IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 14190 of 2025

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PRATIK GULSHANBHAI ALLAWADI
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR. HERSCHELLE K. RAVAL(18164) for the Applicant(s) No. 1
MR. SURAJ A SHUKLA(7185) for the Applicant(s) No. 1
DS AFF.NOT FILED (N) for the Respondent(s) No. 2
MR MANAN MEHTA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

Date : 02/11/2026

JUDGMENT

1. By way of this application under Article 226 and Article 227 of the Constitution of India, the petitioner has prayed for quashing and setting aside FIR being C.R.No.I – 11214020241297 of 2024 registered with Kamrej Police Station, Surat for the offences punishable under Sections 409, 420, 504, 506(2) and 120(B) of the IPC as well as all other consequential proceedings arising out of the aforesaid FIR qua the petitioner herein.

2. Brief facts of the case are as under:-

2.1 The complainant / the respondent no. 2 is in business of manufacturing and trading of grey cloth and is running his business. Before three years, complainant came in contact with with the petitioner through accused no.1. The complainant started supplying grey cloth material to accused no.1 towards

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which he used to make payment on time. It is alleged that during 10.07.2023 till 16.01.2024, the complainant through his three different firms supplied goods to accused no.1 to the tune of Rs.1,42,67,882/-, however, till date said amount is not paid to complainant. Therefore, impugned FIR came to be lodged against the petitioner and other accused.

3. Learned advocate for the petitioner submitted that on plain reading of FIR, it fails to disclose any essential ingredient of criminal breach of trust or cheating, having punishment defined in section 409 and 420 of IPC. He would submit that FIR on its face value indicates that the complainant / the respondent no. 2 herein used to supply grey cloth material to the accused no.1 and the accused no.1 used to make payment to that effect. It is submitted that apart from introducing original accused no.1 with first informant, no specific role is attributed against the petitioner. It is submitted that prior to registration of FIR, original accused no.1 has already issued cheques of outstanding dues in favour of first informant, however, the said cheques got dishonored and first informant has already filed complaint under the provisions of Negotiable Instrument Act. It is further submitted that in absence of any essential ingredient of section 409 and 420 of IPC, civil transaction has been given color of criminality. Therefore, it is submitted to quash the FIR. In support of his submission, learned advocate for the petitioner has relied on judgment of Hon'ble Apex Court in the case of **Delhi Race Club (1940) Ltd. v/s. State of Uttar Pradesh [2024 INSC 626].**

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3.1 Upon such submission, learned advocate for the petitioner requests to allow the petition.

4. When the matter is called out, none present for the respondent No.2.

5. Learned APP submits that it is case where the petitioner has cheated the complainant and therefore, offence u/s 409 and 420 are made out. Therefore, it is submitted to dismiss the petition.

6. I have heard learned advocates for the parties and perused the record. Bare reading of FIR demonstrate that upon say of the petitioner, the complainant supplied goods of grey cloth material to accused no.1 and since accused no.1 did not pay the amount to the complainant, present FIR is filed under section 409 and 420 of IPC. Section 409 and 420 being relevant provision of law defines criminal breach of trust and cheating as under :-

> ***"409. Criminal breach of trust by public servant, or by banker, merchant or agent —***
>
> *Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with* ***imprisonment for life****, or with imprisonment of either description for a term which may extend to* ***ten years****, and shall also be liable to fine."*

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> ***420. Cheating and dishonestly inducing delivery of property.—***
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> *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. Punishment of criminal breach of trust and cheating are slated in section 409 and 420. If any person has been dominion over the property in his capacity of public servant or in the way of his business as banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

8. In background of above provision of law, if we again see contents of FIR, at no point of time, it appears that no offence is made out and it becomes amply clear that instead of filing a money recovery suit, the respondent No.2 has filed the FIR. Thus, FIR is filed giving color of criminality. It is significant to note that first informant feels duped, he could have filed civil suit for recovery of outstanding amount.

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9. What could be noticed that police authorities have misused powers and added section 409 and 420 of IPC for the purpose of recovery of outstanding amount which alleged to have been due in commercial transaction. This Court has time and again deprecated approach of police authorities for filing such kind of FIR whereby civil dispute has been converted into criminal proceedings. Even highest police officer of State in the rank of DGP has issued circular to police personnel for not registering FIR where civil dispute are given color of criminal proceedings. But for the reason best known to the police officers concerned without following those circulars, FIR of such kind are registered.

10. Hon'ble Apex Court recently examined the issue in the case of **Delhi Race Club (1940) Ltd. (supra).** The finding and observation of Hon'ble Apex Court are in para 24 to 41, which reads as under :

> ***"****24. This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*
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> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in*

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which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients. In order to constitute a criminal breach of trust (Section 406 IPC): -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

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2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of 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 and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would

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assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is

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said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a 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 misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

31. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.

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32. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

33. It has been held in State of Gujarat v. Jaswantlal Nathalal reported in (1968) 2 SCR 408, "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression "entrustment" 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. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment"".

34. Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must

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hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence 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. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. [...]" (Emphasis supplied)

35. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In

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case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24 respectively of the Sale of Goods Act, 1930.

"20. Specific goods in a deliverable state. — Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

xxx xxx xxx

24. Goods sent on approval or "on sale or return". — When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time."

36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another : 2024 SCC OnLine SC 171 & Mideast Integrated

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Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another :2023 SCC OnLine Jhar 301]

37. The case at hand falls in category No. 1 as laid in Smt. Nagawwa (supra) referred to in para 7 of this judgment.

38. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust.

39. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

40. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law.

41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS") in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating."

11. Applying aforesaid ratio, in the present case, FIR appears to be complete misuse of power.

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12. This Court may gainfully refer to the following observations of this Court in the case of **State of Haryana v. Bhajan Lal [1992 Suppl (1) SCC 335]**, and the law laid down therein has been consistently followed. In para 102, the Hon'ble Apex Court held as under :-

> *"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.*
>
> *(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.*
>
> *(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.*
>
> *(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 noncognizable 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.

(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."

14. In wake of above reasons, the petition deserves consideration and accordingly, it is allowed. The impugned FIR being C.R.No.I – 11214020241297 of 2024 registered with Kamrej Police Station, Surat and further proceedings arising thereof are hereby quashed and set aside qua the petitioner herein. Rule is made absolute. Direct service is permitted.

(J. C. DOSHI,J)

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