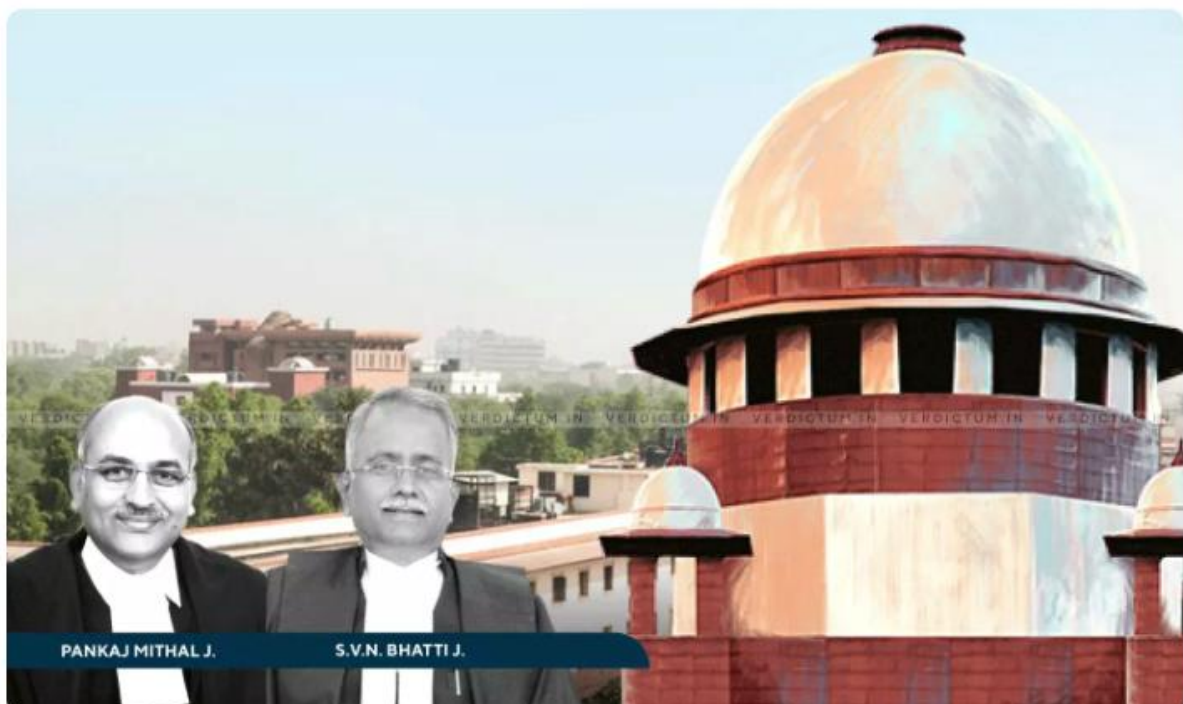


Supreme Court: Mere Non-Payment Of Sale Price Not An Offence Of Criminal Breach Of Trust Or Cheating

The Supreme Court set aside the High Court's Order, which refused to quash an FIR registered against the director of a company registered in Sri Lanka for offences punishable under Sections 406 and 420 of the IPC.

By Riya Rathore | 2 May 2025 9:30 AM





2025 INSC 614

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. OF 2025
(@ S.L.P.(Criminal) No. 1850 OF 2022)

ASHOK KUMAR JAIN

... APPELLANT(S)

VERSUS

**THE STATE OF GUJARAT
AND ANOTHER**

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. The appellant filed R/Criminal Misc. Application No. 11506 of 2017 before the High Court of Gujarat at Ahmedabad under section 482 of The Code of Criminal Procedure (“the Code”) for quashing the FIR bearing C.R. No. I- 06 of 2017 registered with Salabatpura, Police Station, Surat for the alleged offences punishable under sections 406 and 420 of the Indian Penal Code (“IPC”). The said Criminal Misc. Application was dismissed (“Impugned Order”) by the High Court resulting in the filing of the Criminal Appeal.
3. The second respondent claims that he is running a business at Surat Textile market under the name and style of “Ansh Prints”. The nature of the business activity of the second respondent is to subject the Grey cloths purchased from weavers and process them for “Dyeing prints” and “Bal prints”. As a further process, the printed sarees are sent for cutting and saree work. The second respondent sells the finished printed and work saree

products. The appellant is the director of a company registered in Sri Lanka and is doing business under the name and style of “Maayu Import and Export Ltd,” having its registered office at 103, 3rd Cross Street, Colombo-11, Sri Lanka. The places of business activity of the appellant and the respondent are noted to appreciate the subtle intricacy involved in the matter. In March 2012, the appellant and the second respondent came into contact with each other and commenced the business of exporting sarees sold by the second respondent. The export of sarees sold by the second respondent and purchased by the appellant has been facilitated through M/s. Oswal Overseas, inasmuch as the goods could be exported through an entity with an export-import license from the Government of India. The above narrative is not disputed by the parties and is stated to appreciate the setting in which an FIR has been lodged by the second respondent against the appellant. Shorn of too many details, it is noted that on 03.01.2017, the second respondent filed an FIR under sections 406 and 420 of the IPC before the Salabatpura Police Station, Surat. The FIR is registered as I-06 of 2017. The alleged offence is stated to have occurred between 16.10.2013 and 05.04.2014. The accusations in the FIR refer to the initiative of the appellant and the second respondent to establish a business relationship between them. The FIR presents a detailed narrative on the beginning of a transaction between the second respondent and the appellant. The accusations have been noted with sufficient details in the judgment impugned in the appeal. Hence, the contents of the FIR are stated in brief:

3.1 The second respondent from 2012 to 2014 was running his business at Surat Textile market, parking project shop number 133, in the name of Ansh Prints. The business is to process the grey clothes from weavers, and after the

process of Dyeing, printing, and Bal print, the goods are sent for work, and after cutting the saree and packing, the same is sold to the parties directly or through a broker.

3.2 In March 2012, the appellant had come to the shop of the respondent no. 2, told him that he was having his office at Maayu Import & Export Pvt. Ltd., Maayu Impex No.103, Third Cross Street, Colombo 11, Sri Lanka and was interested in doing business with the respondent no. 2. Since the sold goods were to be sent out of India and the respondent no. 2 did not possess an import-export licence, the appellant had asked him to send the goods through Vikrambhai Mahendrabhai Barmecha ("Vikrambhai"), owner of M/s. Oswal Overseas, at Raghunandan Textile Market. It was agreed that the payment would be made via a cheque within 60 to 90 days.

3.3 From 16.10.2013 to 05.03.2014, the second respondent, vide different bills, had sent reniyal sarees, work sarees and cotton work quality goods of 75,515 metres and 44,753 pieces, along with saree packing material bags, handwork beads and stone goods of a total worth of Rs. 39,18,108/- to the appellant through M/s. Oswal Overseas. The above-mentioned Vikrambhai of M/s. Oswal Overseas used to stamp and sign the invoice bill of the second respondent and share the container bill and the customs clearance bill for sending goods to Sri Lanka.

3.4 The Packing List No. AP- 1 to 98 goods were sent through M/s. Oswal Overseas to the appellant in Sri Lanka. However, the other packing list No. AP- 99 to 103 worth Rs. 4,46,764/- for some reason could not be sent by Vikrambhai to the appellant in Sri Lanka. Vikrambhai paid the money for the said goods to the second respondent. Hence, the total goods worth Rs. 34,71,344/- were exported through M/s. Oswal Overseas to the accused.

3.5 Until March 2014, the second respondent had sent the goods to the appellant, but despite repeated demand, no payment was made. Consequently, the second respondent had himself gone to Sri Lanka to the appellant, and the appellant had assured him of payment regarding the same. After the second respondent returned to Surat, the appellant stopped receiving his calls in March 2016. Hence, the FIR was registered.

4. The appellant filed R/Criminal Misc. Application No. 11506 of 2017 under section 482 of the Code for quashing the subject FIR. The foremost grounds, from the nature of the relationship between the appellant and the respondent for invoking the jurisdiction of the High Court under section 482 of the Code are summarised as thus:

- a. The FIR refers to the date of business transactions between 16.10.2013 and 05.04.2014.
- b. On 03.01.2017, the FIR was filed and registered under sections 406 and 420 of the IPC.
- c. The export of goods from the second respondent to the appellant, on the very showing of the second respondent, is through M/s. Oswal Overseas. The second respondent sold or supplied goods to M/s Oswal Overseas, and the said exporter has exported the goods to the appellant.
- d. The claim of the second respondent is based on the unpaid sale consideration of goods sold. There is no privity of contract or a shred of document establishing a tri-partite arrangement between the second respondent/seller on one hand and M/s. Oswal Overseas/exporter and the appellant/the importer, on the other hand.
- e. None of the ingredients of sections 406 and 420 are attracted from the accusations in the FIR, and on the mere statement of the second

respondent, the transaction does not turn out to be an offence under IPC.

5. The High Court, through the impugned order, dismissed R/Criminal Misc. Application No. 11506 of 2017. The gist of the consideration of the High Court is that the appellant misrepresented to the respondent no. 2 and convinced the latter to do business with the appellant through the exporter. The High Court, after relying upon judicial pronouncements defining essential ingredients of criminal breach of trust and cheating, observed that the distinction between mere breach of contract and offence of cheating has to be kept in mind. It emphasised that the same would depend upon the intention of the accused at the time of the alleged inducement, and mere breach of contract cannot give rise to criminal prosecution for cheating unless a fraudulent or dishonest intention is shown at the inception of the transaction. The High Court considered the details provided by the respondent no. 2, showing how the appellant misrepresented and induced the second respondent to deliver the goods. On the basis of documents of supply of goods placed on record and affidavit filed by the respondent no. 2 stating that others were also cheated by the appellant, the High Court found that the offences as mentioned in the FIR were substantiated and refused to exercise the powers under section 482 of the Code to quash the FIR.

6. Mr. P.S. Patwalia, learned Senior Counsel appearing for the appellant, argues that the accusations in the FIR do not make out an offence of criminal breach of trust or cheating. The FIR refers to the total outstanding from the export made through M/s. Oswal Overseas as Rs. 39,18,108/- and the consignment worth Rs. 4,46,764/- could not be exported to the appellant. M/s. Oswal Overseas, through one Vikrambhai, paid the said amount to the

second respondent, thus reducing the unpaid sale consideration of exports made to the appellant to Rs. 34,71,344/-. Either for un-exported or exported goods, the liability towards the unpaid sale price is with M/s. Oswal Overseas. As per the transfer documents, the unpaid sale price can be recovered only by M/s. Oswal Overseas and the second respondent by treating the director of M/s. Oswal Overseas, as a witness, cannot convert a pure and simple dispute on unpaid sale price by the appellant into criminal prosecution under sections 406 and 420 of the IPC. The appellant prays for quashment of the FIR not by looking at any extraneous documents but by accepting the accusation in the FIR.

7. Mr. Mohit D. Ram, learned Counsel, appearing for the second respondent, contends that business transactions have happened, and sarees have been exported through M/s. Oswal Overseas on the negotiations held between the appellant and the second respondent. M/s. Oswal Overseas is a mere facilitator. The goods sold have finally benefited the appellant. The non-payment of the full sale price amounts to criminal Breach of trust and cheating. The investigation into the allegations of the FIR would disclose whether the case warrants filing a chargesheet or closure report. At this stage, invoking the power of section 482 of the Code by the appellant is illegal. He invites our attention to a status report filed by the first respondent, to the evidence gathered so far and argues that the complicity of the appellant to convince the second respondent to do business through M/s. Oswal Overseas can be investigated. The High Court, according to him, has rightly dismissed the prayer.

8. We have heard the learned Counsel and perused the record. The appellant prays for quashment of FIR, and we are conscious of the exercise of

jurisdiction in interdicting an FIR and the legal position is fairly well established by a catena of decisions, and we refer to the following three decisions:

8.1 *State of Odisha v. Pratima Mohanty*¹

As per the settled proposition of law, while examining an FIR/complaint, quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing a complaint/FIR should be an exception rather than any ordinary rule. Normally, the criminal proceedings should not be quashed in exercise of powers under section 482 of the Code when, after a thorough investigation, the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 of the Code, the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting a mini-trial. As held by this Court, the powers under this section are very wide, but the conferment of wide power requires the court to be more cautious. It casts an onerous and more diligent duty on the Court.

8.2 *Kaptan Singh v. State of Uttar Pradesh*²

The inherent jurisdiction under section 482 of the Code, though wide, is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in the section itself. Further, the appreciation of evidence is not permissible at this stage.

8.3 *Pratibha v. Rameshwari Devi*³

¹ (2022) 16 SCC 703.

² (2021) 9 SCC 35.

³ (2007) 12 SCC 369.

It is not open to the High Court to rely on the report of the investigating agency, nor can it direct the report to be submitted before it as the law is very clear that the report of the investigating agency may be accepted by the Magistrate, or the Magistrate may reject the same on consideration of the material on record. Such being the position, the report of the investigating agency cannot be relied on by the High Court while exercising powers under section 482 of the Code.

9. The FIR has been registered under sections 406 and 420 of the IPC. The scope and expanse of these sections is better appreciated in the company of sections 405 and 415 of the IPC. This court in the case of **Radheyshyam v. State of Rajasthan**⁴, culled out the following ingredients to constitute the criminal breach of trust:

“11. For an offence punishable under Section 406, IPC, the following ingredients must exist:

- i. The accused was entrusted with property, or entrusted with dominion over property;*
- ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
- iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract.”*

9.1 This court, while discussing the expression “entrustment” in **Rashmi Kumar v. Mahesh Kumar Bhada**⁵, observed that it carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Entrustment is not necessarily a term of law. It may have different implications in different

⁴ 2024 SCC OnLine SC 2311.

⁵ (1997) 2 SCC 397.

contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any proprietary right therein. The ownership or beneficial interest in the property in respect of which criminal breach of trust is alleged to have been committed, must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit.

9.2 Further, in **Hridaya Ranjan Prasad Verma v. State of Bihar**⁶, this court observed as follows:

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

(Emphasis supplied)

9.3 The ingredients to constitute an offence under sections 415 read with 420 of IPC have been considered and laid down by this court in **Prof. R.K. Vijayasathya and Anr v. Sudha Seetharam and Anr**⁷, as under:

“16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

⁶ (2000) 4 SCC 168.

⁷ (2019) 16 SCC 739.

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. xxx xxx xxx

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1 A person must commit the offence of cheating under Section 415; and

19.2 The person cheated must be dishonestly induced to:

- (a) deliver property to any person; or
- (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.”

(Emphasis supplied)

9.4 Put succinctly, to constitute an offence under sections 415 and 420 of the IPC, the above ingredients are present in the FIR .

10. This court in **AM Mohan v. State Represented by SHO & Another**⁸, has observed as follows:

“13. It could be thus seen for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

- (i) the deception of any person;
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
- (iii) dishonest intention of the accused at the time of making the inducement.”

(Emphasis supplied)

⁸ 2024 INSC 233.

11. As stated in the FIR:

- (i) In March 2012, the appellant had directly contacted the respondent no. 2, gave him his visiting card, and saw the samples of the work being done by the latter;
- (ii) Further, the appellant also enquired from respondent no. 2 from whom he was purchasing the goods of sarees. After 2-3 days, he came to the office of the appellant and demanded other samples;
- (iii) Appellant had asked respondent no. 2 to prepare goods and informed that he would make the payments in 60 to 90 days; and
- (iv) Appellant had assured and given trust for making timely payments, stating that he has his own house in Chennai and had good contacts with political persons.

12. From the above, respondent no. 2 has not availed the services of M/s. Oswal Overseas as a transport carrier. It is unclear whether the invoice has been raised in the name of the appellant or the exporter. The “bill of lading” would have disclosed the transfer of title in goods in favour of the appellant. On the contrary, the FIR is filed showing that the appellant, as accused, had an intention to cheat and commit breach of trust. The documents belie the allegations in the FIR. Looking at the controversy from any perspective, a mere civil dispute has been given the colour of an offence of cheating and criminal breach of trust. We have perused the FIR and are convinced that the inducement is an explanation to contradict the documents through which exports have been completed. In the circumstances of this case, by referring to inducement, the continuation of investigation/prosecution into the offence of cheating and breach of trust would amount to an abuse of the process of

law. Further, what begs the question is whether such non-payment of the sale price can be an offence of criminal breach of trust and cheating at the hands of the second respondent. The answer is clearly no.

13. As per the FIR, the goods were to be exported out of India. The respondent no. 2, since did not possess an import/export license, the appellant had asked respondent no. 2 to export the goods through M/s. Oswal Overseas. Accordingly, from 16.10.2013 to 05.03.2014, respondent no. 2 has in all exported sarees worth Rs. 34,71,344/- through Vikrambhai, owner of M/s. Oswal Overseas to the appellant.

14. By keeping in perspective the ratio in the judgments referred *supra* and also the well-established position of law under section 482 of the Code, we will examine the crux of the complaint. The respondent no. 2 complains that the appellant, after appropriating the goods exported, has not paid the sale price of Rs. 34,71,344/-. M/s. Oswal Overseas is the exporter, and the primary liability for the goods entrusted lies with the appellant. The respondent no. 2 has treated the Director/Partner of M/s. Oswal Overseas as a witness to bring home the accusation of breach of trust and cheating. We do not want to hold a mini trial and observe whether such an effort, either in the course of the investigation by the police or finally in the prosecution, will bring home the aforesaid charges. In the documents filed as *Annexure P2*, which is a true copy of the invoices and the payment receipt made by the appellant, the appellant is shown as the consignee and M/s. Oswal Overseas is the exporter. *Annexure P2* is as follows:

“69. *Beneficiary Customer Name and Address*
 /912020045714085
 M/s Oswal Overseas
 2014-2017 Raghunandan Textile
 Market Ring Ring Road Surat

*India 395002.
71A: Details of Charges
SHA”*

15. Therefore, the entrustment was made to M/s. Oswal Overseas by respondent no. 2 and not to the appellant.

16. The sale price was agreed to be debited to the account of M/s. Oswal Overseas accepted the same as part payment against the subject export of goods from the appellant. It might be true that the appellant is yet to discharge the sale price of the subject export. The respondent no. 2, by referring to an oral arrangement of inducement, tries to plead a case contrary to the documents through which the final “entrustment” of the exported goods happened in Sri Lanka.

17. For the above reasons, and particularly appreciating *Annexures-P1* to *P3*, we are of the view that the continuation of the FIR against the appellant is an abuse of the process of law, and at best, the non-payment of the sale price could be a civil dispute between the appellant and M/s. Oswal Overseas. The appeal is accordingly allowed, the impugned order is set aside and FIR No. I-06 of 2017 is quashed.

.....J
[PANKAJ MITHAL]

.....J
[S.V.N. BHATTI]

**New Delhi;
May 1, 2025.**