

**(1998) 12 BOM CK 0076**  
**In the Bombay High Court**  
**Case No : Criminal Application No. 173 of 1997**

|                                      |    |            |
|--------------------------------------|----|------------|
| P.M. Ramkrishnan and Others          | Vs | APPELLANT  |
| Neelkanth Mahadeo Kamble and Another |    | RESPONDENT |

**Date of Decision :** 03-12-1998

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 202  
Penal Code, 1860 (IPC) — Section 106, 114, 166, 409, 415

**Citation :** (1999) CriLJ 1313

**Hon'ble Judges :** D.G. Deshpande, J

**Bench :** Single Bench

**Advocate :** G.R. Rege and S.A. Mudbidri, Pravin Singhal, app, for the Appellant;  
A.P. Mundergi and S.V. Marwadi, for the Respondent

**Final Decision :** Dismissed

## Judgement

D.G. Deshpande, J.—Heard Mr. Rege for the petitioners and Mr. Mundergi for the Respondent No. 1 and APP for the State, Respondent No. 2.

2. This application is filed quashing the order of JMFC, Kalyan dated 2-12-1996 and also quashing the proceedings i.e. Criminal Case No. 248 of 1991.

3. This criminal case No. 248 of 1991 was initiated by the Respondent No. 1 - Neelkanth Mahadeo Ramble for the offences under Sections 418, 409, 166 read with 114 of the IPC. The complainant - respondent No. 1 filed a complaint in his capacity of Chief Managing Trustee of Somvashi Arya Samaj Trust, the Trust registered under the Bombay Public Trust Act. As per the facts given in the complaint, the Trust owned and possessed certain land within the limits of Kalyan Municipal Corporation. The accused approached the trust with the proposal of development of the aforesaid land. As a consequence, an agreement came to be executed between the Trust and the accused Nos. 1 and 2 on 7-7-1985. Under this agreement, accused Nos. 1 and 2 agreed to construct at their own cost a multipurpose community hall with an area of 4,500 sq. ft. as per the specifications given in the agreement. This hall was to be constructed on an area

of about 13,500 sq. ft. which was to be demarcated and bounded by a compound wall to be constructed by the accused. In consideration thereof, the accused Nos. 1 and 2 were to get all the rights of development of the remaining land (total land was 9952.24 sq. yards). Further according to the complainant in this agreement, no cash consideration was shown in favour of the Trust and therefore as per the directions given by the Charity Commissioner, some nominal consideration of Rs. 50,000/ --or, so was subsequently added by consent of the accused. In short, it is the case of the complainant that even though the accused were under legal and contractual obligation to complete the construction of the community hall of the size and specifications given in the complaint, they did not do so initially. But they developed the property first, sold the construction, earned crores of rupees and ultimately constructed in place and stead of the community hall 10 rooms which do not fulfil the requirements of the agreement and specifications of the community hall and therefore the accused are guilty of the offences alleged. The complainant has also alleged that right from the beginning the intention of the accused was to cheat the Trust, ultimately they succeeded in cheating the Trust. Their further contention is that there is no construction of the community hall as per the agreement and as per the specifications and the 10 rooms constructed by the accused in lieu thereof cannot be construed as community hall. On the basis of these facts, the complaint was filed. The Magistrate. ordered an enquiry u/s 202 of the Cr. P.C. but since police report was not received in time the Magistrate ordered issue of process against the accused Nos. 1 to 14 on 25-10-1991 under Sections 418, 409, 106, 66 of IPC read with 114 of the IPC. It appears that this order of issue of process was challenged by the accused Nos. 1 to 11 before the Additional Sessions Judge, Thane, by filing Criminal Revision No. 206 of 1991, but the Sessions Judge rejected the revision and therefore this application.,

4. I heard Mr. Rege and Mr. Mundergi at length. It was mainly contended by Mr. Rege that firstly there was no entrustment at all by the complainant to the accused of any-property and as such the essential ingredient of offence was not proved even prima facie. Secondly, according to him in the civil suit filed by the Trust, a compromise was arrived at per Exhibit A of the petition, wherein, the plaintiffs in that suit i.e. the Trust agreed to receive possession of community hall as is duly constructed together with land marked A, B, C, D, E, F, G, H, I and delineated in red colour in the plan annexed, in full and filial satisfaction of Clause No. 1 of the agreement dated 4-7-1985 and therefore in view of this compromise, no proceedings could lie against the petitioners for breach of trust. Mr. Rege also contended that accepting the compromise and accepting the fact of construction of community hall acted as estoppel against the complainant and on that ground also the complaint was liable to be rejected. He lastly contended that the entire dispute was of a civil nature and therefore relying on the following Judgments of the Supreme Court, the process was liable to be quashed:

1. Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandrojirao Angre and Others, ;

2. Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, ;

3. Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, .

5. On the other hand it was contended by Mr. Mundergi for the Trust that handing over of the land iii the possession of the accused for the purpose of acting under the agreement dated 7-7-1985 was entrustment of property envisaged by the definition of the cheating. Secondly, at nowhere it was contended in their defence that the 10 rooms constructed by them for the Trust were as per the agreement dated 7-7-1985 and as per the specifications in respect of the community hall. Thirdly, it was contended by him that even if the compromise was signed in the civil suit referred to above, factually there was no community hall constructed by the accused and since this is a Trust property and Trust was a party to the agreement, acceptance of compromise by one of the Trustees of Chief Trustee could not bind all the beneficiaries of the Trust. Lastly, he contended that the matter was not only of a civil nature but direct criminality was involved in it and therefore the judgments relied upon by Mr. Rege could not come to the rescue of the petitioners-accused. He also pointed out that at the time of issuance of process, the complainant was required to make out a prima facie case and not to prove the guilt of the accused beyond reasonable doubt and from the evidence given and the circumstances brought on record, sufficient material was before the Magistrate in ordering issue of process.

6. So far as the Judgments of the Supreme Court relied upon by Mr. Rege are concerned, in the case reported in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, the Supreme Court has observed as under: -

7. The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of .a case also quash the proceeding even though it may be at a preliminary stage.

In the other case reported in Sardar Trilok Singh and Others Vs. Satya Deo Tripathi, the dispute was in respect of a truck pursuant to hire purchase agreement, and in the third case reported in Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , the Court has observed as under (Para 28 of Cri LJ) :

Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant

has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.

7. Before considering the above ratio of the Supreme Court, it is necessary to find out certain facts of the present case as borne out from the record. There is no dispute that the accused Nos. 1 and 2 entered into an agreement with the Complainant - Trust (complainant is hereinafter referred to as the "Trust"). Mr. Mundergi produced the compilation of documents, which contained the copy of the agreement and no dispute was raised by Mr. Rege that this was not the correct copy of the agreement. From this agreement, it is absolutely clear that the very object of the Trust entering into the agreement with accused Nos. 1 and 2 and giving the accused the vast land of about 2 acres and more was to get a community hall equipped with modern amenities on the Trust land for fulfilling religious and charitable purposes but also to enable the Trust to carry on cultural and educational activities and dispensary, medical services to the community. The object of the Trust in giving huge piece of land to the accused is made repeatedly clear in the said agreement. There is also no dispute that the only consideration which the Trust was to receive was the community hall in lieu of giving more than 2 acres of land for development to the accused, from which the accused could earn lacs of rupees. There is also no dispute that in the agreement the specifications of the community hall with necessary amenities have been described as per Annexure A and that the accused developers had undertaken to construct a multipurpose community hall admeasuring 4500 sq. ft. along with amenities at the north west corner, admeasuring 13500sq. ft. plot of land. Annexure A of this agreement is being reproduced by me as follows :

Requirement for community hall to be constructed on N.W. Corner of S. No. 38 at Chikanghar Village admeasuring about 1800 meters, 13203 sq. ft.

The Built up area of community hall is to be kept 4500 sq. ft. having the following amenities :-

- (1) At the entrance there shall be a place for Trust Office at one head.
- (2) A waiting hall for the party, till the time of main hall gets vacant for their use, also for the use as a clock room with rakes.
- (3) Place for control room from where reception, loud speaker, control, light,

telephone control can be made.

(4) Room for bride and bridegroom party separately of about 15 x 20 in which a room for keeping valuable things and place for changing dresses for ladies.

(2) Kitchen of about 15 x 20 adjacent to a room where all utensils, ration and all other things useful for cooking serving etc. can be stored.

(3) A room for keeping linen, bands, carpets, dinning tables, chairs, etc.

(4) Sub hall with stage (Shift able if possible) fans, lights, speakers fitted at sufficient places.

(5) 4 latrines with all the amenities, tap, flush cont. hook shelve light etc.

(6) 4 bath room with all the modern amenities, 2 taps, for cold and hot water, storey books, shelve, light soap case tile etc.,

(7) Dressing room of about 15 x 20 attached to bath rooms having mirrors all side wash basins.

(8) Outside the hall, backside galley hand and month washing arrangement to be made- sufficiently. Throughout the length if possible.

(9) Utensil washing and cleaning place be kept having 20" x 20" tanks in numbers.

(10) Gurder in a kitchen on both the side to rob the hoist for lifting heavy cooked rails from oven to the ground and vice versa.

(11) Outside the halt and side gallery of about 6ft.

Design and material for the hall be used for 1 Plus 3 floor building, foundation steel design be based on this formula.

There is also no dispute that since this agreement did not contend any consideration in terms of money, it was modified at the instance of the Charity Commissioner and the .nominal sum of Rs. 50,000/-or odd was included as payable by the accused to the Trust. There is further no dispute that pursuant to this agreement, the accused got the possession of the entire land i.e. more than 2 acres, that they developed the other portion excluding 13,509 sq. ft. and from the sale proceeds- of the construction made thereto they have earned lacs of rupees.

8. The question therefore is whether it can be said that there was no entrustment of the property by Trust to the accused as argued by Mr. Rege and I am not inclined to accept the submissions made by Mr. Rege in this regard. Because while making the submissions on the point of entrustment, Mr. Rege did not at all referred to or touched this agreement between the Trust and the accused. What he was repeatedly urging that at no point of time there was any entrustment of property. If the agreement is seen, as it is, along with the object

and purpose and the consideration received ,by the Trust then this argument of Mr. Rege has to be outright rejected. There was entrustment of the Trust land by the Trust to the accused for the purpose of community hall of specific dimensions, measurements with specific amenities was a consideration which the accused were to give to the Trust,

9. Admittedly, the accused have not constructed the community hall as per the specifications. Mr. Mundergi repeatedly contended that if the Trust satisfies even today that the construction made by them satisfies the conditions of the agreement and annexure, he was readily to withdraw his complaint. But Mr. Rege did not take note of this offer and repeatedly contended that the accused have prepared the community hall. From the submissions made by Mr. Rege and from the defence that is raised by him, it is prima facie clear that the community hall is not at all constructed on the sight as per the terms of the agreement and as per the Annexure A of the agreement.

10. From the aforesaid circumstances, it is prima facie clear that the accused have induced the Trust to part away with their valuable property, namely, the immovable property of more than 2 acres with representation and promises given in writing that they would be constructing a community hall of the specific description, dimensions and amenities but have not at all fulfilled their promises.

11. The Magistrate had issued the process against the accused under Sections 418, 409 and 166 of the IPC read with 114 of the IPC. Section 418 prescribes punishment to a person who cheats with 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. The word cheating has been defined in Section 415, which is reproduced hereinbelow :

415. 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 or 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".

12. If therefore the definition of cheating is applied to the facts of the present case, it is prima facie clear that accused fraudulently and dishonestly induced the Trust to deliver property i.e. the land which the Trust would not have delivered to the accused but for the fraudulent and dishonest inducement and the fraudulent and dishonest inducement that was given by the accused to the Trust was that they would give a community hall of specific size, dimension and amenities to the complainant-trust.

13. In view of these facts, the Supreme Court cases relied upon by Mr. Rege and quoted above are of no help to him. It is true that summoning the accused in a criminal case is a serious law which should not be allowed to be set in motion as

a matter of course. However, when on the face of the record the complainant succeeds in making out a prima facie case, the trial Court was justified in issuing process against the accused. Secondly, regarding the existence of a civil dispute and exclusion of criminal trial, in the Supreme Court Judgment quoted above in Madhavrao Jiwajirao Scindia and Others Vs. Sambhajirao Chandojirao Angre and Others, observed that the test to be applied for quashing proceedings is to whether the uncontroverted allegations as made prima facie establish the offence. The Supreme Court also further held that it is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. In the instant case from the facts narrated above, about which there is no dispute no other interference can be drawn but the inference that the prosecution of the accused is prima facie justified.

14. One more submission was made by Mr. Rege on the basis of a compromise entered into between the Trust and the accused. Copy of the compromise is filed at Exhibit A, record page 13 of the petition. It is a compromise filed in regular civil suit which was filed by the Trust and in that compromise it is stated that the parties to the suit have settled their dispute out of the Court on following terms and conditions :

(1) That in terms of the Agreement the plaintiffs shall receive the possession of Community Hall as is duly constructed together with the land marked "A. B. C. D. E. F. G. H. I." and delineated in Red Colour in the Plan annexed herewith in full and final satisfaction of Clause No. 1 of the Agreement dated 7-7-1985.

(8) That the Defendants No. 2 have today paid a further sum of Rs. 1,11,000.00 "(Rupees One Lac Eleven Thousand only) to the Plaintiff by Cheque bearing No. 013531 dated 10-6-1988 drawn on Andhra Bank, Chembur, Branch on execution of this Compromise Pursis." On the basis of the aforesaid compromise, Mr. Rege contended that the Trust having agreed under the compromise to take the possession of community hall cannot now come forward and contend that they have been cheated and again further refuse to take possession of the community hall. He also contended that the Trustees of the Trust had satisfied themselves that the construction made by the accused was inconformity with the agreement before signing a compromise pursis.

15. Had the complaint not been filed by the Public Trust registered under the Bombay Public Trust Act and had the complaint been filed by an individual then this compromise could have certainly come in his way in prosecuting the accused for cheating. However, this complaint is filed by the Trust, through its Managing Trustee and in the agreement referred to above between the Trust and the accused it has been repeatedly stated that the accused are being given the aforesaid land for the purpose of getting a community hall which will benefit the community at large because the community hall was to provide facilities for celebrating religious and charitable functions, for carrying on cultural and educational activities and for providing dispensary and medical services to the

community. Therefore, if the object of the agreement was to benefit the community and the Trust entered into the said agreement for the benefit of the community then all the beneficiaries of the Trust and members of the community get a right to see whether the terms of the agreement were fulfilled or not. Therefore signing of the compromise by some of the Trustees of the Trust cannot come in the way of the complaint, which is filed against the accused.

16. Secondly, whether the community hall which is referred in the compromise pursis satisfies the requirements of the agreement and the annexure thereto is a matter of fact which can be ascertained from the situation on the spot. Since Mr. Rege could not accept the challenge given by Mr. Mundergi as stated above, and went on urging repeatedly that the community hall is ready, it has to be prima facie accepted that the community hall is not at all constructed as per the agreement and as per the annexure.

17. Since the object of the Trust in entering into this agreement was to benefit the community at large and to get a community hall for the aforesaid public purposes, a compromise, even if entered into by the Trustees will not come in the way of the present prosecution initiated by, filing a private complaint.

18. At this juncture, it is necessary to mention that from the annexure of the agreement it is clear that the community hall was to serve the members of the community for performing marriages and for that object, specifications of the community hall and other requirements were given in detail in the agreement and in annexure. If the construction now made by the accused and offered under a compromise does not fulfil those requirements then a compromise cannot be an obstacle in the way of the present prosecution. Even, at the risk of repetition it has to be pointed out here that the Trust did not get any other consideration under this agreement when the Trust handed over more than 2 acres of land to the accused accepting the consideration in the form of community hall (it may be that at the time of the compromise the sum of Rs. 1,11,000/- was given to the Trust).

19. For all these reasons, the order of issue of process being passed on a strong prima facie case not liable to be interfered with. Hence the order:

ORDER

Petition dismissed. Rule discharged. Ad-interim order of stay is vacated.

Parties to appear before the trial Court on 21 -12-1998.

R and P be sent back immediately.