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# IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

## WRIT PETITION NO. 2661 OF 2026

Ashutosh Satchidanand Pandey .. Petitioner

**Versus**

The State of Maharashtra & Anr. .. Respondents

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- Mr. Shyam Dewani a/w Mr. Sachet Makhija & Ms. Asmita Maurya, Advocates for Petitioner
- Mr. Sukanta Karmakar, APP for State
- Ms. Shraddha Talkar, Advocate for Respondent No. 2
- Mr. Satyajit V. Virnodkar (Goregaon Police Station) Pairavi Officer

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**CORAM : MILIND N. JADHAV, J.**

**DATE : SEPTEMBER 17, 2026**

**P. C.:**

**1.** Heard Mr. Dewani, learned Advocate for Petitioner; Mr. Karmakar, learned APP for State and Ms. Talkar, learned Advocate for Respondent No. 2.

**2.** Present Petition is filed under Sections 528 and 529 of Bharatiya Nagarik Suraksha Sanhita, 2023 to seek quashing of proceedings in Criminal Case No. 3745/PW/2019 pending before Judicial Magistrate at Borivali, Mumbai arising out of Crime No. 387 of 2018 registered with Goregaon Police Station and all consequent actions in pursuance thereof and for setting aside the order dated 20.02.2026 passed by the learned Judicial Magistrate First Class, 67th Court, Borivali, Mumbai rejecting the Petitioner's Discharge Application (Exh. 3) in CC No. 3745/PW/2019.

**3.** Petition is an ex-director and CEO of the Company called M/s. Kailasa Analytics and Services Pvt. Ltd. He was the founder director of the said company. By order dated 07.09.2017 passed by the Registrar of Companies, Mumbai, he stood disqualified as director. The said Company defaulted in payment of Employees' Provident Fund (EPF) amount, which is the statutory amount, to the EPF Authority for the period of October and November 2017.

**4.** Respondent No. 2 - Provident Fund Implementation Officer at Central Government Employees Provident Fund Organisation Office in Mumbai filed a complaint and registered an FIR on 04.07.2018 under Section 406 & 409 of the IPC against the Petitioner. Reading of the FIR, *prima facie*, shows that it has been filed against the Petitioner because he is the director of the Company.

**5.** The record itself shows that immediately after the FIR was filed, the said company immediately paid the EPF contribution amount for the said unpaid period along with interest. The prosecution, however, has continued. The reasons for non-payment of the said amount towards EPF contribution was on account of the Company having faced financial constraints during the months of October and

November 2017. Record also shows that during the said months rather during the said period, the Petitioner who was working as the CEO of the Company and was no longer the director, also did not draw his salary. Most importantly, the Petitioner was completely unaware about the fact that there was a delay in deposit of the EPFC contribution amount. It is seen that on 29.11.2018, the entire amount towards EPF contribution which was in arrears was duly deposited.

**6.** Case of the prosecution against the Petitioner is for non-remittance of EPF contribution amount of Rs. 42,453/- and Rs. 38,845/- for the months of October 2017 and November 2017. The petitioner has approached this Court for quashing.

**7.** Mr. Dewani would subit that the amount was deposited and delay in depositing the amount could not be attributed to the Petitioner who was not even the director of the Company at the then time. He would submit that since the amount is deposited, the case of the Petitioner is fully covered by the decision of this Court in the case of ***Rolta India Ltd & Anr. v. State of Maharashtra & Anr.***[1]**.** He has placed the said decision before this Court for consideration and for quashing.

**8.** ***Per contra,*** Ms. Talkar, learned Advocate for Respondent No. 2 - Complainant has placed on record written submissions dated

1 Order dated 01.08.2024 in Criminal Writ Petition No. 3078 of 2018

28.08.2026. She would submit that the FIR, investigation papers and chargesheet *prima facie* discloses the essential ingredients of the offenses of breach of trust and cheating. She would submit that the prosecution is initiated *bona fide* on the basis of statutory records maintained by Respondent No. 2's office and therefore, no case is made out for exercising extraordinary jurisdiction of this Court for quashing the FIR, since the Petitioner is *prima facie* guilty. She would submit that Petition is misconceived since the FIR and chargeseeht would disclose *prima facie* offence based upon statutory records and material collected during investigation. She would submit that failure to remit the deducted EPF contribution amount within the prescribed period attracts criminal liability and even if it is true that subsequent payment has been made, that does not absolve the Petitioner from criminal liability. She would submit that subsequent full compliance of payment of the amount renders continuation of the proceedings oppressive since it is confirmed that the Petitioner has committed the said offense. She would submit that the plea of subsequent compliance is a matter for consideration during trial and does not constitute a ground for quashing the proceedings. Next she would submit that non-impleadment of the Company does not render the prosecution unsustainable and it merely raises a disputed question of facts to be decided during trial. Hence, she would submit that the Petition be dismissed and the prosecution be continued.

**9.** I have considered the submissions advanced by both the learned Advocates appearing for the parties and perused the record of the case.

**10.** According to the Complaint, an offense is committed under Sections 406 and 409 of the Indian Penal Code, 1860 (for short **"IPC"**) by the Petitioner who was admittedly the CEO of the Company which defaulted in payment of the statutory EPF contribution for two months in October and November 2017.

**11.** Section 405 of the IPC is the offense of criminal breach of trust whereas Section 406 is the punishment for criminal breach of trust. Section 409 pertains to criminal breach of trust by public servant or banker or merchant or agent.

**12.** In the present case, the Company has defaulted in payment of the amount whereas the Petitioner before the Court is the CEO of the Company. *Prima facie*, the Petitioner being the CEO cannot be regarded as an employer because if Explanation 1 to Section 405 is considered, then the definition of 'criminal breach of trust' under Section 405 can only implicate the employer who can be held responsible for the default in making the payment of contribution.

Further, no *prima facie* case is made out against the Petitioner in the FIR itself as the ingredients of the offense under Sections 406 and 409 of IPC have not been made out by the Complainant.

**13.** The Complainant has not stated in what manner the Petitioner has used the said property for his own use or dishonestly has used the said property or disposed of the said property, which is a prime requirement under Section 405 of the IPC to constitute criminal breach of trust. All that the Complaint merely states is that the said amounts have not been deposited towards EPF contribution.The Complaint nowhere states as to in what manner the said amounts have been used by the Petitioner dishonestly for his own use. Therefore having failed to make out the ingredients of Section 406 and 409 of the IPC, allegations made by the Complainant are not at all sustainable.

**14.** I am of the opinion that even if the allegations in the FIR are taken at their face value and accepted in their entirety, it still does not constitute the alleged offenses. The fact remains that had it been the intention of the Petitioner to commit criminal breach of trust, he acting as the CEO of the Company, would not have deposited the amount in the EPF account subsequently. Therefore, the conduct of the Petitioner does not reflect dishonesty in any manner. There was no criminal intention for committing the said offense. In this view of the matter, the continuation of criminal proceedings in furtherance to the FIR and the charge sheet against the Petitioner would be, in my opinion unfair, unjust and against the interest of justice. It would rather only amount to an abuse of the due process of law and a sheer waste of judicial time. I am of the opinion that there is nothing likely to be achieved by continuation of such proceedings. The case of the Petitioner before me is fully covered by the decision of this Court in the case of *Rolta India Ltd. & Anr. (supra)* relied upon by the learned Advocate for the Petitioner.

**15.** Considering the aforesaid facts and circumstances, the prosecution is not likely to succeed if the proceedings are continued and taken to its logical end. There is no *prima facie* case warranting continuation of prosecution. Therefore, to secure the ends of justice, the FIR and the consequential proceedings are required to be quashed and set aside in exercise of the powers conferred under Section 482 of the Cr.P.C. However, since admittedly the Petitioner was the CEO of the Company and in charge of its operations, he has given reasons about financial constraints faced by the Company during the said period. Though it is true that the amounts are deposited subsequent to the filing of the FIR, non-deposit of the said amounts which were statutory amounts was contrary to law and would therefore attract penal consequences.

**16.** I am, therefore, of the opinion that the Petitioner, being the CEO of the Company was responsbile and should had be vigilent about the effect of non-payment of statuory dues and its consequnces and ought to have ensured that the said deposit was made. For not having made the said deposit on time, I am inclined to direct the Petitioner to pay costs for his such actions as condition for allowing the present Petition for quashing on merits of the matter. Hence, on exercising powers conferred under Section 482 of the Cr.P.C. read with Section 528 of the BNSS, I am inclined to allow the present Petition subject to Petitioner paying costs of Rs. 5,000/- towards charity. Petitioner is directed to pay this costs amounts to the Corpus of **A.K. Munshi Yojana** a trust which runs medical centres, vocational training centres and which also runs a Special School called **J.T. Sheth Mandbuddhi Vikas Kendra**, imparting education and training to the needs of 150 special children in the field of Education (Classes for 6 to 18 years), early intervention (upto 6 years) and vocational training (18 years above) having its school address and building at A.K. Munshi Yojana Chowk, 3rd Panjarapole Lane, C.P. Tank, Mumbai – 400 004 [Contact Nos. 22425513 / 22423654] registered under the Society Registration Act, XXI of 1980 under No. : 387/81 GBBSD and the Public Trust Act, XXIX of 1950 under No. F-6809. RCI Reg. No. 0163.

**17.** Petitioner is present in Court and through his Advocates agrees to pay the aforesaid costs amount to charity within a period of two weeks from the date of uploading of this order.

**18.** In view of the above, the present Petition is allowed in terms of prayer clauses (a) and (b) which read thus:-

> *"(a) Quash and set aside First Information Report bearing Crime No. 387 of 2018 as well as the Chargesheet filed in respect thereof vide Criminal Case No. PW/3745/2019 which is pending before Hon'ble Judicial Magistrate, Borivali and all the consequential actions in pursuance thereto, as far as they are pertaining to the Petitioner herein;*
>
> *(b) Quash and set aside the order dated 20.02.2026 passed by the Ld. Judicial Magistrate First Class, 67th Court, Borivali, Mumbai, on the Discharge Application (Exh-3) filed by the Petitioner in Criminal Case No. 3745/PW/2019 and consequently allow the said discharge application and discharge the Petitioner form the said proceedings."*

**19.** List the Petition for compliance of the order on **8th October, 2026**.

**20.** Advocate for Petitioner shall remain present and show compliance on that date. If he does not remain present and there is non-compliance of this order, Court will pass appropriate order for recall of this order, which shall be noted by the Petitioner.

**21.** Writ Petition is allowed and disposed.

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**[ MILIND N. JADHAV, J. ]**



RAVINDRA MOHAN AMBERKAR
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