

MHRG030011872025



Regular Criminal Case No. 107/2025

(State Vs. Amit M. Patil)

Common Order below Exh. 6 & 1

This is an application filed by the accused to discharge him for the offences punishable u/secs. 406 and 420 of the Indian Penal Code.

2. I have heard learned advocate Shri. V.A.Patil for the accused and learned A.P.P. Shri. P.S.Patil for the State.

3. Learned advocate for the accused has submitted that this is not a case of cheating and criminal breach of trust because mere reading the allegations in complaint, it is clear that there was breach of agreement between the parties. It is submitted that every breach of promise cannot attract the criminal liability and the informant had not entrusted any property with the accused which was misappropriated by him. Lastly, he has prayed to discharge the accused from the charges of cheating and criminal breach of trust.

4. On the contrary, learned A.P.P. has submitted that the allegations made in the complaint are well found, because the

accused has committed offences punishable u/secs. 406 and 420 of the Indian Penal Code and prayed to frame the charge and reject the application.

5. Learned advocate for the accused has placed reliance on following cases,

a) **Veer Prakash Sharma Vs. Anil Kumar Agarwal and ors. 2008 (1) MhLJ 135**, in which the Hon'ble Supreme Court has held that,

the non-payment of the price of goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

b) **Dilip Kaur & ors. Vs. Jagnar Singh and anr. AIR 2009 SC 3191**, in which the Hon'ble Supreme Court has held that,

breach of an agreement for sale cannot constitute offences punishable u/secs. 406 and 420 of the Indian Penal Code. Unless there is evidence on record to show that the accused had fraudulent and dishonest intention at the time of making promise and mere simple breach of contract does not constitute an offence of cheating.

c) **Daily Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & anr. AIR 2024 SC 4531**, in which the Hon'ble Supreme Court has held that,

Offence of cheating and criminal breach of trust are distinct and independent as the said two offences cannot coexist simultaneously in same set of facts.

6. I have considered submissions of both sides, perused application, say of learned A.P.P. at Exh. 8 and entire record of the case. Particularly allegations in First Information Report discloses that the accused agreed to help to convert the land of the informant into non-agricultural purposes and for that purpose the informant agreed to pay an amount of Rs. 5,00,000/- (In words Rupees Five lakh only) to him. As agreed between them, the informant paid an amount of total Rs. 4,25,000/- (In words Rupees Four lakh twenty five thousand only) on different dates. In spite of that the accused did not convert the land into non-agricultural purposes. It is also alleged that the accused neither converted the land for residential purposes nor returned the amount to the informant. So, he cheated her and lastly she lodged the report against him on the basis of which C.R. No. 125/2024 registered at Mandawa Coastal police station for the offences punishable u/secs. 406 and 420 of the Indian Penal Code.

7. From reading of the allegations in complaint, even if given face value and taken to be correct in their entirety, commission of offences are not disclosed. Because it is not alleged that at the inception the accused had fraudulent and dishonest intention to induce the informant to give money to him. Moreover, photocopy of letters dated 03.10.2023 forwarded by Tahasildar,

Raigad to the office of Executive Engineer PWD Department, Raigad and Asstt. Director of Town Planning, Raigad discloses that the process was already started for converting the land of the informant into non-agricultural purposes and for that purpose reports were called from concerned department. Then how it can be concluded that there was no any action on behalf of the accused to assist the informant to convert their land into non-agricultural purposes. Therefore, this is breach of contract between the informant, her husband and the accused. However, mere breach of contract cannot give rise to the prosecution u/s. 420 of the Indian Penal Code unless fraudulent or dishonest intention is shown right at the beginning of transaction time when the offence was said to have been committed. But, as discussed above, there is no allegations of fraudulent and dishonest intention of the accused at the time of agreement between them. As the Hon'ble Supreme Court held in above said case that, offence of cheating and criminal breach of trust are distinct and independent as the said two offences cannot coexist simultaneously in same set of facts.

8. Considering all these aspects and allegations in First Information Report it can be said that there is civil dispute between the informant and the accused and mere breach of contract cannot give rise to a criminal liability. Accordingly, I found substance in the submission of learned advocate for the accused. Present application for discharge has been filed within 60 days from the date of supply of copies of documents u/s. 230 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Upon considering the police report and the

documents filed therewith, in my opinion, the charge against the accused to be groundless. Consequently, the present application deserves to be allowed. In the result, I pass the following order.

ORDER

1. Application at Exh. 6 is allowed.
2. Accused Amit Manohar Patil is hereby discharged u/s. 262 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 for the offences punishable u/secs. 406 and 420 of the Indian Penal Code.
3. Proceeding is closed.

Alibag,
Date : 30.07.2026

(D.M.Zate)
Chief Judicial Magistrate,
Raigad-Alibag