IN THE COURT OF THE ADDL. CHIEF JUDICIAL MAGISTRATE,
5TH COURT, DADAR (AT SEWREE), MUMBAI.
C. C. No.435/PW/2025

Ghanashyam Gupta ... Applicant/Accused No.3.

Versus

The State (Dadar Police
Station, Mumbai.) ... Respondent/Prosecution.

ORDER BELOW EXH.26.

By way of this application applicant/accused No.3 namely Ghanashyam Gupta seeking discharge of the offences punishable under sections 406 and 420 r/w 34 of the Indian Penal Code, 1860 (for short **"I.P.C."**) vide Section 239 of the Code of Criminal Procedure (for short **"Cr. P. C."**).

Facts responsible for germination of the application are as under : -

02) The applicant is a law-abiding citizen of the country. She has a distinguished academic and professional track record. His professional outlook and track record have been unblemished. It is stated that, the applicant enjoys an impeccable reputation in society. It is stated that FIR was registered against one Mr. Amol Jaywant Bhosle (Accused No.1) and the applicant was not named in FIR. After completion of the investigation, the investigating officer from Dadar Police Station has arraigned the applicant as accused No.3 without any justification and foundation.

03) It is stated that after reading of the FIR and the charge sheet as a whole would postulate that there are no specific or direct allegations

against the applicant. The only allegation against the applicant is that he has not provided the complete information to the first informant in respect of home loans availed by the accused No. 1, who is main culprit in alleged crime. It stated that by assuming not admitting if the statement of all prosecution witnesses on its face value accepted as correct, then the statements goes to depict that there is no involvement of the applicant in the offence alleged to have been committed by him. None of these statements, even remotely or minutely, establishes that the applicant had any dominion over the funds, nor was there any entrustment in the legal sense. There is no material on record to show that the applicant had any dishonest intention or mens rea at the time of alleged transaction. The investigation has failed to produce any evidence of personal gain, fraudulent documentation or misuse of authority by the applicant. It stated that continuation of proceeding would amount to abuse of process of law and cause undue harassment of the applicant. It is stated that cheating and breach of trust require dishonest intention from the outset. For breach of trust there must be clear entrustment of property and dishonest misappropriation. Mere failure to discharge contractual obligations does not amount to cheating. It is stated that, without prejudice section 406 and 420 of IPC are often considered mutually exclusive. It is stated that in order to make out the case under the provisions of 420 of the I. P. C. the prosecution has to establish that the applicant/accused No.3 was involved in deceiving the informant since inception. It is stated that at the stage of framing charge the court has to consider whether there is enough evidence to frame charge against the applicant/accused No.3. In the strict sense there is no evidence that would justify the framing of charge against the applicant/accused No.3. Therefore, applicant/accused No.3 constrained to file present application.

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04) The learned A. P. P. resisted the application by filing say at Exh.27. It is opposed by the learned A. P. P. on the ground that, there is prima facie sufficient material against the applicant/accused No.3 to frame the charge. It is stated that the documents filed by the investigating agency filed on record discloses prima facie role attributed by the applicant/accused No.3. It is stated that, as per the contention of FIR the informant initially meet with the applicant accused on 20th March, 2025 and inquired about Flat No.1380. On enquiry the applicant Inform him that Loan amount of Rs.81,00,000/- is the outstanding amount against Flat No.1380. It is contended that on 23/03/2025 when the informant again went to the bank and again enquired with applicant/accused about the original documents of flat, that time applicant/accused pretends that said documents are at Bangalore. The applicant/accused has given Loan Account No.LBMVB00005922075 to the informant. Said information was forwarded by applicant/accused to the informant through WhatsApp message. It is stated that on 14/04/2023 the informant personally meet to Amit Khot, Manager of the said bank. Mr. Amit Khot proposed re-loan on said flat. Thereafter, on 29/04/2023 the applicant/accused fraudulently pretends that Flat No.1380 is best and loan amount of Rs.One Crore will be passed upon it. On 22/06/2023 he sent a message about approval of loan amount. Therefore, informant gave cheque to accused No.1 namely Amol Bhosale to clear the loan amount of Rs.81,25,305/-. On 28/06/2023 the loan of Rs.One Crore was passed. On 07/07/2021 accused No.2 send a message to the informant about documents of flat. On that day applicant/accused and accused No.2 have given documents to the informant. After close scrutiny of the documents it reveals that said documents are relating to Flat No.1003 and not relating to Flat No.1380. After realisation of said fact when informant again approached to the applicant/accused, he informed to him that accused No.1 Amol Bhosale repaid the loan amount in respect of Flat No.1003. Thereafter, on further enquiry

applicant/accused discloses that Rs.2,40,00,000/- is the outstanding loan amount against Flat No.1380. It is contended that applicant/accused, accused No.2 with the joining hand with accused No.1 hatched the criminal conspiracy and play fraud with the informant. There is prima facie evidence against applicant/accused to frame charge against him under Section 420, 409, 120-B of the I. P. C. On these counts the learned A. P. P. urged for rejection of the application.

05) The learned advocate engaged by the informant to assist the prosecution also resisted the application by filing say at Exh.30. Besides the categorical denial it is contended that discharge application filed by the applicant/accused is just desperate attempt to mislead this court into believing that there is no material / evidence in charge sheet or specific allegations against him on the basis of which he is made accused. It is alleged that applicant/accused in his capacity as a banker has played and active and key role in conspiring with accused Nos. 1 to 3 to cheat the informant by concealing information about home loan on the flat that original informant purchased from accused No.1 and further supplied informant with wrong home loan account number of accused No.1 on which different flat was mortgaged thereby deliberately cheating, conspiring and causing deliberate loss to the informant and his wife who is co-owner of flat for which sale deed is executed. Apart from above, accused No.2 and 3 also made sure that informant is tangled with loan of Rs.One Crore on the flat that they purchased from accused No.1 knowingly that informant will never get clear title of the flat and other documents for which sale deed is executed with accused No.1. It is stated that though FIR was initially registered against accused No.1 only, the complaint made by the informant specifically highlights role of accused Nos. 2 and 3 in cheating and playing fraud on the informant. Therefore, investigating agency taking note of the said fact arraigned accused Nos. 2 and 3 subsequently. It is stated that after careful scrutiny

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of the charge sheet and the documents filed on record clearly shows that there was WhatsApp communication between applicant/accused and the informant and based on the information provided by the applicant/accused, informant paid an outstanding amount against Flat No.1380. It is stated that statements of Nirmala Dhamsam, Amit Khot and Sunder Dese connotes that accused No.2 and 3 have played active role in dealing with informant regarding the flat purchased from accused No.1 and cheated the informant in connivance with each other. It is alleged that role of applicant/accused and accused No.2 in connivance with accused No.1 have caused huge financial loss to the informant and the original documents of flat purchased by informant from accused No.1 are still with ICICI Bank with whom applicant and accused No.3 are working for many years. It is alleged that the act of accused Nos. 2 and 3 deceiving the informant to compel the informant to pay for accused No.1's different home loan account have also caused illegal gain to accused No.1. Said overt act of applicant/accused and accused No.3 is sufficient ground to frame the charge against the applicant/accused. On these counts, the learned advocate engaged by the informant to assist the prosecution requested to reject the application.

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06) I have heard the learned Advocate representing the applicant/accused No.3, the learned A. P. P. and the learned advocate engaged by the informant to assist the prosecution. I have gone through the charge sheet and documents available on record. I have also gone through the reply (Exh.30) and written notes of argument (Exh.32) submitted by the learned advocate for the informant.

07) Following points emerges for my discussion and I have recorded my findings thereon for the reasons to follow : -

SR.NO.	POINTS	FINDINGS
1)	Whether the applicant/accused No. 3 has made out grounds to discharge him by exercising powers conferred to this court under section 239 of the Cr. P. C.?	No.
2)	What order ?	Application stands rejected.

- : REASONS : -

As to Point nos. 1 and 2:-

08) Admittedly, the applicant/accused No.3 has filed present application for seeking discharge vide under Section 239 of the Cr. P. C. It is to be noted that on 07/11/2023 offence was registered under offences punishable under section 420, 406 r/w 34 of the I. P. C. The investigation of this case commenced before commencement of new legislation i.e. Bhartiya Nagarik Suraksha Sanhita - 2023 (for short B. N. S. S."). Therefore, as per Clause (a) of sub Section (2) of Section 531 of B. N. S. S., investigation was governed under Cr. P. C. as investigation was pending before commencement of B.N.S.S. However, charge sheet has been filed on 09/05/2025 i.e. after commencement of B.N.S.S. Therefore, every further proceeding of this case will have to be governed under the B. N. S. S. Therefore, the present application is governed under Section 262 of the B. N. S. S. instead of Section 239 of the Cr. P. C. According to section 262 of the B.N.S.S, if upon considering the police report and the documents sent with it under section 193 of the B. N. S. S. and making such examination, if any, of the accused as the magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. As per settled practice and procedure of law

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while exercising powers under section 262 of BNSS, the magistrate is required to see whether grounds for presuming commission of offence exists or whether the charge is groundless; whether a prima-facie case pertaining to the commission of the offence is made out or not. This section enjoins upon the magistrate to record his reasons for holding the charge against the accused to be groundless and discharging him. If there were sufficient documents and evidence indicating that prima-facie charges were made out against the accused, magistrate cannot discharge the accused. Therefore, the remedy for the accused under section 262 of the BNSS is available on a prima-facie case, if the report submitted by the police does not conclude any prima facie case, then the court has the power to discharge the accused.

09) It is to be noted that, two expressions i.e. 'sufficient ground' and 'prima-facie case' have been used in section 262 of the BNSS (Section 239 of the Cr. P. C.). The scope and ambit has been expressed by various pronouncement by Hon'ble Bombay High Court and Hon'ble Supreme Court. At this juncture, it is useful to refer judgment in case of **Century Spinning & Manufacturing Co. reported in (1970) 72 Bom LR 585**. Wherein Hon'ble Bombay High Court held that "there is no sufficient ground for proceeding" means that no reasonable person could come to the conclusion that there is ground whatsoever to sustain the charge against the accused.

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10) At this juncture liberty being given to refer judgment of Hon'ble Supreme Court in case of **Union of India V/s. Prafulla Kumar Samal & Another reported in AIR 1979 SC 366**. Wherein the Hon'ble Supreme Court held that : - "The words "not sufficient ground for proceeding against the accused" clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to

determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts.

11) The another expression appears in section 262 of BNSS is prima-facie case. The test to determine a prima-facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable 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 gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The word “ground” in the context is not a ground for conviction, but a ground for putting the accused on trial. Thus, after assessment of various pronouncements of Hon’ble Bombay High Court and Hon’ble Supreme Court the crystallized judicial view is that the Court cannot conduct a deep roving enquiry into the evidence at this stage.

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12) Taking cue from the above proposition of law, the facts and circumstances arises in present case are required to be looked into. After reading the report of informant and F. I. R. as a whole it is alleged that, it is alleged that applicant/accused is the bank employee and he provided wrong information to the informant, his wife and nephew. It is alleged that, incorrect information provided by the applicant/accused is also confirmed by him through WhatsApp messages,e-mail. It is alleged that based on the information provided by the applicant/accused the informant deposited Rs.81,25,305/- in the wrong loan account No. i.e. account No. LBMUM00005922075. Even though said account is standing in the name of accused No.1, but informant was not concerned to the

said loan account. As per the story of prosecution informant was intended to purchase Flat No.1380, 2nd Floor, Building No.B-51, MIG Adarsha Nagar CHSL., Worli, Mumbai - 30. As per the factual position, an amount of Rs.2,00,40,000/- was outstanding against said flat and loan account number was LBMUM00005825896. It is alleged that by applying fraud on the informant with the joining hand with accused No.1, the applicant/accused cheated him dishonestly and induces the informant to deliver property i.e. an amount of Rs.81,25,305/-. It is alleged that on 09/05/2023 Sale Deed was executed by accused No.1 in favour of the informant and his wife Nirmala in respect of Flat No.1380. It is alleged that this fact was well within the knowledge of applicant/accused. It is alleged that the applicant/accused is the part of criminal conspiracy hatched by accused No.1 and 2.

13) The learned advocate representing the applicant/accused much harped on the point that the allegation against applicant/accused centralised on the point that he provided inaccurate / false information to the informant with regard to loan account of accused No.1 and induced the informant into purchase of property of accused No.1. It is stated that applicant/accused being employee of the bank had limited role in providing information pertaining to details of loan account of accused No.1 maintained with the bank. It is stated that actions of applicant/accused were those of bank employee performing his duties without any discernible criminal intent or active participation in the alleged cheating and request this court to take judicial note of the limited role of the applicant/accused. It is stated that it was not the intention of applicant/accused to commit cheating against him. It is stated that, in the strict sense there are no sufficient grounds to frame the charge against the applicant/accused. In support of his submissions he placed reliance on following case laws : -

(1) **Yogesh @ Sachin Jagdish Joshi V/s State of Maharashtra : (2008) 10 SCC 394**.

(2) **Suresh Budhamal Kalani @ Pappu Kalani V/s State of Maharashtra : 1998 SCC (Cri.) 1625**.

(3) **State of Haryana V/s Bhajan Lal : AIR 1992 SC 604**.

14) I have pondered over the submissions made by the learned advocate of the applicant/accused No.3 and the learned A. P. P. I have also gone through the case laws relied upon by the learned advocate of the applicant/accused No.3. There is no dispute about the proposition as expounded by the Hon'ble Supreme Court in three the case laws relied upon by him. It is well settled that the Court cannot conduct a deep roving enquiry into the evidence at this stage. While deciding the application of like nature it is necessary to see whether there are sufficient grounds to proceed against the accused or charge against the accused to be groundless. Hence, upon considering the police report and the documents sent with it under section 193 of BNSS, I am of the opinion that there are several grounds to frame the charge against the applicant/accused. In the circumstances, I have no hesitation to hold that the applicant/accused has not made out any grounds to discharge him by exercising the powers conferred to this court under section 262 of the BNSS. Hence, I answer Point No.(1) in the negative and in answer to Point No.(2), I pass the following order:-

-: ORDER :-

The application stands rejected.

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(Vaibhav V. Kulkarni)
Addl. Chief Judicial Magistrate,
5th Court, Dadar (At Sewree), Mumbai.

Date : 10/11/2025.
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