

When the decision to not classify the account as fraudulent and to remove the red flag was a collective business decision taken by the majority of lenders after due deliberations, forensic audits, and under the purview of the RBI and the Ministry of Finance, a dissent by a few banks does not by itself impute criminality

The **Bombay High Court** in the case of **GTL Limited vs CBI [Writ Petition No. 3631 of 2024] dated February 27, 2026**, has held that an offence of cheating, as defined under section 415 of the Indian Penal Code, requires a fraudulent or dishonest intention at the very beginning of the transaction. Thus, the Court ruled that a mere breach of contract or a subsequent failure to keep up a promise is not sufficient to constitute the criminal offence of cheating.

As in the present case, there was no evidence of deception at the inception or any fraudulent act by the petitioner company, the Court said that its inherent power under Section 482 of the Code of Criminal Procedure, should be exercised to quash criminal proceedings to prevent a miscarriage of justice. This power can be used when unimpeachable documents produced by the accused substantially wipe out the allegations in the FIR, even if the investigation is still in progress.

The Court went on to explain that an investigation initiated against 'unknown' persons after a lengthy preliminary enquiry, without identifying any specific accused, amounts to a 'roving and fishing inquiry'. Hence, the continuance of such a criminal proceeding cannot be permitted on the ground that the investigating agency may find the culprits at some future date.

The Court added the alleged loss of public exchequer does not fall within the meaning of wrongful loss in absence of any evidence of intentional and fraudulent act on the part of the petitioner-company. The CBI could not detect any illegal act or deceit in the entire transaction played by any of the directors of the petitioner-company. Their identity is known but there is no allegation against any of them. Hence, the criminal justice system cannot be set in motion in the mere hope of discovering an offender.

The Court observed that it was of considerable importance that the FIR was lodged against 'unknown' directors and bank officials, despite the CBI having conducted a Preliminary Enquiry for 18 months and collected 52 documents from which their identities were ascertainable. The Court noted that even at the time of the hearing, the CBI was unable to identify a single accused, which suggested the FIR was lodged for a fishing inquiry.

The Court gave significant weight to the commercial wisdom of the consortium of banks. It noted that the decision to not classify the account as fraudulent and to remove the red flag was a collective business decision taken by the majority of lenders after due deliberations, forensic audits, and under the purview of the RBI and the Ministry of Finance. Thus, the Court stated that such a decision cannot be second-guessed by an investigating agency, and a dissent by a few banks does not by itself impute criminality.

The Court highlighted that the CBI had previously, through a communication dated 5th September 2018, ordered the closure of the matter because the JLF had not classified the

account as fraud. The Court also pointed to the bar under Section 17A of the Prevention of Corruption Act, which requires prior approval to investigate public servants (bank officials), and noted that no such approval was obtained.