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

CRIMINAL APPLICATION (APL) NO.246/2026
(Dr. Sameer S/o Balswarup Chaubey Vs. State of Maharashtra, through Police Station Officer, Sitabuldi, Nagpur City, Nagpur and others)

Office Notes, Office Memoranda of Coram, appearances, Court's orders of directions and Registrar's orders	Court's or Judge's orders

Mr. S.V. Manohar, Senior Advocate with Mr. Aadil Anwar J. Mirza and Mr. Masood Shareef, Advocates for the applicant.
Mr. K.R. Lule, A.P.P. for the non-applicant Nos.1 and 2/State.
Mr. Nipan Katyal with Mr. Parth Ranade, Advocate for the non-applicant No.3.

CORAM: MRS. VRUSHALI V. JOSHI, J.
DATED: 20.4.2026.

By way of present application, the applicant is invoking the inherent jurisdiction of this Court for quashing the F.I.R. No.0068/2026, registered by the non-applicant No.1, for the offence punishable under Sections 420, 406 and 506 of the Indian Penal Code, 1860 (for short “I.P.C.”).

2. On the complaint lodged by Sameer Sawwalakhe, the crime is registered. It is alleged that when the complainant came to know that the applicant Dr. Choubey was in need of money he met the applicant Dr. Choubey and gave the proposal of setting up a pharmacy shop in his hospital. Since the applicant’s hospital was famous, the complainant was sure that there would be a good business. The Complainant considered establishing a pharmacy but since the applicant demanded Rs.5 Crores and as he could not provide that amount alone, the complainant asked some of his friends and they were assured that the hospital would achieve the business of around Rs.60 to 90 Lakhs per month. The complainant along with

Sachin Madke, Varun Kumar and Deepak Singh invested the said amount of Rs.5 Crores and they agreed to invest the same in pharmacy at Asian Kidney Hospital and Research Center, Nagpur of the applicant.

3. On 21.6.2019 a financial MoU was signed between Dr. Choubey and the complainant and his friends deciding to give Rs.5 Crores as a deposit to applicant. Out of this amount 50% was non-refundable and 50% was to be refunded when the pharmacy is to be closed. From 18.6.2019 to 14.11.2019 total amount of Rs.5,14,45,000/- was given in cash, cheques and RTGS. Out of this, Rs.14,45,000/- has been lent to the applicant. The MoU contained the term that Dr. Choubey will provide his shop with a minimum monthly drug sales business of Rs.60 Lakhs to Rs.90 Lakhs. This MoU will be valid for 7 years. 18 percent of drug sales business will be given to Dr Choubey. Dr. Choubey had promised to set an I.C.U. and other departments in his hospital in December 2019 but even after 3 to 4 years of the agreement, the I.C.U. and other departments were not started. As per the agreement, it was decided that Dr. Choubey would not start any other pharmacy in his hospital or allow others to start one.

4. Despite above mentioned conditions in the MoU signed between the applicant and the complainant, Dr. Choubey started another pharmacy in the hospital premises due to which the complainant and his partners suffered significant financial losses. The agreement predicted that sales would reach at least Rs.60 Lakhs to Rs.90 Lakhs per month but this target had not reached till the date of filing of the F.I.R. The complainant spoke to the applicant. The

applicant had started another pharmacy at the same location which affected the sale of the pharmacy of complainant and daily transaction money was not received. Therefore, as the complainant and his friends were running the pharmacy at a loss, they had no option but to close it.

5. The premises leased/licenced as per the MoU dated 21.6.2019 *inter alia* provides that the non-applicant No.3 had agreed to deposit Rs.5 Crores as a security deposit and out of which Rs.2 Crores 50 Lakhs were refundable and Rs.2 Crores 50 Lakhs were not refundable. Further the non-applicant No.3 agreed to pay the monetary benefits equivalent to 18% of net sales per month to the applicant. At the time of agreement it was represented by the non-applicant No.3 to the applicant that the monthly sales of the pharmacy of non-applicant No.3 initially would be between Rs.45 Lakhs to Rs.60 Lakhs. It was represented that after six months, the sales would rise upto Rs.60 Lakhs to Rs.90 Lakhs per month.

6. It is argued by the learned Advocate for the applicant that the non-applicant No.3 represented to the applicant that he shall specifically provide best quality pharmaceuticals services *vis-a-vis* the medicine and equipments in strict adherence to the terms of the understanding and availability of such quality medicines and to operate the pharmacy on 24/7 basis as it is of utmost importance that such quality medicines are available at all times in the aforesaid hospital for treatment of critical patients around the clock. The non-applicant No.3 agreed and represented that, in case of his failure to meet the terms and conditions of the lease/licence along with the timely payment of rent in the form of revenue generated from the

sales at the pharmacy, the applicant would be well within his right to terminate the lease by providing prior intimation.

7. The applicant and the non-applicant No.3 entered into another MoU dated 19.10.2021 prepared in accordance with the National Accreditation Board of Hospitals (NABH) to incorporate, amongst others, an increase in the duration of the said lease/licence to a period of 84 months commencing from 28.6.2019 to 27.6.2024.

8. Since commencement of the licence, the non-applicant No.3 by providing false reasons and assurance to the applicant defaulted in making the timely payments against the said occupation charges as licencee being the amount equipped with 18% of the net sales per month at the pharmacy. The applicant requested for said payment but the non-applicant No.3 breached the trust of the applicant by furnishing false and fabricated statement of accounts that showed a drastic decrease in the sale of pharmaceuticals of the non-applicant No.3. The non-applicant No.3 has not paid the licence fee in the form of revenue generated from the sales at the pharmacy being operated by the non-applicant No.3. According to the Books of Account maintained by the applicant, the non-applicant No.3 has failed miserably to make payment of the occupation charges since December 2022. He was also not keeping pharmacy open and available for 24/7 which was one of the primary conditions considering the nature of services. The non-applicant No.3 principally committed the breach of terms and conditions of understanding/agreement which was entered into between the applicant and the non-applicant No.3 at the time of induction of non-applicant No.3 as a licencee in the suit shop.

9. It is argued that the non-applicant No.3 in order to avoid contractual obligations, has issued the legal notice dated 2.6.2023 to the applicant claiming that the applicant has allegedly breached the terms and conditions of the lease. The applicant has replied the said legal notice on 5.9.2023 and denied all the allegations made by the non-applicant No.3 and thereafter the applicant called upon the non-applicant No.3 to vacate the premises in his occupation and thus terminated the lease/licence granted to the non-applicant No.3 and directed to hand over the vacant possession of the aforesaid suit shop.

10. The applicant has filed suit against the non-applicant No.3 for ejectment, possession, arrears of occupation charges, mesne profits, damages and perpetual injunction under Section 16(1)(g) of the Maharashtra Rent Control Act, 1999 read with Section 26 of the Provincial Small Causes Act being Regular Civil Suit No.258/2023 which is pending before the Small Causes Court and also moved an application under Order XV-A of the Code of Civil Procedure for payment of arrears of rent and for direction to deposit the monthly rent pending disposal of the suit.

11. Apprehending his eviction from the premises of the applicant and to extract the money from the applicant, the non-applicant No.3 has lodged the complaint against the applicant with Economic Offences Wing (E.O.W)-non-applicant No.2 directly, without approaching the Police Station Sitabuldi. Upon receipt of notice from the E.O.W., the applicant attended the Police Station and pointed out that the said complaint was false and concocted. The statement of the applicant was recorded. After dropping of the enquiry, the complainant lodged an identical report with the non-

applicant No.1 Sitabuldi Police Station, Nagpur through his partner Varun Kumar Chauhan. On receipt of said report, the applicant was summoned by the non-applicant No.1-Sitabuldi Police Station on 28.8.2025. The applicant appeared and explained his side and pointed out that the said complaint is frivolous. Sitabuldi Police Station initially refused to entertain the said complaint lodged at the behest of non-applicant No.3 and closed the enquiry on the complaint with remarks "*dispute in respect of the alleged transaction is already sub-judice before the competent civil court and to approach the civil court for his alleged grievance*. Though the dispute amongst the applicant and non-applicant No.3 is purely of civil nature and is pending before the Small Causes Court, the non-applicant No.3 has not initiated any proceeding for recovery and has again lodged the complaint against the applicant and the offence under Section 420, 406 and 506 of I.P.C. was registered.

12. As the civil suit is pending and the dispute is between the landlord and the tenant and earlier complaint was closed by the same Police Station i.e. Sitabuldi Police Station and on the another complaint lodged by the complainant through his partner Varun Kumar Chauhan the crime was registered, it requires to be set aside. Hence, prayed to set aside the F.I.R. registered against the applicant by allowing this application.

13. The learned A.P.P. has filed the reply and though has opposed the application, however, while arguing the matter has stated that, the registration of a crime on same complaint which was already closed by the same Police Station is not correct. From the F.I.R. itself it is clear that the complaint is of civil nature. The dispute is already

pending before the Small Causes Court. Hence, there is no substance in the F.I.R. and he has no objection, to set aside the same.

14. The non-applicant No.3 has filed reply and opposed the application stating that the applicant has not approached this Court with clean hands and suppressed the material facts. The financial transactions and contractual obligations between the applicant and non-applicant No.3 clearly show that, the applicant had dishonest intention since the inception of transaction between them. Therefore, the present case is not a mere breach of contract and conduct of the applicant reflects a well planned and systematic scheme which includes making false promises and representations to induce the investors by obtaining substantial monetary benefits for himself and wrongful loss to his associates and thereafter refusing to pay the amount and even resorting to threats when repayment was demanded.

15. It is argued that, the non-applicant No.3 along with his associates, were induced by the applicant to invest a substantial amount of Rs.5 Crores for the purpose of running pharmacy within the hospital premises owned and controlled by the applicant. The applicant made several specific assurances to non-applicant No.3 including that the pharmacy would have exclusive right to operate within the hospital and there would be a steady and assured flow of business due to hospital patients, necessary infrastructure and support would be provided and that the venture would be commercially viable and profitable. These assurances were repeatedly given and were made in a manner which created complete confidence in the mind of the non-applicant No.3 to make the investment. The applicant

completely failed to adhere to the agreed terms and conditions, allowed other competing pharmacies or activities, thereby defeating the assurance of exclusivity, created circumstances which made the business commercially unviable and ultimately refused to return the invested amount despite repeated requests and demands.

16. On several occasions, instead of resolving the issue, the applicant avoided the issue thereby giving false explanations and evasive responses and even issued threats thereby aggravating the situation further which clearly shows that entire transaction was not a genuine business but was vitiated by fraud from the very beginning. The present case is not a simple contractual dispute as falsely projected by the applicant but is a clear cut case of breach of criminal trust and criminal misconduct. The F.I.R. and the material on record clearly makes out the offence under Sections 406, 420 and 506 of I.P.C. The attempt of the applicant to portray the dispute as purely of civil nature is deliberate a calculated misrepresentation as the material on record clearly demonstrates that the applicant right from the inception induced the non-applicant No.3 to pay the substantial amount on the basis of false assurances and representations thereby causing wrongful loss to the non-applicant No.3 and wrongful gain to himself.

17. Further contention that offence under Section 420 and 406 of I.P.C. cannot co-exist is legally unsustainable as the facts of the present case clearly disclose both i.e. the element of dishonest inducement at the inception as well as failure to repay the amount. It clearly emerges from the F.I.R. that the applicant from the very inception of the transaction made specific representations and

assurances with complete knowledge that the same would not be honoured thereby induced the non-applicant No.3 to part with the substantial amount. Such conduct of the applicant clearly reflects the dishonest intention at the inception itself and cannot be brushed aside as a simple contractual dispute. The further contention that no misrepresentation is made is equally baseless inasmuch as the applicant had assured exclusivity, business and viability of business. Such assurances were not only false but were made with sole object of securing financial benefits. The attempt of the applicant to deny the applicability of Section 506 of I.P.C. is also without merit as the F.I.R. specifically records that when non-applicant No.3 demanded return of the invested amount, the applicant resorted to threats and caused an intimidation to the non-applicant No.3 thereby attracting the said provision. The F.I.R has been registered against the applicant only after due enquiry and upon finding sufficient material disclosing the commission of a cognizable offence and, therefore, no fault can be attributed to the Investigating Officer, at this stage. Hence, prayed to reject the application.

18. Heard the learned Advocates for the parties and perused the record.

19. On perusal of F.I.R. itself it appears that there is a contract between the applicant and the non-applicant No.3 i.e. complainant. The complainant himself went to the applicant and gave the proposal for starting the pharmacy at the establishment of the hospital of the applicant. The terms and conditions were reduced in writing. On perusal of MoU it appears that both the parties agreed for setting up a pharmacy at the establishment of the applicant on the agreed terms

and conditions and it is a leave and licence agreement between both parties. Initially the non-applicant No.3 failed to pay the agreed amount of 18% per month leading the applicant to file a civil suit before the Small Causes Court. This civil litigation is currently pending. During the pendency of the said civil suit, the non-applicant No.3 has lodged two complaints. First complaint, which was lodged by the non-applicant No.3, is closed by giving a direction to the non-applicant No.3 *to file a civil litigation and to go before the Civil Court*. Thereafter another complaint regarding the same dispute was lodged by the complainant through his partner Varun Kumar Chauhan. It is surprising that the same Police Station i.e. Sitabuldi Police Station took cognizance of it and registered a crime.

20. The applicant has placed reliance on the Judgment of this Court in the case of *Sunil Gangaram Hemnani and ors. Vs. State of Maharashtra, through PSO Lakadganj and anr.* reported in *2025 SCC On line Bombay 5407*, which cites *Delhi Race Club (1940) Limited Vs. State of Uttar Pradesh reported in (2024) 10 SCC 690.* The Court observed that a mere breach of contract, cannot give rise to a criminal prosecution for cheating unless a fraudulent or dishonest intention is shown right from the beginning of the transaction. It is also observed that criminal breach of trust and cheating cannot co-exist simultaneously.

21. In case in hand, it is evident that parties had an established commercial relationship, MoU was executed, which demonstrates absence of any fraudulent inaction at the inception of the transaction in question. The relations between the applicant and

the non applicant no.3 is landlord and tenant and suit remaining pending.

22. The learned A.P.P. has admitted this fact and has also admitted that this is a civil litigation and the F.I.R. can be quashed.

23. The Hon'ble Apex Court in the case of Urmila Devi and Ors. Vs. Balram and Anr. reported in 2025 SCC Online, SC 1574 observed as under:-

> *... 8.8. This Court, in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, (1988) 1 SCC 692, (Madhavrao Jiwajirao Scindia) reasoned that the criminal process cannot be utilized for any oblique purpose. This Court also observed that the court should quash those criminal cases where the chances of an ultimate conviction are bleak and no useful purpose is likely to be served by continuation of a criminal prosecution.*
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> *8.9. In R.K. Vijayasarathy, this Court held that while exercising powers under Section 482 of the Cr. P.C., a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Recently, in Vishal Noble Singh v. State of Uttar Pradesh, 2024 SCC OnLine SC 1680, this Court held that Courts have to be vigilant to ensure that the machinery of criminal justice is not misused for achieving oblique motives and agendas. Tacitly endorsing such misuse only unnecessarily burdens the courts and the criminal justice system. In Anand Kumar Mohatta, this Court, whilst quashing the FIR and chargesheet therein, highlighted the following Words of this Court in State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699, that describe the fundamental principle for exercise of powers under Section 482 of the Cr. P.C :*

> *7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."*

24. Reliance is also placed on the judgment of this Court in the case of *Dilip Visumal Aswani and Anr. Vs. Kamlabai Zabbulal Yadav and Anr, reported in 2026 SCC Online, Bombay 1652.*

25. It is observed by the Hon'ble Apex Court in the case of *Delhi Race Club (1940) Limited and ors. Vs. State of Uttar Pradesh and Anr. r*eported in *(2024) 10 SCC 690* as under:-

> *"43. 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".*

26. In V.Y. Jose and Another V/s. State of Gujarat and Another reported in (2009) 3 SCC 78 the Hon'ble Apex Court has observed as under:-

> "...... a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. ..... It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been mad ut in the complaint. ....."

27. I have also gone through the authorities cited by the non applicant No.3. He has relied on the judgment of the Hon'ble Apex Court in the case of Dinesh Sharma V. Emgee Cables and Communication Ltd. and Anr. reported in 2025 INSC 571, in which it is observed that:-

> *"23. Thus, it can be concluded that economic offences by their very nature stand on a different footing than other offences and have wider ramifications".*

From the MoU it is evident that this is a contract between the parties and no economic offence is made out.

28. The Hon'ble Apex court has observed in the case of *Shashirekha Vs. State of Karnataka and Ors.* reported in *2025 INSC 402* that the court should give reasons as to why the offence under Section 420 is not made out by considering the material placed on record by the Investigating Officer. Reliance is also placed on the judgment of *A.M.Mohan Vs. State Represented by SHO and anr. (2024) INSC 233.*

29. Hon'ble Apex Court in M/s Neeharika Infrastructure Pvt. Ltd. V.State of Maharashtra and Ors. reported in *(2021) 19 SCC 401* in para 10 laid down the principles about how and when the court can interfere in the investigation under Section 482 of the Indian Penal Code.

30. It is argued by the learned Advocate for the non-applicant No.3 that parallel pharmacy was established by the applicant in said premises but it is neither mentioned by the complainant i.e. non-applicant No.3 in the F.I.R. nor he has mentioned the name of said pharmacy. The perusal of F.I.R. itself reveals that the dispute between the applicant and the non-applicant No.3 is a civil litigation. Already the civil suit is pending which is filed by the applicant. The subsequent F.I.R. of which cognizance is taken by the Sitabuldi Police Station appears to be an arm-twisting tactic adopted by the non-applicant No.3. It appears that the amount which was deposited by the non-applicant No.3 is not invested but is deposited for running a pharmacy and as per the agreement, the rent was also fixed as 18% amount of the profit per month. Considering the civil nature of the present F.I.R. and the fact that the earlier F.I.R. was already closed, the application is required to be allowed by quashing the F.I.R. against the applicant. Hence, the following order:-

ORDER

i) The application is allowed.

ii) The F.I.R. bearing Crime No.0068/2026, registered by the non-applicant No.1-Sitabuldi Police Station, Nagpur (City), for the offence punishable under Sections 420, 406 and 506 of the Indian Penal Code is quashed and set aside against the present applicant only subject to depositing costs of Rs.25,000/- with the Public Welfare Account maintained with Union Bank of India, High Court Branch, Civil Lines, Nagpur bearing Account No.129712010001014 and IFSC Code UBIN0812978 and producing the receipt thereof on record within two weeks

iii) The application stands disposed of in the above terms.

(MRS. VRUSHALI V. JOSHI, J.)

Tambaskar.