

R.C.C. No. 398/2002
CNRNO.MHOS030003962002

ORDER BELOW EXH. 953

1. Accused No.7 Sanjay Hariram Agarwal has filed present application under Sec. 216 of the Code of Criminal Procedure, 1973 (for short Cr.P.C.) / under Sec. 239 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short BNSS) for alteration of charges.

2. It is contended that the present criminal proceeding arises out of set of commercial transactions between Osmanabad District Central Co-Operative Bank Ltd. (for short ODCC Bank), Nagpur District Central Co-Operative bank Ltd. (for short NDCC Bank) and Ms. Home Trade Ltd., (for short HTL) pertaining to purchase and sale of Government Securities during the year 2001-2002. As per the prosecution case the ODCC Bank paid money to purchase Government securities worth Rs. 30 crore from HTL. A contract note was issued on 01.02.2002. It is alleged that the HTL failed to honour the transaction, although the time for providing Government securities was still available. HTL was made to issue a cheque to the ODCC Bank for returning the money it received but these cheques got dishonored. This led to the lodging of FIR on 05.05.2002 and thereafter the charges have been framed against the accused under Secs. 406,420,468,471 r/w Sec. 120B and under Sec. 34 of the Indian Penal Code, 1860 (for short IPC) through an order dt. 08.05.2014. It is further contended that at the relevant time, accused was one of the directors of HTL. The gravamen of the

allegations is limited to the above said transactions which are commercial in nature and do not prima facie attract any criminal charges.

3. It is further contended that the charges framed on 08.05.2014 under Sections 406 and 420 of IPC are legally antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. It is further contended that Sec. 420 of IPC requires proof of dishonest intention at the inception of the transaction, i.e. when inducing the delivery of property through deceit. Conversely Sec. 406 of IPC applies when property is lawfully entrusted to the accused, who subsequently develops a dishonest intention and misappropriates it. These two offences cannot arise from the same act or transaction as they are antithetical to each other. It is further contended that despite well settled legal position, the court has framed charges under both the Sections 406 and 420 of IPC simultaneously and other sections as co-existing. The framing of such antithetical charges violates the principles of criminal jurisprudence and undermines the accused's ability to prepare a coherent defence, thereby infringing upon the right to a fair trial guaranteed under Articles 14 and 21 of the Constitution. The concurrent framing of these incompatible charges, constitutes a cumulative miscarriage and failure of justice, warranting the present application.

4. It is further contended that the present dispute is civil in nature and has been given a criminal colour, amounting to an abuse of process of law. Prosecution's case, including the FIR, charge-sheet and the witness depositions, demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. Therefore continuing the trial on the basis of allegations which arise for the commercial dispute amount to permitting the abuse of criminal process and causes irreparable prejudice to the accused. Hence the accused has filed present application thereby prayed to drop or alter the antithetical and unsustainable charges framed both under Sec. 406 and 420 of IPC. Accused is further seeking direction that the trial may recommence only after amending the charges. Hence the present application.

5. Prosecution has taken strong objection on this application by filing its say vide Exh. 962. It is contended that in the present matter offence is registered at Police Station, Dharashiv (City) bearing Cr. No 106/2002 on complaint given by Divisional Registrar co-op Societies, Latur for the offences punishable under Sec. 218, 406, 409, 420, 468, 471, 120B of IPC, on the basis of report of Special Auditor Class-1 (Bank), Latur. After completion of investigation, Investigating Officer submitted charge sheet against the 10 accused and thereafter charges have been framed by the

court against all the accused.

6. It is further contended that the present accused i.e. the accused No. 7 is head of the Home Traders at Washi, Mumbai which is not authorised Agency to take deposits and invest in shares. It is further contended that ODCC Bank received an amount of RS. 30 Crore from NDCC Bank on 31.01.2002 on its A/c No. 73/4701/01. Thereafter ODCC Bank transferred amount to account of Home Traders Washi Mumbai on its A/c No 3A/17031. It is further contended that present accused in collusion with accused No. 1 and 2 has deposited the amount in Home traders. Further there is sufficient documentary evidence against the present accused.

7. It is further contended that ODCC Bank has disobeyed legal formalities while investing share's with HTL. It is further contended that before 31.01.2002 there was no agreement or correspondence between HTL and ODCC Bank. The ODCC Bank had not taken precaution regarding RBI circular for investment of funds. All these facts have been mentioned in the charge sheet, in the report filed by the Special Auditor and are also deposed by the prosecution witnesses. Therefore the court has rightly framed the charge. It is further contended that there is sufficient oral and documentary evidence against the present accused, to prove his role in the offence that he has taken deposits in illegal manner to invest it in shares. The present accused in collusion with accused Nos 1 and 2 alongwith other accused has mis-appropriated huge amount

of Rs. 30 crore which is public money. Hence considering the above facts and circumstances the prosecution has prayed to reject the present application.

8. Heard both sides at length. On behalf of accused No. 7 learned Adv. Diyashri Kamanya has argued the matter through video conferencing. She has argued that in the present matter both the charges under Sec. 406 and 420 of the IPC have been framed against the accused simultaneously. However they are antithetical to each other. Further it is highly impracticable for the accused, the defend both the charges. She has further argued that the transaction in the present proceeding is commercial in nature which is given criminal color. Therefore continuing the trial on the basis of allegations which arises from commercial disputes, will cause irreparable prejudice to the accused. Hence she has argued to drop or alter in the antithetical charges under Sec. 406 and 420 of IPC and further to recommence the trial after amending the charges. In support of her contentions, she relied upon the following judgments of Hon'ble Supreme Court of India and Hon'ble Bombay High Court :

1. *Shikhar Chemicals Vs. State of Uttar Pradesh and another*, reported in 2025 SCC OnLine (SC) 1643, Judgment dated 4th August, 2025 (Hon'ble Supreme Court of India)
2. *Arshad Neyaz Khan Vs. State of Jharkhand and another*, reported in 2025 SCC OnLine (SC) 2058, Judgment dated 24th September, 2025 (Hon'ble Supreme Court of India)

3. *Delhi Race Club (1940) Ltd. And others, Vs. State of Uttar Pradesh and another, reported in 2024 SCC OnLine (SC) 2248, Judgment dated 23rd August, 2024 (Hon'ble Supreme Court of India)*

4. *Bharat Uttam Rajurkar and others Vs. State of Maharashtra, in Criminal Writ Petition No. 1232 of 2017 decided on 12th Jaunuary, 2018 (Hon'ble Bombay High Court, Bench at Nagpur).*

9. On the contrary learned APP Shri. Shevalkar for the State has argued in the line his say given to the present application.

10. Considering rival submissions of both sides and perusing entire available material on record it appears that accused No. 7 has filed present application for alteration of charges. There are two grounds taken for pressing the prayer for alteration of said charges. The first ground is that Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. Therefore the allegations, at the best make out a claim for recovery of money, which is enforceable through civil remedies and not through prosecution under the penal code. The second ground is that the charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist, thereby violating the most basic principles of criminal jurisprudence and causing irreparable prejudice to the accused from the very inception of the trial and has led to complete failure of justice. To deal with both the above objections, it is necessary to look into the

prosecution story. The prosecution case, in short, is that all the ten accused have hatched the criminal conspiracy to cheat the ODCC Bank for Rs. 30 crore. At the relevant time deceased accused No. 1 was the Chairman of ODCC Bank while accused No. 10 was the Chairman of the NDCC Bank. There was a collusion between accused 1 and 10 to purchase Government securities to HTL, an unauthorized broker. Thereafter on 31.01.2002 the NDCC Bank got credited its 30 crore as a deposit in the account of ODCC Bank maintained with the Maharashtra State Co-Operative Bank Ltd., Mumbai. Then the ODCC Bank unauthorizedly credited the said amount of Rs. 30 crores in the account of HTL for purchasing Government Securities. Officer bearers of HTL then issued false contract notes of Government Securities worth Rs. 29,99,34,591/- to the officer of ODCC Bank and on the same day the HTL got credited an amount of Rs. 29,99,99,766.67 Ps. in the account of NDCC Bank with the Maharashtra State Co-Operative Bank Ltd., Mumbai. The HTL also issued false receipts of Rs. 29,99,34,591/- for the purchasing Government Securities and delivered it to the officer of ODCC Bank. On the same day i.e. on 01.02.2002 office bearer of HTL transferred Rs. 29,99,99,766.67 Ps in the account of NDCC Bank towards alleged sale proceeds of the Government Securities. It is further alleged that in the meeting held on 08.02.2002 of the Board of Directors of the ODCC Bank there was no discussion on the purchase of Government Securities from HTL and even then on the proceeding register wrong entry was made to the effect that there was resolution for purchasing Government

Securities and the Board of Directors have unanimously resolved to purchase Government Securities and that proceeding was signed by accused No. 1, 2 and 6. Thus it is the case of prosecution that deceased accused No. 1, Chairman of ODCC Bank and accused Nos. 2 to 6 being main office bearers of the said bank, without having prior permission from the Commissioner, Co-Operative Society, accepted deposit of Rs. 30 crore from NDCC Bank and in violation of RBI directions paid some of Rs. 29,99,34,591/- to HTL for Government Securities. Hence considering the prosecution case the Learned Predecessor of the Court has framed the charges against the accused vide Exh. 641.

11. Perusal of record further shows that the charges have been framed against the accused on 08.05.2014 vide Exh. 641. Perusal of record shows that the charge for the offence punishable under Sec. 120B of IPC has been framed all the accused, charges for the offences punishable under Sec. 409,468 and 471 r/w 34 of IPC have been framed against accused No. 3 to 5 , charges for the offences punishable under Sec. 406,468,471, r/w Sec. 34 of IPC have been framed against accused No. 7 to 9 and the charge for the offence punishable under Sec. 420 r/w 34 of IPC has been framed against accused No. 3 to 5 and 7 to 10. Hence it appears that accused No. 7 is charged with an offences punishable under Sec. 406,468,471,420 r/w Sec.34 of IPC and Sec. 120B IPC.

12. It is to be noted that before framing of charge, on 25.03.2008 the accused No. 7 i.e. present accused had filed an

application vide Exh. 407 for discharge under Sec. 239 of Cr.P.C. In the said application, alongwith other grounds, the accused had also taken ground that the transaction is purely civil in nature and not subject matter of Criminal Code. Further in view of order passed on the said application alongwith other two applications dt. 07.08.2017, the application for discharge came to be rejected. Hence from this it becomes clear that the application for discharge filed by accused No. 7 has been rejected by the court.

13. It is also important to mention here that before framing of charges the learned APP for State had filed draft of proposed charges vide Exh. 583 on 13.03.2014 and thereby prayed to frame the charges for the offences punishable under Sec. 120(b), 409,420,406,468 and 471 r/w Sec. 34 of IPC. Further it is to be noted that the accused No. 7 had filed written submissions at Exh. 606 on the said draft of proposed charges. Perusal of said written submission on the draft of proposed charges filed by accused No. 7 vide Exh. 606 shows that he had specifically mentioned therein that the provisions of Sec. 406 of IPC cannot invoke as the main ingredients required to attract the provisions of Sec. 405 and 406 of IPC are completely missing in the transaction under consideration. Further it was specifically mentioned in the said submissions that accused cannot be tried for the offences of cheating under Sec. 420 of IPC and Criminal Breach of Trust under Sec. 406 of IPC in the same trial. Sec. 406 and 420 of IPC cannot be applied simultaneously. Further there is no prima facie case against the accused under Sec. 406 r/w 34 and / or under Sec. 420 r/w 34 of

IPC. Perusal of record further shows that the learned predecessor of this court has passed detailed order below Exh. 1 on 06.05.2014. In the said order the court has considered all the written and oral submissions of the accused on the point of framing of charges. Further the contentions of the accused No. 7 that charges cannot be framed under Sec. 406 and 420 of IPC simultaneously, as well as the contention that the nature of transaction is civil which is given an criminal color, have been considered in detail by the court before framing of charges and only after considering all the objections taken by the present accused and other accused, the court, after passing detailed order in that regard below Exh. 1 on 06.05.2014, framed the charges against the accused below Exh. 641. Hence from the record it becomes clear that before framing of charge, all the accused were given an opportunity of hearing as required by Sec. 240 of Cr.P.C. and thereafter the charges have been framed against the accused.

14. Perusal of record further shows that charges have been framed against the accused on 08.05.2014. Thereafter prosecution has examined in all 22 witnesses till date. The matter is at its fag end. Further it is also important to mention here that as per the directions of Hon'ble Supreme Court of India this matter is required to be disposed of on or before 30th November, 2025. At this stage, the accused No. 7 has filed present application for alteration of charges. However as discussed hereinabove, both the objections of the accused have been thoroughly considered by the predecessor of this court before framing of charges itself and thereafter only

charges have been framed against the accused. Hence it appears that only to prolong the present matter, which is time bound by the Hon'ble Supreme Court of India, the accused has filed the present application.

15. Apart from this, if the application is considered on its own merits, then it appears that the accused has filed application for alteration of charges on two grounds as discussed hereinabove. As per the contention of the accused Prosecution's case demonstrates that the underlying transactions were commercial in nature involving purchase and sale of Government Securities and issuance of cheques for amounts allegedly due. The second ground is that charges framed under Sections 406 and 420 of IPC are antithetical and cannot co-exist. In support of his contentions, accused has relied upon various authorities of Hon'ble Apex Court and Hon'ble Bombay High Court. I have gone to the said authorities minutely and carefully. In view of ratio laid down by the Hon'ble Apex Court in the above said authorities relied upon by the accused, it becomes clear that there is distinction between the ingredients required to constitute both the offences i.e. offence of cheating and offence of criminal breach of trust. Both the offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. Further there is no doubt that the ratio laid down by the Hon'ble Apex and Hon'ble Bombay High Court is binding upon this court. However, with great respect, it is necessary to mention here that the facts of the above said authorities and the facts of the matter in hand are totally different. Hence the ratio laid down by

the Hon'ble Apex Court is not helpful to the accused in the present matter. In the present matter the prosecution case of scam of Rs. 30 crores by the Chairman and Bank Officers of the O.D.C.C. Bank and other accused, is based on peculiar facts and circumstances as stated hereinabove. On account of the nature of the acts or series of acts alleged against the accused, it is doubtful as to which of the several offences, the facts which may be proved will constitute and therefore in my opinion, by taking recourse of provision of Section 221 Cr.P.C., it was necessary to frame both the charges under Sec. 406 and 420 of IPC. Therefore said section is extracted as under :

221. Where it is doubtful what offence has been committed. -

(1) If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, 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 he may be charged in the alternative with having committed some one of the said offences.

(2) If in such a case the accused is charged with one offence, and it appears in evidence that he committed a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is shown to have committed, although he was not charged with it.

Illustrations

(a) A is accused of an act which may amount to theft, or receiving stolen property, or criminal breach of trust or cheating. He may be charged with theft, receiving stolen property, criminal breach of trust and cheating, or he may be charged with having committed theft, or receiving stolen property, or criminal breach of trust or cheating.

(b) In the case mentioned, A is only charged with theft. It appears that he committed the offence of criminal breach of trust, or that of receiving stolen goods. He may be convicted of criminal breach of trust or of receiving stolen goods (as the case may be), though he was not charged with such offence.

(c) A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A states on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.

16. The above illustration (a) below S. 221 Cr.P.C./Sec. 244 of BNSS amply clarifies the position. Hence considering the peculiar facts and circumstances of the prosecution case the charges have been framed against the accused. It is also important to mention here that nothing has been brought on record by the accused No. 7 to show that due to the framing of both the charges under Sections 406 and 420 of IPC, actual prejudice has been caused to the accused in taking defence. On the contrary if eventually both the offences are made out of distinct and separate transactions, then prosecution will be prejudice if one of the charge is dropped. Hence in view of above discussion, I do not find it proper to drop or alter the charges and recommence the trial as prayed by the accused No. 7. There is no merit in the application for alteration of charge and therefore application is liable to be rejected. Accordingly I pass the following order.

ORDER

Application filed by accused No. 7 below Exh. 953 is rejected.

Date:- 13/10/2025

(Smt. Pradnya V. Medhe)
Addl. C. J. M.Osmanabad.

CERTIFICATE

I affirm that, the contents of this P.D.F. file judgment / order are same word to word, as per the original Judgment.

Name of stenographer	---	M.K.KULKARNI - GRADE-II
Court	---	Addl. Chief Judicial Magistrate,Osmanabad
Date of Dictation	---	13/10/2025
Typed on	---	14/10/2025
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