2025 SCC OnLine SC 2058

In the Supreme Court of India

(BEFORE B.V. NAGARATHNA AND R. MAHADEVAN, JJ.)

Arshad Neyaz Khan ... Appellant;

Versus

State of Jharkhand and Another ... Respondents.

Criminal Appeal No. of 2025 (Arising out of Special Leave Petition (Criminal) No. 3606 of 2024)[§]

Decided on September 24, 2025

Advocates who appeared in this case :

Ms. Srija Choudhury, AOR, For Petitioner(s)

Mr. Rajiv Shankar Dvivedi, Adv., Ms. Madhusmita Bora, AOR, Mr. Pawan Kishore Singh, Adv., For Respondent(s)

The Judgment of the Court was delivered by

B.V. NAGARATHNA, J.:— Leave granted.

2. This appeal arises out of the order dated 19.01.2023 passed by the High Court of Jharkhand at Ranchi in Cr.M.P. No. 2384 of 2022 dismissing the application filed under Section 482 of the Code of Criminal Procedure (hereinafter 'CrPC' for short) preferred by the accused-appellant and thereby refusing to quash the proceedings arising out of the Complaint Case No. 619 of 2021 and FIR No. 18 of 2021 dated 08.02.2021 registered at PS Hindpiri that was filed by Md. Mustafa, the complainant/respondent No. 2.

3. Briefly stated, the facts of the case are that the appellant is the owner of the property situated at Khata No. 186, MS Plot No. 1322, Sub Plot No. 1322/38-A and that he is also the power of attorney holder for the property adjacent to the above-mentioned plot situated at Sub-Plot No. 1322/39-A-1.

4. On 16.02.2013, the appellant entered into an agreement for sale of the aforesaid properties with the complainant/respondent No. 2 for a total consideration of Rs. 43,00,000/-. Out of the said consideration, the petitioner received an advance payment of Rs. 20,00,000/- on the date of agreement for sale.

5. Thereafter, on 29.01.2021, after nearly eight years from the date of the agreement for sale, aggrieved by the non-transfer of the said properties, a complaint was filed being Complaint Case No. 619 of 2021 by the complainant/respondent No. 2 against the appellant alleging offences under Sections 406, 420, and 120B of the Penal Code, 1860 (hereinafter, "IPC" for short.). The said complaint culminated into

registration of the FIR No. 18 of 2021 dated 08.02.2021 at Police Station Hindpiri against the appellant. The allegations contained in the said complaint and F.I.R. can be crystallized as hereunder:

i. In January 2013, one Atik Alam assured the complainant/respondent No. 2 that the property owned by the appellant situated at Khata No. 186, MS Plot No. 1322, Sub Plot No. 1322/38-A was available for sale. Thereafter, upon meeting the appellant, the complainant/respondent No. 2 was assured that all the documents and titles to the said property were in order and correct.

ii. The complainant/respondent No. 2 was also informed that the land adjacent to the property owned by the appellant, situated at M.S. Plot No. 1322, Sub Plot No. 1322/39-A-1, was owned by six different individuals, all of whom had created a power of attorney in favour of the appellant and therefore authorized him to sell the said adjacent land as well.

iii. Pursuant to the said representations, the complainant/respondent No. 2 agreed to buy the said properties for a consideration of Rs. 43,00,000/- vide agreement for sale dated 16.02.2013. In furtherance to the said agreement, a total sum of Rs. 20,00,000/- was given to the appellant and it was agreed between the parties that the balance amount shall be paid by the complainant/respondent No. 2 to the appellant at the time of the registration of the said document.

iv. After the execution of the said agreement for sale, the appellant failed to convey title of the said lands to the complainant/respondent No. 2 nor did he return the money deposited with him by the complainant/respondent No. 2.

6. Apprehending arrest on the aforesaid complaint and F.I.R., the appellant herein preferred Anticipatory Bail Petition No. 681 of 2021 before the Judicial Commissioner, Ranchi, Jharkhand on 22.03.2021.

7. Meanwhile, the parties were referred to the Mediation Centre, Ranchi wherein they arrived at a mutually satisfactory disposition according to which the appellant agreed to return a sum of Rs. 24,00,000/- to the complainant/respondent No. 2 in five instalments as a full and final settlement of all the claims between the parties.

8. The Court of Judicial Commissioner, Ranchi, *vide* order dated 23.12.2021, allowed the Anticipatory Bail Application No. 681 of 2021.

9. In pursuance to the aforesaid order of the Judicial Commissioner, Ranchi, the appellant appeared before the said Court on 19.01.2022 to surrender and sought permission to furnish bail bond. The appellant, in compliance with the anticipatory bail conditions imposed by the Judicial

Commissioner, Ranchi, also furnished a demand draft bearing no. 115484 dated 13.01.2022 of Rs. 5,00,000/- in favour of the complainant/respondent No. 2 as a payment of the first instalment.

10. Subsequently, on the failure of the appellant to abide by the condition of timely payment of instalments fixed by the Judicial Commissioner *vide* its order dated 23.12.2021 while granting anticipatory bail, the complainant/respondent No. 2 preferred Criminal Miscellaneous Case No. 39 of 2022 in Anticipatory Bail Application No. 681 of 2021 seeking cancellation of the bail granted to the appellant. The said application was allowed and consequently *vide* order dated 15.06.2022, the anticipatory bail granted to the appellant was cancelled.

11. Aggrieved by the order dated 15.06.2022 of the Court cancelling the Anticipatory Bail, the appellant preferred Criminal Miscellaneous Petition No. 2384 of 2022 under Section 482 CrPC before the Jharkhand High Court at Ranchi praying for the relief of quashing of F.I.R. No. 18 of 2021; Criminal Complaint Case No. 619 of 2021; and order dated 15.06.2022 *vide* which the anticipatory bail of the appellant was cancelled.

12. The Criminal Miscellaneous Petition No. 2384 of 2022 preferred by the appellant was partly allowed by the Jharkhand High Court *vide* impugned order dated 19.01.2023 whereby the High Court although refused to quash the criminal proceedings against the appellant but nevertheless allowed him the liberty to approach the High Court to prefer a fresh anticipatory bail application.

13. Aggrieved by the impugned order dated 19.01.2023 passed by the High Court of Jharkhand, the appellant has preferred the present appeal.

14. We have heard learned counsel for the appellant and learned counsel for the respondent-State as well as respondent- complainant. We have perused the material on record.

15. We have given our thorough consideration to the arguments advanced at the bar and the material on record.

16. The contents of the complaint as well as the FIR would have to be read in light of the ingredients of Sections 406 and 420 IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 29.01.2021, it is noted that the complainant/respondent No. 2 has filed the said complaint invoking Sections 406, 420 and 120B IPC. For ease of reference, the aforesaid Sections are extracted as under:

> "406. Punishment for criminal breach of trust.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to

three years, or with fine, or with both.

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420. Cheating and dishonestly inducing delivery of property.- 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.

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120B. Punishment of criminal conspiracy.-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

17. In *Inder Mohan Goswami* v. *State of Uttaranchal*, (2007) 12 SCC 1 ("*Inder Mohan Goswami*"), while dealing with Section 420 IPC, this Court observed thus:

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

18. In light of the facts and circumstances of the present case, we find that the complainant/respondent No. 2 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 IPC. We fail to understand as to how the allegations against the

appellant herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the FIR as well as the complaint, we do not find that the offence of cheating as defined under Section 420 IPC is made out and we do not find that there is any cheating and dishonest inducement to deliver any property or a valuable security involved in the instant case.

19. It is settled law that for establishing the offence of cheating, the complainant/respondent No. 2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale. We must hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No. 2. Mere allegations by the complainant/respondent No. 2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No. 2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No. 2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No. 2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or

converted for his own use, thereby committing a breach of trust.

21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in *Delhi Race Club (1940) Limited* v. *State of Uttar Pradesh*, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

22. At this point, we must hasten to add that the complaint was filed after a delay of nearly eight years. Learned counsel for the complainant/respondent No. 2 has failed to impress the Court about the reason for the delay and hence this fact further raises a suspicion about the *bona fides* of the complainant/respondent No. 2. The delay in lodging of the complaint and FIR, coupled with the vague allegations do not inspire any confidence in the Court to allow the criminal proceedings to continue against the appellant. Further, the complainant/respondent No. 2 had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights which has not been availed but a route through criminal proceedings, when no ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant therefore, in our view, could not be attributed any *mens rea* and therefore, the allegations levelled by the prosecution against the appellant are unsustainable.

23. Furthermore, in *Inder Mohan Goswami*, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down any inflexible rule that would govern the exercise of inherent jurisdiction. In view of

the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant herein would cause undue harassment to him because as observed hereinabove, no *prima facie* case for the offence under Sections 406 or 420 IPC is made out.

24. In this regard, it would be apposite to rely on the judgment in the case of *State of Haryana* v. *Bhajan Lal*, 1992 Supp (1) SCC 335 ("*Bhajan Lal*") with particular reference to paragraph 102 therein, where this Court observed:

> "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 give 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.
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> (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.
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> (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.

(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."

25. On a careful consideration of the aforementioned judgment in the light of the facts of this case, we find that none of the offences alleged against the appellant herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant herein have been made with a *mala fide* intent and therefore, the judgment of this Court in the case of *Bhajan Lal* and particularly sub-paragraphs 1, 3, 5 and 7 of paragraph 102, extracted above, squarely apply to the facts of this case. In our view, it is neither expedient nor in the interest of justice to permit the present prosecution to continue.

26. At this juncture, we find it apposite to mention the observations of this Court in *Vishal Noble Singh* v. *State of Uttar Pradesh*, 2024 SCC OnLine SC 1680 wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No. 2 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.

27. In the aforementioned circumstances, the impugned order of the High Court is set aside and consequently, the Complaint Case No. 619/2021 and FIR No. 18 of 2021 dated 08.02.2021 lodged with Police Station Hindpiri and all consequent proceedings initiated pursuant thereto stand quashed.

The appeal is allowed in the aforesaid terms.

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