



ORDER BELOW EXH.22

The present application has been made by the accused u/s. 245 of the Code of Criminal Procedure, 1973 (in short, 'CrPC') for discharge.

02. The accused submits that vague complaint is filed which is not maintainable. In verification of the complainant dtd. 19.08.2022, the only allegation made is that the complainant has made construction and some amount is given by the accused and some amount is due. The Court has taken evidence before charge. The complainant has given his evidence in chief on 21.08.2023 at Exh. 16, in which he has deposed about the statement regarding terms and conditions, progress of construction. In para no. 4, he has deposed that the cheque no. 124061 was only dishonoured. But against that the accused has made net payment on 09/09/2021. The bank statement is enclosed. But the cheque no. 642839 was not presented in the bank. Consequently, there was no dishonour of cheque.

03. The accused further submits that dishonour of cheque cannot be a cheating. The complainant is required to file complaint u/s. 138 of the N.I. Act. Deposition of PW2 Anil Ashokrao Kulkarni is not useful to the complainant as he has only deposed about the agreement of construction between the

complainant and the accused. He has not deposed about any criminal act. It is further submitted that none of the single ingredients of Section 415 of the IPC appear in the complaint or evidence before charge. Continuation of criminal proceeding is nothing but abuse of process of law. Hence, prayed to discharge the accused for the offence punishable u/s. 420 of the IPC.

04. The complainant by filing say opposed the application stating that the accused has the habit of cheating. Therefore, the complainant has filed the complaint against the accused with proof of fraud. The complainant has given his evidence before charge. If the application is granted, the complainant will suffer loss of mental anguish and will lose faith in the Court and the accused will have no fear of Court and law. Hence, prayed to dismiss the application with costs.

05. Perused the application, the say and the record. Heard learned advocates for the accused and the complainant. They argued as per their respective cases. Considered their submissions. The learned advocate for the accused in support of his arguments relied upon the following judgment:

a) **Vikram Johar Vs. The State of Uttar Pradesh & Anr., 2020 ALL SCR (Cri) 818**, wherein it is observed that *“while considering the discharge application, the Court is to exercise its judicial mind to determine whether a case for trial has been made out or not.”*

b) **Ramesh Dadarao Bagdure & Anr. Vs. The State of Maharashtra & Anr.**, 2023 ALL MR (Cri) 3656, wherein the Hon'ble Bombay High Court (Aurangabad Bench), quashed and set aside the order of issuance of summons for the offence punishable u/s. 420 and 406 of the I.P.C. holding that there is no delivery of property belonging to the complainant in favour of petitioner or the firm and it was purely a civil dispute between the partners.

c) **Pushpendra Kumar Singh Vs. State of Jharkhand**, 2023 ALL SCR (Cri) 399, wherein it is held that *"it is a well settled law that at the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing of charge the Court must apply it's judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible."*

d) **M/s. S.K. Rai Engineers and Contractors Jaildar Market and anr. Vs. M/s. S.C. Jain Constructions Company Pvt. Ltd.**, CRM--32851-2018, D/d. 31.05.2022, wherein the Hon'ble Punjab and Haryana High Court has held that *"26. In fact the substance of the allegations in the FIR/complaint are to be seen in totality. Mere use of the word 'cheat' in the FIR/complaint is of little consequence. The 'dishonest intention at the very inception' should be made out from the allegations as well and not by a mere play of words. In the present case, the dishonouring of the cheques by itself does not make out a case of cheating, moreso when part payments were made for the goods supplied and the*

case of the accused from the beginning was that they were ready for a settlement of accounts.”

e) **Sarabjit Kaur Vs. The State of Punjab & Anr., Criminal Appeal No. 581 of 2023**, wherein the **Hon’ble Supreme Court** has held that *“A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.”*

f) **Rajesh Shantilal Adani and Anr. Vs. State of Maharashtra and Anr. Criminal Writ Petition No. 6289 of 2019 D/d. 17.03.2025** of the **Hon’ble Bombay High Court**. However, this judgment is in respect of scope and extent of the powers of the trial Court for discharge u/s. 245 (2) of the Cr.P.C. However, in the present case, as the complainant has led the evidence u/s. 244 of the Cr.P.C., the present discharge application would come under Section 245 (1) of the Cr.P.C.

Taking into consideration the ratios laid down in the above rulings, I proceed to decide the present application.

06. This is the private complaint u/s. 200 of the Cr.P.C. The case of the complainant in brief is that the complainant, who does the business of construction, took work of constructing house of the accused. An agreement dtd. 10/08/2021 was came to be executed between them regarding the work of construction, wherein it was agreed to complete the construction within 365 days at the rate of Rs. 910/- per sq.ft.

for 1050 sq.ft. As per the agreement, it was agreed that digging would be carried out to a depth of 4 to 5 ft. But as there was black soil, digging had to be done up to a depth of 12 ft. It was agreed that for that extra work the accused would daily make the payment. But the accused did not pay accordingly. Thereafter, the accused issued cheque for Rs. 50,000/- on 21/08/2021, which got dishonoured due to insufficient funds. Thereafter, the accused on 02/09/2021 issued another cheque for Rs. 50,000/-, which returned by the bank as it was branch level cheque. When the complainant asked for another cheque or cash payment, the accused did not pay or give another cheque. But by issuing false cheque cheated the complainant. Out of Rs. 9,37,000/- for the construction and extra work, the accused has paid Rs. 6,05,000/- to the complainant.

07. It is further alleged that as per the agreement, two storied building was agreed to be constructed. The construction of ground floor with bricks and RCC work was completed. But the accused caused obstruction for construction of first floor. As the accused made demand beyond the agreement, the construction of first floor remained pending. The material of the complainant worth Rs. 1,30,000/- is also retained by the accused. The work amount of Rs. 3,65,000/- and Rs. 1,30,000/- of the construction material is due from the accused. The accused has not paid the amount nor started the further work. Rather, by making breach of an agreement he is getting work done by another contractor. Therefore, he has cheated the

complainant. Hence, the complainant has filed this complaint.

08. After verification of the complainant and one witness u/s. 200 of the CrPC, the process came to be issued for the offence u/s. 420 of the IPC. The said order of issuance of the process was confirmed by the Hon'ble Add. Sessions Judge, Latur in Cri.Rev.App.No. 07 of 2023 and thereafter, it is further confirmed by Hon'ble Bombay High Court, Aurangabad Bench in Cri.Writ Petition No. 1609 of 2024. Thereafter, the complainant examined himself as PW1 and PW2 Anil Ashokrao Kulkarni in evidence before charge and closed the evidence by filing pursis below Exh. 20. Thereafter, the present application for discharge is filed by the accused.

09. As the application is made under Section 245 of the CrPC, it is necessary to see, whether after taking into consideration the evidence of the complainant before the charge, case is made out against the accused which, if unrebutted, would warrant his conviction. If the answer is no, then the accused is entitled to be discharged.

10. In the present case, the process was come to be issued against the accused for the offence punishable under Section 420 of the I.P.C., which deals with cheating and dishonestly inducing delivery of property. The essential ingredients of Section 420 of the I.P.C. are as follows:

I) Cheating,

II) Dishonest inducement to deliver property or to make, alter or destroy any valuable security, and

III) mens rea of the accused at the time of making the inducement

11. The term cheating is defined under Section 415 of the I.P.C. Therefore, it is necessary to have glance over the essential ingredients of Section 415 of the IPC, which are as follows:

I) Deception of any person,

II) Fraudulent or dishonestly inducing that person

a) to deliver any property to any person, or

b) to consent that any person shall retain any property,

or

c) intentionally inducing that the person to do or omit to do anything which he would not do or omit, if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

12. In the offence of cheating there are two essential elements i.e. deception and fraudulent or dishonest inducement to do or omit to do something. Mere dishonesty is not sufficient to prove the offence of cheating. Moreover, to establish the offence of cheating, the complainant would have to show, not only that he was induced to do or omit to do a certain act, but that this induced act or omission on his part caused or was likely to cause him some harm or damage in body, mind, reputation or property, which are presumed to be the four cardinal assets of humanity. Further the deception must be from the inception.

13. Now, coming to the case in hand, the complainant has examined two witnesses, firstly himself as CW1 (Exh. 16) and another witness Anil Ashokrao Kulkarni as CW2 (Exh. 19). CW1 Chetan Sunil Pandharikar in his evidence has deposed that he has been in construction business since last 10 years. Due to old acquaintance, an agreement was made between him and the accused regarding construction, in which it was decided to construct a two-storey building over 600 sq.ft. land on Plot No. 13 out of Survey No.1920 in Vyankatesh Nagar owned by the accused. The agreement was fixed at Rs. 910/- per sq. ft. The total construction was of 1050 sq.ft. Accordingly, he prepared a plan for the accused ranging from Rs. 11.5 lakh to 12 lakh. The agreement was signed in front of the witnesses and the amount fixed in the agreement was to be paid by the accused in instalments within a year. It was decided in the agreement that if the amount is delayed, the construction and possession will also be delayed. The complainant has duly proved the said agreement dtd. 10.08.2021 (Exh.17.)

14. CW1 Complainant has further deposed that, while starting the construction, it was decided to dig about 4 to 5 feet. However, due to the high amount of black soil in the ground, digging had to be done up to a depth of 10 to 11 ft. Accordingly, after discussion, it was decided that the accused will pay the additional amount, to which the accused was agreed. The accused told him that he would pay the additional expenses after receiving the salary. Also, it was told to complete the

construction of the ground floor and then to start construction of the first floor. In the meantime, the accused gave him two cheques (Exh. 18 & 19) of Rs. 50,000/- each and both are dishonoured. He has further deposed that the accused told him to do the construction of the ground floor only. The accused disposed of all his material. The accused also started intimidating him. The accused also stopped him from doing the rest of the construction as per the agreement. He has further deposed that the accused sent a notice to him through a lawyer dtd. 29/11/2021, to which he sent a reply notice dtd. 09/12/2021 (Exh. 20). CW1 Complainant has further deposed that when he repeatedly demanded money from the accused, he refused to pay. He yet to receive amount of Rs. 5 to 5.5 lakh from the accused. The accused completed the remaining construction from another contractor. The accused has cheated him by causing loss.

15. Thereafter, the complainant has examined CW2 Anil Ashokrao Kulkarni (Exh. 39). He has deposed that he knows the complainant due to work-related relationship. The complainant does the business of construction. He became acquainted with the accused due to the construction. There is dispute between the accused and the complainant regarding the construction. He has further deposed that the accused has told that only the construction of the ground floor should be completed. However, when the complainant told the accused that the construction would be carried out as per the agreement, the dispute arose

between them. He has further deposed that the agreement was done in the year 2021 and all its contents are true and correct and it bears his signature. As per agreed terms the accused gave cheque to the complainant which got dishonoured. The cross-examination of both the witnesses is reserved by the accused after framing of charge. The complainant by filing pursis below Exh. 20 closed his evidence.

16. On perusal of the evidence of the complainant, it appears that the allegations against the accused are that the accused has not acted as per the agreed terms between them, did not pay the amount and completed the work through another contractor. However, it is a settled law that mere breach of contract cannot give rise to criminal prosecution. There is a thin line of difference between a case of breach of contract and that of cheating. Every case of breach of contract cannot amount to cheating. The deception should exist from the very beginning of the transaction. A subsequent non-fulfilment of promise is no cheating. As per the case of the complainant itself, out of the amount of Rs. 9,37,000/-, the accused has paid Rs. 6,05,000/- to the complainant. This itself shows the absence of intention to deceive from the inception. Therefore, mere failure to pay the remaining amount as per the agreement, does not come under the purview of cheating.

17. As per the oral evidence of the complainant, the accused gave him two cheques bearing nos. 124061 and 642839 of Rs. 50,000/- each and both are dishonoured. The

complainant has produced those cheques below Exh. 18 and 19. However, no return memo or any other documentary evidence has been produced by the complainant to prove that the cheques were in fact dishonoured. That apart, the fact that the cheques have been dishonoured, by itself does not constitute the offence of cheating. For the dishonour of cheque to become the offence of cheating, it must be proved that the deception was caused on account of the cheques and secondly, the deception was practiced from the beginning. However, the evidence on record fails to prove the same.

18. The learned advocate for the complainant argued that the order of issue process was challenged by the accused before the Hon'ble Court of Sessions, which was dismissed and that order may kindly be taken into consideration. However, the scope of consideration at the time of issuance of process vide Section 204 of the Cr.P.C. and discharge vide Section 245 of the Cr.P.C. are altogether different. At the time of issuance of process, it is to be seen whether there exist sufficient grounds for proceeding against the accused. However, at the time of discharge under Section 245 of the Cr.P.C. it is required to be seen whether the evidence of the complainant led before the charge, if left un rebutted, would warrant conviction of the accused.

19. The accuse has produced on record copy of his bank statement and copy of the cheque and other documents. The learned advocate for the accused argued that this cheque and

the account statement show that the accused has paid Rs. 50,000/- to the complainant through mobile banking after dishonour of the previous cheque. But this fact is not disclosed by the complainant. However, in the present case, the evidence of the accused is yet to begin. At the time of deciding an application u/s. 245 of the Cr.P.C., only the evidence of the complainant before the charge needs to be taken into consideration.

20. Upon overall appreciation of the oral and documentary evidence adduced before the charge, this Court finds that the complainant has failed to prove the essential ingredients of the offence of cheating. The evidence, even if accepted in its entirety, merely shows a contractual dispute arising out of non-payment of the balance amount and non-performance of certain terms of the agreement. There is no evidence to indicate that the accused has any fraudulent or dishonest intention at the inception of the transaction or that the complainant was induced by deception to part with property. The subsequent disputes regarding payment, non-performance of the contract and completion of the remaining work through another contractor are the matters which falls within the realm of the civil law. Consequently, the evidence led before the charge is insufficient to hold that, if it left unrebutted, it would warrant the conviction of the accused for the offence punishable under Section 420 of the I.P.C. Therefore, the accused is entitled to be discharged under Section 245 of the Cr.P.C. Accordingly,

the following order is passed:

ORDER

- 1 The application is allowed.
- 2 The accused namely Dattatray Vasantrao Kulkarni (Chandorikar) is discharged from the offence punishable under Section 420 of the I.P.C. vide Section 245 of the Cr.P.C.
- 3 The bail bonds of the accused stand cancelled.
- 4 The accused is directed to execute bail bonds with surety of Rs. 25,000/- in compliance of Section 437-A of the Cr.P.C.

Place :- Latur
Date :- 12/08/2026.

Sd/-
(K.K. Jadhav)
Judicial Magistrate First Class,
(Court No.7), Latur