(2026) 08 BOM CK 3166

In the Bombay High Court, Nagpur Bench

Case No : Criminal Application (APL) No. 956 of 2026

Abhilash & Anr. APPELLANT

Vs

The State Of Maharashtra & Anr. RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Bharatiya Nyaya Sanhita, 2023 — Sections 318(4), 3(5), 318
Indian Penal Code — Sections 420, 406, 415
Code of Criminal Procedure, 1973 — Section 482, 156(1), 155(2), Chapter XIV
Constitution of India — Article 226

Citation : (2026) 08 BOM CK 3166

Hon'ble Judges : M. W. Chandwani, J

Bench : Single Bench

Advocate : Shri Anil Mardikar, Shri Digvijay Singh, Shri H.D. Futane, Shri Uday Changle

Final Decision : Allowed

Judgement

1. Rule. Rule made returnable forthwith. Heard finally by consent of the learned counsel appearing for the parties.

2. The applicants seek quashing of the First Information Report bearing Crime No.234/2025 registered with Police Station, Chandrapur City for the offence punishable under Sections 318(4) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for short, "BNS") and Charge-sheet No.310/2025 filed in R.C.C. No.21/2026 pending on the file of Chief Judicial Magistrate, Chandrapur.

3. The charge-sheet indicates that the applicants are sales executives of Blue Star Ltd. which deals in Air Conditioning (AC), commercial refrigeration and MEP (Mechanical, Electrical, pumping and Fire-fighting) instruments. Non-applicant no.2/complainant is a doctor by profession who lodged an FIR with Police Station, Chandrapur City alleging that on 02.01.2023, the applicants had been to his newly constructed hospital alongwith another co-accused Gangandeep Saini for the purpose of installing ACs. The other co-accused Gangandeep Saini, owner

of Gurunanak Refrigeration Pvt. Ltd. was to install the AC system. Accordingly, a deal was confirmed and the applicants and other co-accused quoted the amount of ☐ 40,17,833/- as the total cost. The amount of Rs.35,21,273/- was transferred to the firm owned by co-accused - Gangandeep Saini. After the initial work of wiring and copper piping, work of installation of the ACs stopped. Inspite of repeated requests when no development was seen, non-applicant no.2 contacted applicants, but they did not respond. When non-applicant no.2 contacted co-accused – Gangandeep Saini, he gave vague replies. Non-applicant no. 2 demanded refund of money repeatedly, however, he received no response. Therefore, on the complaint of non-applicant no.2, the aforesaid offences came to be registered against the applicant and co-accused - Gangandeep Saini.

4. Shri Anil Mardikar, learned Senior Advocate for the applicants vehemently submitted that the FIR does not disclose any offence whatsoever punishable under Section 318(4) of the BNS. According to him, the entire transaction of non-applicant no.2 was with co-accused – Gangandeep Saini. The applicants are merely the employees of Blue Star Ltd. Not a single rupee has been transferred by non-applicant no.2 to the account of the applicants or Blue Star Ltd., whereby it can be said that the applicants are involved. The entire amount has been transferred to the account of the other co-accused. It is also contended that non-applicant no.2 has also filed a complaint before the District Consumer Redressal Forum, Chandrapur and availed the civil remedy. There is no form of mens rea on the part of the applicants in the present case and they are merely the sales executives of the Company. They have nothing to do with installation and other procedural aspects of the service.

5. Per contra, Shri Futane, learned APP accompanied by Shri Changle, learned counsel for non-applicant no.2 objected to the application on the ground that inspite of making the entire payment, the ACs were not installed as promised by the applicants and co-accused – Gangandeep Saini. According to the learned APP, though the entire amount was credited to the account of the other co-accused but the applicants, being representatives of Blue Star Ltd, had visited the hospital of non-applicant no.2 in this regard and therefore, they are also liable for criminal action alongwith the other co-accused.

6. In view of the submissions mentioned above, it is necessary to examine whether the ingredients of the offence of cheating are made out, which has been defined under Section 318, as under:

> **"318. Cheating.**
>
> (1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived 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, is said to cheat.
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> Explanation.—A dishonest concealment of facts is a deception within the meaning of this

section.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

7. In respect of an offence under Section 318(4), the essential ingredients are: (1) deception of any person either by making a false or misleading representation or by other action or by omission; (2) fraudulently or dishonestly inducing any person to deliver any property or (3) the consent that any person shall retain any property and finally, intentionally inducing that person to do or to omit to anything which he would not do or omit. Further, in the aforesaid section, mens rea i.e. intention to defraud or the dishonest intention must be present from the very beginning or inception. The offence of cheating is established when dishonest intention exists at the time when the contract or agreement was entered upon.

8. Perusal of the charge-sheet only reveals that the applicants who are sales executives of Blue Star Ltd., had met non-applicant no.2 alongwith co-accused – Gangandeep Saini. The material in the entire charge-sheet does not reflect any allegation against the applicants that the applicants, in any way, deceived non-applicant no.2 and under such deceit, non-applicant no.2 placed the order. There is nothing on record to suggest that there was any intention on the part of the applicants to cheat non-applicant no.2 since inception. Thus, there is nothing on record which goes to suggest mens rea on the part of the applicants. It appears that the entire amount has been credited to the account of Gurunanak Refrigeration Pvt. Ltd. i.e. the proprietorship business of co-accused – Gangandeep Saini. Thus, no amount has been transferred, either in the name of Blue Star Ltd. or any of the present applicants. Further, the reason for lodging of the FIR appears to be the delay in installing the ACs or non refund of the money or at the most non-supply of ACs by co-accused – Gangandeep Saini. The matter appears to be purely a commercial transaction which is civil in nature. Rather, a complaint has also been filed by non-applicant no.2 before the District Consumer Redressal Forum.

9. A reference can be made to the decision of the Supreme Court in the case of Lalit Chaturvedi v. State of U.P. 1, wherein it has been observed as under:

"5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment [Lalit Chaturvedi v. State of U.P., 2023 SCC OnLine All 2945] dismisses the application filed by the appellants under Section 482CrPC on the ground of delay/laches and also the factum that the charge-sheet had been filed on 12-12-2019. This ground and reason is also not valid.

6. In Mohd. Ibrahim v. State of Bihar [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929], this Court had referred to Section 420IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied: (SCC pp. 757-58, paras 18-19)

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived:

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."

7. Similar elucidation by this Court in V.Y. Jose v. State of Gujarat [V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78 : (2009) 1 SCC (Cri) 996], explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of "cheating", as defined under Section 415IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition where from the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 CrPC. Section 482 CrPC saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose [V.Y. Jose v. State of Gujarat, (2009) 3 SCC 78 : (2009) 1 SCC (Cri) 996] placed reliance on several earlier decisions in Hira Lal Hari Lal Bhagwati v. CBI [Hira Lal Hari Lal Bhagwati v. CBI, (2003) 5 SCC 257 : 2003 SCC (Cri) 1121 : (2003) 262 ITR 466] , Indian Oil Corpn. v. NEPC India Ltd. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , Vir Prakash Sharma v. Anil Kumar Agarwal [Vir Prakash Sharma v. Anil Kumar Agarwal, (2007) 7 SCC 373 : (2007) 3 SCC (Cri) 370] and All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain [All Cargo Movers (India) (P) Ltd. v. Dhanesh Badarmal Jain, (2007) 14 SCC 776 :

(2009) 1 SCC (Cri) 947]"

10. There is nothing on record to show that the applicants had any dishonest or fraudulent intention at the time when non-applicant no.2 parted the amount with co-accused – Gangandeep Saini. At the cost of repetition, there is nothing on record to indicate that the applicants induced non-applicant no.2 to place the order or to pay the amount to the co-accused. There is no manner of doubt whatsoever that this is a case of sale of goods and is a purely commercial transaction.

11. Hence, the present case is squarely covered by clause (1) and (3) of para 102 of the decision of the Supreme Court in the State of Haryana and others Vs. Bhajanlal and others 1, which reads thus:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.
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> (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.
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> (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.
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> (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.
>
> (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.
>
> (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.
>
> (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party
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> (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

12. In view of the above, since none of the ingredients of the offence of cheating

are attracted against the present applicants, a case is made out to exercise the inherent powers of this Court to quash the FIR as well as the consequent proceedings. Resultantly, the following order is passed:

(i) The application is allowed.

(ii) First Information Report bearing Crime No.234/2025 registered with Police Station, Chandrapur City for the offence punishable under Sections 318(4) read with Section 3(5) of the Bharatiya Nyaya Sanhita, 2023 and Charge-sheet No.310/2025 filed in R.C.C. No.21/2026 pending on the file of Chief Judicial Magistrate, Chandrapur, qua the applicants, are hereby quashed and set aside.

Rule is made absolute.

FOOTNOTES

1. (2024) 12 SCC 483
1. 1992 Supp (1) SCC 335

