IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 4076 OF 2022

1. Naresh Vishwambhar Sharma
   Age : 54 years, Occupation : Business
   Residing at : A/1002,
   Rushi Tower, Swami Samarth Nagar,
   Lokhandwala complex,
   Andheri, Mumbai.

2. Mrs. Sunita Naresh Sharma
   Age : 48 years, Occupation : Business
   Residing at : A/1002,
   Rushi Tower, Swami Samarth Nagar,
   Lokhandwala complex,
   Andheri, Mumbai. … Petitioners

V/s.

1. The State of Maharashtra,
   Through Sr. P. I. At
   Panvel City Police Station,
   Navi Mumbai.

2. Shri. Hanumant Girjappa Londhe
   Age : 47 years, Occupation : Contractor,
   Residing At : Prathamesh HSG., Plot-D-63,
   Room 23, Sector 12, Kharghar,
   Tal : Panvel Dist : Raigad … Respondents

Mr. Niranjan Mundargi, i/by Mr. Omneel A. Jadhav for the Petitioners.
Mr. Aditya Bapat for Respondent No.2.
Mr. Prashant Jadhav, A.P.P. for Respondent No.1-State.

CORAM : RANJITSINHA RAJA BHONSALE, J.

RESERVED ON : 9th JULY 2026

PRONOUNCED ON : 11th SEPTEMBER 2026

JUDGMENT :-

1) By the present Petition, filed under Article 227 of the Constitution of India and Section 482 of Code of Criminal Procedure, 1973, for short 'CrPC') (now Section 528 of BNSS), the Petitioners seek to challenge the Order dated 28th December 2017 passed by the learned Judicial Magistrate First Class, 6th Court, Panvel in RCC No. 566 of 2013, and impugned Judgment and Order dated 13th October 2022, whereby the Criminal Revision Application bearing No. 112 of 2019 was dismissed by the learned Additional Sessions Judge, Panvel, Raigad. The Petitioners also seek to quash and set aside the Order dated 23rd December 2022 passed by the learned Judicial Magistrate First Class, 6th Court, Panvel framing charge against the Petitioners in RCC No. 566 of 2013.

2) Heard Mr. Niranjan Mundargi, learned Advocate for the Petitioners, Mr. Prashant Jadhav, A.P.P for Respondent No.1-State and Mr. Aditya Bapat for Respondent No.2. By Order dated 2nd December 2022, this Court was pleased to grant ad-interim relief in terms of prayer clause (c). At the request and with the consent of the parties, the matter was taken up for final hearing at the admission stage.

3) The case as alleged by the prosecution is as under:

3.1) Respondent No.2/First Informant is a civil contractor engaged in the business of taking contracts of construction work. In the year 2007, the Respondent No.2 got a contract to carry out construction work of a company by the name of JKS Infrastructure Private Limited. That, for the said construction work, Respondent No.2 purchased centering material valued at Rs. 8,22,600/-. That, in the year 2008, Respondent No.2 completed the work. That, due to ensuing monsoon season, Respondent No.2 decided to keep the centering material at the site i.e. in the premises of C.C.I. Logistic Pvt. Ltd. Company. That, at the relevant time the work of the toilet slab would be given to him.

3.2) Though assured, the work was not given to Respondent No.2 and was in fact given to three other contractors by the name of Kesubhai Karbhasibhai Patel, Pravin Rama Mhatre and Sajjan Vinayak Kamble. That, the said contractors used the centering material without the consent of Respondent No.2. The said material was used by the said three contractors allegedly on the say of Petitioner No.1.

3.3) When Respondent No.2 came to know of the said facts, he approached the company for return of the said material and payment of certain outstanding bills. That, the repeated requests for return of the material and the payment of bill did not yield any positive results. The Supervisor of C.C.I. Logistics Company Limited assaulted Respondent No.2 and removed him from the company. That, the Petitioners and one Charan Singh, allegedly refused to return the material or to pay the bill.

3.4) That, on 18th July 2009, Petitioner No.2 convened a meeting wherein the three contractors agreed to pay an amount of Rs. 1,75,000/-

towards rent of the centering material. That, the discussion of the said meeting was reduced to writing and signed by the three contractors and Petitioner No. 2. Despite the said understanding, the payment was not made. It is alleged that, the centering material was stolen.

3.5) That, since 4th October 2007 till July 2008 C.C.I. Logistics Private Limited Company had not returned the said centering material, wooden planks, tin sheets, wooden card, drum and other construction material. The said material was kept because Respondent No.2 trusted the company. On the aforesaid basis, on 22nd February 2013, an FIR bearing No. I 77 of 2013 came to be lodged with the Panvel City Police Station, Raigad, under Section 406, 420 read with Section 34 of the Indian Penal Code against the present Petitioners and other co-accused.

4) Pursuant to the investigation, a charge-sheet came to be filed, which was numbered as RCC No. 566 of 2013. The Petitioners thereafter preferred an application for discharge under Section 239 of the Code of Criminal Procedure, before the learned Judicial Magistrate First Class, 6th Court at Panvel in RCC No. 566 of 2013. By an Order dated 28th December 2017, the learned Judicial Magistrate First Class, rejected the said Application.

5) The Petitioners challenged the said Order dated 28th February 2017 by filing a Criminal Revision Application No. 112 of 2019 before the learned Additional Sessions Judge, Panvel, Raigad. After hearing, the said

Criminal Revision Application No. 112 of 2019 was rejected by Order dated 13th October 2022.

6) The present petition has been filed challenging the aforesaid Orders dated 28th December 2017 and 13th October 2022. By way of an amendment the order dated 23rd November 2022 framing charges has been challenged.

7) Mr. Niranjan Mundargi, learned Advocate appearing for the Petitioner submitted that:

7.1) The FIR dated 22nd February 2013 does not indicate any offence as against the Petitioners much less any prima facie offence. That, the FIR is misdirected qua the Petitioners, the charges are groundless in as much as the decision to keep the material was admittedly taken unilaterally by the Respondent No.2 and there is not even any allegation of inducement etc.

7.2) The work was completed in the year 2008, and the Petitioner has filed the FIR in the year 2013. That, there is no explanation for the delay in filing the FIR. That, in fact the Petitioners had convened a meeting and ensured that, the matter is settled. At the said meeting the concerned contractors agreed to pay an amount of Rs. 1,75,000/- to the Respondent No.2 towards the rent of the centering material. That, grievance if any can be only against the other co-accused. There is not even an allegation of entrustment and as such no offence under Section 406 can be made out.

7.3) The Respondent No.2 had undertaken the job of construction of the godown and buildings, for which he had been paid. That, the alleged centering material purchased by him was for the said work which was completed in the year 2008. It is an admitted position that, due to the monsoon season, Respondent No.2 himself decided and chose to keep the material at the godown of the Petitioners. There is not even an allegation of inducement or entrustment. That, a purely civil dispute, if any, is been converted into a criminal prosecution. An attempt has been made to indirectly recover monies which are allegedly due from the co-accused contractors by pressurizing the Petitioners.

7.4) The Petitioners relied upon the Judgment of the Hon'ble Supreme Court in the case of Delhi Race Club Limited & Ors Vs. State of Uttar Pradesh & Anr., to contend that offence under Section 406 and 420 cannot coexist simultaneously.

8) Mr. Aditya Bapat, learned Advocate appearing for the Respondent No.2 submitted that:-

8.1) Perusal of the FIR would clearly make out a case under Section 406 and 420 of the Indian Penal Code. That, the material was kept in the Petitioner's company as the Petitioners had assured the first informant that further work would be allotted to him. The work was denied to Respondent No.2 and allotted to the co-accused contractors, who used the Respondent No.2's centering material. That, when demand was made for the outstanding payment and return of the material, Respondent No.2 was threatened, assaulted and driven away, for which a complaint was filed. As such the offence of Section 406 and 420 are clearly made out. That, at the stage of framing charge, charges under Sections 406 and 420 can go hand in hand.

8.2) Referring to Section 221 of the Code of Criminal Procedure, he would submit that, if a single act or a series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved would constitute an offence, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once, or may be charged in the alternative. While referring to the illustrations, it was submitted that an act which may amount to theft, criminal breach of trust, or cheating, and, where it is doubtful as to which of these offences has been committed, the accused may be charged with theft, criminal breach of trust, or cheating.

8.3) That, what the Petitioners have challenged are the Orders of rejecting Discharge Application. The impugned Orders are correctly passed, as prima facie case is made out against the accused and it cannot be said that the charge is groundless. That, prima facie the contents/ingredients of both the offences of cheating as well as criminal breach of trust are made out.

9) Learned APP appearing for the State supported the case of the Respondent No.2.

10) Perused the entire record. The allegations against the Petitioners being owners of the company who gave out a construction contract and

permitted material to be stored in the company premises are under Section 406, 420 read with Section 34 of the Indian Penal code.

11) Section of 406 of IPC reads as under:-

> *406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

11.1) Section 420 of IPC reads as under:-

> *420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

11.2) A useful reference can be made to the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Prafulla Kumar Samal, reported in AIR 1979 SC 366.** It is necessary and useful to refer to paragraph 10 of the said judgment which reads as under:-

> *"10. Thus, on a consideration of the authorities mentioned above, the following principles emerge:*
>
> *(1) That the Judge while considering the question of framing the charges under section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out:*
>
> *(2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be, fully justified in framing a charge and proceeding with the trial*

> *(3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused*
>
> *(4) That in exercising his jurisdiction under section 227 of the Code the Judge which under the present Code is a senior and experienced Judge cannot act merely as a Post office or a mouth-piece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roaming enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial"*

11.3) The Hon'ble Delhi High Court in the case of *Bhim Sain Arora v. State*, reported in *2025 SCC OnLine Del 6721,* has observed that:-

> ***22.*** *The Hon'ble Supreme Court in* ***Delhi Race Club (1940) Limited*** *(supra), had come to the conclusion in the facts of the said case, as already noted hereinbefore, which were with respect to sale and purchase of certain goods, and therefore, ingredients of Section 406 of the IPC were not be made out. There is no doubt that the legal position is that a person cannot be convicted for Sections 409/420 of the IPC simultaneously. However, at the time of consideration on point of charge, in view of the provision of Section 221 of the CrPC, the learned Trial Court can proceed to frame the charge under both the offences.*

12) Section 405 and 406 of the Indian Penal Code deals with the offence of Criminal Breach of Trust. An offence of criminal breach of trust would be attracted only (i) when there is entrustment of property of a person (ii) a person with a dominion over the property, dishonestly misappropriates

or converts to his own use that property or dishonestly uses or dispossess that property in violation of any direction of law prescribing the mode in which such trust is to be discharged or any legal contract. Entrustment and dishonest misappropriation are the main essential ingredients to make out an offence of Criminal Breach of Trust. Only when a case of intentionally and dishonestly acting in a manner contrary to the directions is alleged, there may be a possibility of invoking section 405 and resultantly section 406 of the Indian Penal Code. The act or conduct, ought to be in defiance of the directions. In the present case, I find that there is no entrustment at all to the Petitioners. Even if the case of the Respondent No.2 is accepted in its entirety it prima facie appears that, a case of breach of trust cannot be made out against the Petitioners. At the first instance it is necessary that the allegation or case of entrustment is required to be alleged and prima facie made out. In the present case, no case of entrustment is made out. There is no allegation that, the acts of the Petitioner are contrary to any directions. The specific contention of Respondent No.2 is that due to the ensuing monsoons he decided to kept the material in the premises of the Petitioner. In my considered view this pleading of Respondent No.2 does not make out any case of entrustment and in fact makes the entire criminal prosecution against the present Petitioners extremely doubtful and suspicious. This part of the pleading of Respondent No.2, has to read and understood on a prima facie basis in the background of the facts that (i) the material was kept by Respondent No.2 for his own convenience, (ii) that it was a unilateral decision of Respondent No.2 (iii) it was kept to protect the material from the monsoon and (iv) in a hope of getting work. Only to make bald and general statement that, the Respondent No.2 trusted the Petitioners is not sufficient to invoke the offence under Section 405 and 406 of the IPC. It is necessary that, there is entrustment. There is a basic difference between “having trust” and “entrustment”. Entrustment is positive act of giving a particular property or thing in trust. It is a legal act. On the other hand, ‘trust’ is merely a mental state. Entrustment is a positive act of giving dominion over property and an act by which possession and control are given for a specific purpose. Having trust on the other hand is a mental state and subjective belief which one has. To attract the provisions of Section 405 or 409, there has to be entrustment with a specific direction and intent.

13) Section 420 of the Indian Penal Code, deals with the offence of cheating. For an offence of cheating to be made out, there has to be an act of deceiving a person or fraudulently or dishonestly inducing a person so deceived to deliver a property. It is settled law that, the dishonest act or intent or dishonest inducement has to be since the inception. In the present case, there is no dishonest inducement even alleged by Respondent No.2. Even if the case of Respondent No.2, is taken as pleaded in the complaint and accepted in its entirety and as it is, a case of cheating cannot be made out against the Petitioners. There is no allegation of deception let alone the details

of the alleged deception. Perusal of the allegations in the complaint and FIR indicate that, the specific case of Respondent No.2 is that, the material was kept by Respondent No.2 himself for his own convenience to protect it from the monsoon. The further case is that, Respondent No.2 was anticipating and was hopeful of getting the work of toilet slab in August 2008. This cannot be construed as ingredients or as an allegation so as to make out, an offence of cheating and/or criminal breach of trust.

14) It is settled law that, there is a distinction between the offence of criminal breach of trust and cheating. For cheating it is necessary that, the dishonest intention and inducement is at the inception and for criminal breach of trust it is necessary that, there should be entrustment. Entrustment and dishonest inducement making a person to part with property are two different and distinct concepts. In criminal breach of trust the accused is supposedly entrusted with property which he dishonestly misappropriates and in a case of cheating there is dishonest inducement to a person so deceived to deliver a property. It is necessary that, the facts as alleged are clear and make out an offence. Though the ingredient of "dishonesty" finds place in both the offences, the time, stage and manner in which the act of dishonesty comes into operation for creating the respective offences is completely distinct and different. Due to the said difference the offences i.e cheating and criminal breach of trust, cannot co-exist simultaneously. In the peculiar facts of the present case, I prima facie find that the essential ingredients required to make

out a case under both the offences is clearly absent.

15) As regards Section 34, the requirement is that the act should be done by several persons in furtherance of the common intention of all, and when done in such a manner, each of the person is liable for the act in the same manner as if it was done by him alone. To attract the Section 34 of the Indian Penal Code, two ingredients are must (i) the criminal act should be done not by one person but more than one person and (ii) the individual acts of each such person must cumulatively result in the commission of the criminal offence and should have been done in furtherance of the common intention of all the persons. It is required to be shown that, all the accused had the common intention to commit the offence and that, in furtherance of such intention, each one of the accused performed an assigned role by doing separate acts, similar or diverse. Section 34 has been enacted on the principle of joint liability. One must also remember that, there is a fine distinction between 'common intention' and 'similar intention'. Common intention is a state of mind of an accused, which can be inferred objectively from his conduct displayed in the course of commission of the alleged crime, and the prior and substantive attending circumstances may also be considered. Section 34 creates a deeming fiction by attributing a particular criminal act constituting a criminal offence which is committed by one person to the others in pursuance of a common intention.

16) Perusal of the FIR would indicate that, the specific case of the

Respondent No.2 is that after completing the contract as allotted to him in the year 2008, due to the onset of the monsoon, he decided and chose to keep the centering material in the premises of the company. It is the further contention that, the company had assured him work of the toilet slab which was proposed/scheduled for August 2008. It is the further case that, the three contractors/co-accused used the said material and that the Petitioners permitted the said use. It is also contented that, when Respondent No.2 went to ask for return of the material and the outstanding bill, the company refused to give it and that, the informant was threatened, etc. The further case of the Respondent No.2 is that, on 18th July 2009, a meeting was held wherein the said three co-accused/contractors agreed to pay rent of Rs.1,75,000/-. The decision arrived at in the said meeting were reduced in writing. Perusal of the said writing would indicate that, the amount of Rs.1,75,000/- was to be paid to Respondent No.2 by the three contractors in the following manner:-

(i) Manoj construction - Shri. Kamble- Rs.88,000/-

(ii) Smt. Rupali Construction of Shri. Pravin Mhatre - 43,5000/-

(iii) Shri. D. K. construction of Shri. Kesubhai – 43,500/-

16.1) The said writing is initialed by the said three contractors/co-accused. The Petitioner No.2 has signed only as a witness. Perusal of the FIR and the said writing would indicate that, the rent, if any, was payable by the said three contractors/co-accused to Respondent No.2. In the FIR, there is no allegation so as to make out an offence of Sections 406 and 420 of the Indian

Penal Code as against the present Petitioners. It is not the case of the Respondent No.2 that, the said centering material was specifically entrusted to the Petitioners with a specific direction nor is it the case that Respondent No.2 was induced. In fact, perusal of the FIR would indicate that, the decision to keep the said material in the Petitioner's premises was taken by Respondent No.2 of his own will, for his own convenience and to protect the material as the monsoon was round the corner. As regards the payment of an outstanding bill, there is only a reference made that, he had demanded an outstanding bill. There is no specific pleading as to which bill was outstanding in respect of the 2007 contract. There is no detail whatsoever. Further in the NC complaint, there is no reference to the present Petitioners. Further, on perusal of the allegations in the FIR, the case of common intention of Section 34 is also not made out. The only vague statement which is made by the complainant is that, the Petitioners permitted the use of the material. The said statement, by no stretch of imagination, can be construed to mean that the Petitioners had any common intention or any similar intention to support the co-accused. As regards the case under Section 420 for cheating, there is no pleading at all or allegation in respect of any alleged inducement which was offered by the Petitioners. A vague reference to an alleged inducement is that of the proposed work of the toilet slab, which according to the Respondent No.2 would have been given to him in August 2008. Perusal of the allegation would indicate that, the complainant had in fact kept the material only for his own logistic convenience. Further pursuant to the meeting of 18th July 2009, it was clear that, the complainant had settled the disputes with the said three contractors/co-accused and agreed to receive an amount of Rs. 1,75,000/- from the three co-accused/contractors. There was no complaint or dispute with the Petitioner which was sorted out by the said meeting. The privity of contract or any link of Respondent No.2 at the most would be with the said co-accused/three contractors and not with the present Petitioners.

17) Perusal of the Order dated 28th December 2007 would indicate that, the Discharge Application has been rejected on untenable and misplaced grounds. I find that, the complaint/FIR does not contain any allegation whatsoever in respect of the dishonest inducement or entrustment. On the contrary, the Respondent No.2 has specifically stated that it was his own decision to keep the material at the premises due to the monsoon season. It is clear that, the purported promise to give work of the toilet slab in August 2008 was not an inducement offered to keep the material. It is not the case of the Respondent No.2 that, the material was purchased on the said assurance/prospect of given the work of the toilet slab.

18) Perusal of the Order dated 13th October 2022, would indicate that, the Revision Application was rejected, as the Court was of the opinion that, the material was entrusted and that there was a promise to allot work. As observed earlier, this Court is of the prima facie opinion that neither was the material entrusted nor brought on the purported premise of the toilet slab

work. Non-allotment of work/contract cannot culminate in an offence of cheating or criminal breach of trust of the IPC. In my opinion the case against the present Petitioner is totally groundless. I find that, there is no cogent material and the charges against the Petitioner are totally groundless. Further the key fact that, the written document in respect of meeting held on 18^{th} July 2009 would indicate that, the three contractors had agreed to repay the money. The liability and obligation were that of the other co-accused and no that of the Petitioner.

19) In the present case, I am of the prima facie opinion that, if the facts as stated in the chargesheet are taken to be true on their face value and accepted in their entirety, they do not constitute the offence of cheating and/or criminal breach of trust. In the facts of the present case, to proceed any further against the Petitioners would be a grave error of law and would amount to an abuse and misuse of the process of law.

20) In view of the peculiar facts of this present case, I am of the view that, the Petitioners have made out a case for quashing and for this Court to exercise its inherent powers under Section 482 of the Code of Criminal Procedure. It would be in the interest of justice to prevent the abuse of process of law and to quash the criminal proceedings. I find no criminality or criminal intent on the part of the Petitioners is even alleged by the complainant.

21) Considering the aforesaid facts and circumstances, the present case in my opinion would fall within the category 1 and 5 of categories

enumerated by the Supreme Court in case of *State of Haryana v. Bhajan Lal reported in 1992 Supp (1) SCC 335* :

> *"(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.*
>
> *(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.*

22) I am of the prima facie opinion that, no case is made out under Section 406 and 420 of the Indian Penal Code. In view of the aforesaid facts and circumstances, I am inclined to allow the Petition. Hence, the Petition is allowed in terms of prayer clause (b) and (c1).

(RANJITSINHA RAJA BHONSALE, J.)