18.07.2005 and subsequent to that the sale deed of all the plots were executed on 12.12.2006. Thus, apparently it appears that the sale deeds were executed after the Power of Attorney was cancelled, which was executed in favour of Rajnish Khanorkar. It is also not disputed that, initially the Complainant has filed a complaint against the present Applicants, the same came to be dismissed after the receipt of report under Section 202 of Cr.P.C.

14. Mr. Dewani, learned Counsel, placed reliance on catena of decisions i.e. *Usha Chakraborty & Anr. Vs. State of West Bengal & Anr., (2023) 15 SCC 135, Rikhab Birani & Anr., Vs. State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 823, Arshad Neyaz Khan Vs. State of Jharkhand & Anr., 2025 SCC OnLine SC 2058, Mahmood Ali & Ors., Vs. State of Uttar Pradesh & Ors., (2023) 15 SCC 488, Delhi Race Club (1940) Limited & Ors., Vs. State of Uttar Pradesh & Anr., (2024) 10 SCC 690, Lalit Chaturvedi & Ors., Vs. State of Uttar Pradesh &*

Anr., (2024) 12 SCC 483, Deochand Damduji Karemore Vs. State of Maharashtra, AIR OnLine 2020 BOM 2453, Krishna Lal Chawla & Ors. Vs. State of Uttar Pradesh & Anr., (2021) 5 SCC 435, S.C. Garg Vs. State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 791, Anukul Singh Vs. State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 2060.

15. Mr. Dhobe, learned Counsel also placed reliance on the decision of *C. Subbiah alias Kadambur Jayaraj & Ors., Vs. Superintendent of Police & Ors. AIR 2024 SC 2633.*

16. Mr. Bhuibhar, learned Counsel for the Complainant, has placed reliance on the decision of *State of Madhya Pradesh Vs. Shilpa Jain & Ors., 2024 SCC OnLine SC 507 and Special Leave Petition (Criminal) No.18084/2024.*

17. Before entering into the merits of the case, it is necessary to see the parameters which are laid down by the Hon'ble Apex Court in the case of *State of Haryana & Ors. Vs. Bhajan Lal & Ors., 1992 Supp.(1) SCC 335*, which reads as under:

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

18. In the light of said parameters the entire facts and circumstances of the present case are to be looked into. It is

already observed that, initially the Complainant has filed a complaint under Section 200 of Cr.P.C. The learned Magistrate has taken cognizance and called the report under Section 202 of Cr.P.C. After perusal of the said report, the learned Magistrate has observed that the dispute between the parties is of civil nature and dismissed the complaint on 11.07.2024 and thereafter approximately after six months the present FIR came to be lodged.

19. It is well recognized that the person aggrieved must first exhaust the alternative remedies available to him in law before approaching the Court of law. In other words, he cannot ordinarily approach the Court directly. In the case at hand, the fact reveals that the Complainant had neither approached the officer-in-charge of the Police Station or the Superintendent of Police concerned as contemplated under Sections 154(1) and 154(3) of Cr.P.C., but has directly gone to the Magistrate under Section 156(3) of Cr.P.C. In such a situation, the Magistrate ought not to have ordinarily entertained the application either under Section 156(3) or under Section 200 of Cr.P.C., so as to direct the Police for the registration of the FIR, rather, it ought

to have relegated the Complainant to first approach the officer-in-charge of the Police Station and then to the Superintendent of Police. Thus, it is apparent that, the Complainant without exhausting his statutory remedies directly approach to the Magistrate and the Magistrate has taken the cognizance of the said complaint and called for report under Section 202 of Cr.P.C.

20. The fact that the Non-applicant No.3 having filed R.C.C. No. 975/2010 before the learned Judicial Magistrate First Class, Nagpur making allegations similar to the allegations made in the impugned FIR and the Magistrate has dismissed the complaint after perusing the report under Section 202 of Cr.P.C. on 11.07.2024. The said order was not challenged by the Non-applicant No.3 and it attained the finality. Even accepting that, the FIR is filed by the Non-applicant No.3 after dismissal of the complaint, i.e. on 13.03.2025 approximately after 6 months of the dismissal of the complaint. More so, the Non-applicant No.3 has not disclosed in the FIR regarding the earlier proceeding which was necessary. When the said criminal complaint was dismissed by the Competent Court on a finding that the dispute

was a pure civil dispute of a breach of contract and there was no element of either deception or misappropriation of money.

21. The Hon'ble Apex Court in the case of ***Vijay Kumar Ghai & Ors., Vs. State of West Bengal & Ors., (2022) 7 SCC 124***, has held that filing of multiple complaints by same party against same accused in respect of same incident amounts to an abuse of process. In paragraph Nos.14 and 15, the Hon'ble Apex Court has observed as under:

“14. Forum shopping has been termed as disreputable practice by the courts and has no sanction and paramountcy in law. In spite of this Court condemning the practice of forum shopping, Respondent 2 filed two complaints i.e. a complaint under Section 156(3) CrPC before the Tis Hazari Court, New Delhi on 6-6-2012 and a complaint which was eventually registered as FIR No. 168 under Sections 406, 420, 120-B IPC before PS Bowbazar, Calcutta on 28-3-2013 i.e. one in Delhi and one complaint in Kolkata. The complaint filed in Kolkata was a reproduction of the complaint filed in Delhi except with the change of place of occurrence in order to create a jurisdiction.

15. A two-Judge Bench of this Court in Krishna Lal Chawla v. State of U.P.¹⁹ observed that multiple complaints by the same party against the same accused in respect of the same incident is impermissible. It held that permitting multiple complaints by the same party in respect of the same incident, whether it involves a cognizable or private complaint offence, will lead to the accused being entangled in numerous criminal proceedings. As such he would be forced to keep surrendering his liberty and precious time before the police and the courts, as and when required in each case.”

22. I find that initially the Non-applicant No.3 filed the complaint which was dismissed by the Competent Court which was not challenged by the Non-applicant No.3 and subsequently the FIR came to be lodged by suppressing the earlier proceeding. As far as the suppression of the earlier proceeding is concerned, which is not explained by the Non-applicant No.3 in the reply filed in the Application. The Non-applicant No.3 has entirely suppressed the order passed by the Competent Court while lodging the FIR. Moreover, the delay which is caused in lodging the FIR, is also not explained by the Non-applicant No.3 in the said FIR. Thus, the admitted fact shows that, the complaint filed was dismissed under Section 203 of Cr.P.C. by the learned Magistrate, Nagpur and the said dismissal order was not challenged before any Higher Forum but the FIR came to be lodged by suppressing the said fact is sufficient to show that the Non-applicant No.3 has not approached the Investigating Agency with a clean hand.

23. The Complainant has alleged that, with the help of Power of Attorney, the present Applicants have executed the sale deed and thereby committed an offence punishable under

Sections 406 and 420 read with Section 34 of IPC. There is a difference between criminal breach of trust and cheating. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted: (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

24. Thus, 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.

25. 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.

26. 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.

27. 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.

28. The learned Counsel for the Applicants relied upon the judgment of ***Delhi Race Club*** (supra), wherein the Hon'ble Apex Court has 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.” ”

29. 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.

30. The Hon'ble Apex Court in catena of judgments 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.

31. Thus, there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same.

Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

32. This aspect is further considered by the Hon'ble Apex Court in the case of ***Rikhab Birani*** (supra) and by referring the catena of decision it is held that both the offences cannot co-exist simultaneously. Similar observation is made in ***Arshad Neyaz Khan*** (supra) as well as in the case of ***Mahmood Ali & Ors.***, (supra).

33. 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 the Applicants with whom the property was entrusted dishonestly, misappropriated or converted the property to their own use and cause the loss to the Complainant then the Complainant cannot raise the issue that there was a deception by the accused persons by making a false or misleading representation or by any other action or permission, as both the Sections cannot co-exist together. Moreover, considering the fact that, initially the complaint was filed, which

was dismissed and by suppressing the earlier proceedings, the Complainant lodged the FIR. The continuance of the above said proceedings against the present Applicants would be an abuse of process of law. Moreover, accepting the case as it is in its entirety do not *prima facie* constitute any offence against the present Applicants as both the contentions of the Complainant that he is deceived by the Applicants as well as they have misappropriated the property cannot co-exist, and therefore, if the criminal proceedings are allowed to continue against the Applicants, the same will be the abuse of process of law and result in miscarriage of justice.

34. In the case of ***Achin Gupta Vs. State of Haryana & Anr., 2024 SCC OnLine SC 759***, wherein the Hon'ble Apex Court observed as under:

“19. It is now well settled that the power under Section 482 of the Cr. P.C. has to be exercised sparingly, carefully and with caution, only where such exercise is justified by the tests laid down in the Section itself. It is also well settled that Section 482 of the Cr. P.C. does not confer any new power on the High Court but only saves the inherent power, which the Court possessed before the enactment of the Criminal Procedure Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of Court, and (iii) to otherwise secure the ends of justice.

20. The investigation of an offence is the field exclusively reserved for the police officers, whose powers in that field are unfettered, so long as the power to investigate into the cognizable offence is legitimately exercised in strict compliance with the provisions under Chapter XII Cr.PC. While exercising powers under Section 482 Cr.PC. The court does not function as a court of appeal or revision. As noted above, the inherent jurisdiction under the section, although wide, yet should be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has the power to prevent such abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers, the court would be justified to quash any proceeding if it finds that the initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

35. In the case of ***Paramjeet Batra Vs. State of Uttarakhand & Ors., 2013(11) SCC 673***, the Hon’ble Apex Court in paragraph No.12 has observed as under:-

“12. While exercising its 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.”

36. In the present case also, the Complainant has already availed the remedy by filing the civil suit.

37. The decisions of the Hon’ble Apex Court relied by the learned Counsel for the Applicants supports the case of the Applicants, and therefore, covered under the parameters given by the Hon’ble Apex Court in the above said judgments.

38. The ingredients of cheating as defined under Section 415 of IPC and criminal breach of trust under Section 405 of IPC are not made out even accepting the allegations in the complaint at their face value, moreover both cannot co-exist together. The facts and circumstances of the case further shows that, the Complainant has suppressed the earlier proceeding especially the dismissal of the complaint by the Magistrate after perusing the report under Section 202 of Cr.P.C., and the same is not challenged before any Court and attained the finality. There

is inordinate delay in lodging of the FIR which is also not explained by the Complainant.

39. For all above these reasons, it is apparent that the Complainant has not approached the Investigating Agency with a clean hand, and therefore, in my considered opinion, the Applications deserve to be allowed. Accordingly, I proceed to pass the following order.

ORDER

- i. Criminal Application (APL) Nos. 581/2025 and 370/2025 are **allowed**.
 - ii. The First Information Report in connection with Crime No. 167/2025 registered with Police Station Hudkeshwar, Nagpur City for the offence punishable under Sections 420, 406 read with Section 34 of the Indian Penal Code, is hereby quashed and set aside to the extent of present Applicants.
40. Pending application/s, if any, shall stand disposed of accordingly.

(URMILA JOSHI PHALKE, J.)