



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE**

HON'BLE SHRI JUSTICE SANJEEV S. KALGAONKAR

ON THE 16th OF APRIL, 2025

MISC. CRIMINAL CASE No. 5685 of 2019

RAJPAL SINGH

Versus

THE STATE OF MADHYA PRADESH & OTHERS

Appearance:

Shri M.A. Bohra - Advocate for the petitioner.

Shri Vinod Thakur - Govt. Advocate for the respondent/State.

Shri Prateek Maheshwari - Advocate for the respondent [R-2].

ORDER

This petition u/s 482 of the Cr.P.C is filed for quashing of FIR registered at Crime No. 422/2017 dated 08.08.2017 at P.S. Bhawarkuan, Distt. Indore. It is further requested for quashing of order dated 12.12.2018 in RCT No. 215/2018 passed by the JMFC, Indore, whereby the charges punishable u/S 420 and 406 of IPC are framed against the petitioner.

2. It is undisputed that the Petitioner Rajpal Singh executed an agreement to sale in favour of respondent Gurpreet Saluja for sale of immovable property i.e Plot No. 42/18 admeasuring 30x45=1350 sq.ft. situated at Nanank Nagar, Pipaliyagaon, Indore for consideration of Rs. Thirty three Lakhs to be paid in four months. Both the parties had given



notice to each other after the dispute arose between them. The petitioner filed a civil suit bearing Registration no. 42/2017 before Civil Judge Class II, Indore on 10.01.2017 against respondent no.2 for declaration and injunction to restrain respondent Gurpreet Saluja from interfering in his peaceful possession on disputed property. Respondent Gurpreet Saluja also filed Civil Suit bearing Registration No. 686/2019 on 21.07.2017 for specific performance of the contract against the petitioner Rajpal.

3. The petition, in brief, states as under:

a. The Petitioner executed agreement to sale dated 22.07.2014 in favor of respondent Gurpreet Saluja for sale of immovable property for consideration of Rs. 33,00,000/-. The dispute arose when the respondent Gurpreet Saluja did not pay the sale consideration in terms of the agreement. Respondent Gurpreet, after expiry of the period for performance of contract, sent a legal notice dated 16.11.2016 to the petitioner demanding execution of sale deed in his favour. The petitioner sent a reply dated 22.11.2016 denying all the allegations contained in the notice.

b. Respondent Gurpreet Saluja never had arrangement of remaining sale consideration. He never tendered the same to the petitioner. Respondent Gurpreet Saluja attempted to pressurize the petitioner to execute the sale deed without paying entire sale consideration.



c. Respondent Gurpreet Saluja made all attempts to take illegal possession of the property by intimidating and threatening the petitioner.

d. The petitioner, being aggrieved by the conduct of respondent Gurpreet Saluja, submitted written complaint to police authorities on 10.01.2017 and gave notice to respondent. Petitioner filed a civil suit for declaration and injunction against respondent which was registered as Civil Suit no. 42/2017.

e. Learned Civil Judge issued summons to the respondent on 21.01.2017. The respondent Gurpreet Saluja feeling aggrieved by civil action of the petitioner submitted a complaint on the allegation that petitioner has committed fraud with him and intimidated him. The respondent no.1 on the basis of complaint of respondent no.2 maliciously registered FIR dated 04.02.2017 at Crime No. 422/2017 at P.S. Bhawarkua Indore.

f. The P.S. Bhawarkua, on completion of investigation submitted final report on 30.12.2017. Learned JMFC, Indore framed charges against the petitioner *vide* order dated 12.12.2018 without appreciating the fact that no *prima-face* case was made out.

4. This petition is filed for quashing of impugned FIR and the order framing the charges and subsequent proceedings on following grounds:



(a) The action of respondent police authorities is unreasonable, arbitrary and malicious.

(b) No *prima-facie* case for offence punishable u/S 406 and 420 of IPC is made against the petitioner. The learned trial Court without properly considering the material on record framed charges of offence punishable u/Sec. 406 and 420 of IPC against the petitioner. The order is without application of mind, illegal and arbitrary.

(c) The whole dispute alleged in the police complaint is purely civil in nature, which has been given cloak of criminal prosecution. The dispute pertains to non-performance of the contract. The petitioner and the respondent had filed civil suit regarding present dispute.

(d) Respondent Gurpreet Saluja failed to pay the consideration amount as per the agreement to sale, therefore, the petitioner refused to execute the sale deed, until the entire consideration amount is paid. Respondent Gurpreet Saluja under the garb of criminal case is pressurizing the petitioner to execute sale deed in his favor.

On these grounds, it is prayed that the impugned FIR be quashed. The order dated 12.12.2018 framing charges and the subsequent criminal proceedings pending at RCT No 215/2018 be also quashed.

5. The respondent no.2 submitted written objection to the present petition. The objection, briefly, states as under:



(a) The petitioner, instead of filing a criminal revision u/S 397 r/w 401 of Cr.P.C., had filed present petition u/S 482 of the Cr.P.C. An efficacious alternate remedy of criminal revision is available to the petitioner, therefore, present petition u/S 482 of the Cr.P.C. is not maintainable.

(b) The proceedings before the JMFC, Indore is at the stage of evidence after framing of charges. Therefore, quashing of proceedings at this stage will cause injustice to the complainant.

(c) The petitioner has executed the sale agreement with malafide intention to extract money from the complainant and deceive the complainant by refusing to transfer the property and refusing the advance money.

(d) The petitioner has maliciously filed the civil suit to portray it to be a civil dispute between the parties and to escape from criminal proceedings lodged against him. The criminal complaint was filed before the civil suit was initiated between the petitioner and the respondent.

(e) The allegations made in FIR *prima-facie* show commission of offence of criminal breach of trust and cheating. Mere pendency of civil litigations between the parties does not bar the criminal proceedings as the alleged act makes out offence against the petitioner.



On these grounds, it is requested that the petition be dismissed.

6. Learned counsel for the petitioner referring to the agreement to sale Annexure A-1 contended that the sale deed was to be executed after payment of entire consideration amount of Rs. 33,00,000/- within the time prescribed in the agreement to sale. The respondent/complainant gave legal notice dated 16.11.2016 (Annexure A-2) to the petitioner/accused. In reply to the notice (Annexure A-3), the petitioner requested for payment of entire consideration amount. The respondent Gurpreet Saluja, instead of filing the civil suit for specific performance of contract, submitted a written complaint to the District Magistrate at *Jan Sunwai* on 18.12.2016. Learned counsel referring to the civil suit (Annexure A-6) contended that the petitioner approached civil Court for permanent injunction against forceful dispossession by the respondent/complainant Gurpreet Saluja. The Civil Court issued summons on 21.01.2017. Thereafter, the DIG, Indore directed SHO, Bhanwarkuan to register FIR against the petitioner. Ultimately, the respondent filed civil suit for specific performance of contract on 21.07.2017 which was registered as Civil Suit No. 686/2019. After registration of the civil suit, P.S. Bhanwarkuan registered the impugned FIR on 08.08.2017(Annexure A-8). The learned trial Court committed error in framing charges for offence punishable u/S 406 and 420 of IPC against the petitioner *vide* impugned order dated 12.12.2018(Annexure A-10). The



dispute between the parties relates to specific performance of contract, which is invariably of civil nature.

7. *Per contra*, learned counsel for the State and learned counsel for the objector contended that the conduct of petitioner Rajpal Singh manifests his intention to defraud from inception. The petitioner induced the respondent to enter into agreement to sale and taken total amount of Rs. 12,52,853/- in installments. As per the terms of agreement, petitioner was to perform the proceedings with regard to lease of the land from the Indore Development Authority, but the respondent paid the fees and executed entire proceeding with regard to lease of land from the Indore Development Authority. The petitioner attempted to delay the execution by making a publication with regard to loss of documents. He pledged the property in year 2014 to secure loan from Manpreet Singh. The petition is meritless and deserves to be dismissed.

8. Heard both the parties, perused the record and the case diary.

9. It is trite law that mere availability of an alternate remedy of revision u/Sec. 397 of the Cr.P.C. does not bar an application u/Sec. 482 of the Cr.P.C. The inherent powers of the High Court are not conferred by the statute but are merely saved thereunder. Therefore, the preliminary objection about maintainability of present petition filed u/S 482 of the Cr.P.C. is meritless. [*Dhariwal Tobacco products Ltd. & Ors Vs. State of Maharashtra & Another* reported in (2009)2 SCC 370 & *Prabhu Chawla*



Vs. State of Rajasthan & Another reported in ***2016(16) SCC 30*** relied upon]

10. It is contended that the FIR lodged at the instance of DIG, Indore is illegal. The record shows that the District Magistrate had forwarded the complaint of Gurpreet received during *Jan Sunwai* for inquiry. It was duly enquired by police authorities. The FIR was lodged on the basis of inquiry report submitted by the CSP. It is not a case of registration of FIR merely on the instruction of any authority.

11. The impugned FIR, in brief, reads as follows-

Rajpal Singh executed an agreement to sale in favour of Gurpreet Saluja regarding Plot No. 42/2018 situated at Nanaknagar Pipliyagaon, Indore for consideration of Rs. 33 Lakhs. Gurpreet Saluja paid Rs. 4 Lakhs in cash and Rs. 50,000/- through cheque. Later, on 09.08.2014, Gurpreet paid Rs. 2,50,000/- in cash and Rs. 2,00,000/- through cheque. Rajpal Singh has not co-operated in execution of lease deed of the plot in favour of complainant from IDA. Gurpreet had to pay Rs. 2,82,835/- for execution of lease deed. Thus, he paid Rs. 12,52,835/- in furtherance of the agreement to sale. Rajpal Singh has declined to execute registered sale deed. Although, the original registry of the plot is with the complainant, Rajpal Singh has mortgaged the channel Registry of plot with Manjeet Singh Bhatia and took loan of Rs. 2,00,000/-. It appears that Rajpal Singh has changed his mind. He has committed fraud and criminal breach of trust and misappropriated



the amount of consideration towards sale of plot. On 17.12.2016, when the complainant requested Rajpal Singh for execution of registered sale deed, Arvind, associate of Rajpal Singh, abused him in filthy language and threatened to kill him.

12. The material on record reveals that both the parties were at *consensus ad idem* in executing the agreement to sale of disputed plot. Para 10 of the agreement shows that parties were aware of the need of proceeding before the IDA. A note on the back of agreement to sale also supports this status. The parties, in furtherance of agreement to sale, paid and received part consideration. Therefore, the intention to cheat cannot be inferred at the inception i.e. when agreement to sale was executed between the parties. Later, a dispute arose between the parties over the payment of fees to the Indore Development Authority. Both the parties exchanged notices and reported to concerned authorities. Ultimately, respondent/ complainant Gurpreet Saluja had filed a civil suit for specific performance of contract.

13. The charges under Sections 406 and 420 of IPC stem from allegations of criminal breach of trust and cheating, respectively. Section 406 IPC addresses the dishonest misappropriation of property and entrusted to some other person, while section 420 IPC deals with the cheating by dishonestly inducing delivery of property. The two offenses are distinct and mutually exclusive. They operate in entirely different spheres. The petitioner's failure



to execute the sale deed and to return the advanced money has led to these charges. The reasons and responsibility for non-compliance with the terms of contract will be evaluated on evidence at trial. The dispute appears to be primarily civil in nature and lacks criminal intent. Mere non-performance of the contract or inaction in complying with the terms of contract or cursory denial of receipt of consideration amount in reply to legal notice may provide cause of action for specific performance of the contract but dishonest intention to cheat or fraudulent intention to misappropriate the advance amount cannot be inferred from these actions.

14. In the case *of International Advance Research Centre for P.M. & N.M. Vs. Nimra Cerglass Technics (P)Ltd. & Anr.* reported in (2016) 1 SCC 348 , the Supreme Court held as under:

15. The essential ingredients to attract Section 420 IPC are : (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.

16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In *S.W. Palanitkar v. State of Bihar* [(2002) 1



SCC 241 : 2002 SCC (Cri) 129] , this Court held as under : (SCC p. 250, para 21)

“21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

The above view in *Palanikar case* [(2002) 1 SCC 241 : 2002 SCC (Cri) 129] was referred to and followed in *Rashmi Jain v. State of U.P.* [(2014) 13 SCC 553 : (2014) 5 SCC (Cri) 751]

15. In the case of *Delhi Race Club (1940) Vs. State of U.P.* reported in (2024) 10 SCC 690, the Supreme Court has held as under:

36. 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. Palanikar](#) (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;
- 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))

37. 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.

38. 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.



39. 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 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.”

40. 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.

41. 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 said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. 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.



43. 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.

46. 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 [Jaswantraji 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””.

16. Recently, in the case of ***Radheyshyam & Ors. Vs. State of Rajasthan & Anr.*** (Order dated 22.07.2024 passed in Cr.A. No. 3020 of 2024), reported in ***2024 SCC OnLine SC 2311*** the Supreme Court has held as under:

8. Thus, cheating forms an essential ingredient to constitute an offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines ‘cheating’, as:

“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 to 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”. ”

9. From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place



between the parties during which the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sale and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance.

10. Additionally, the appellants have also been accused of committing the offence of criminal breach of trust under Section 406, IPC. This offence is defined under Section 405, IPC as follows:

"Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "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 which the person has made, touching the discharge of such trust.

12. In the present case, the appellants were not entrusted with any property by respondent no. 2 – complainant. The only delivery made was of part payment towards an Agreement to Sale between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.

17. Therefore, in view of aforestated dictum of law laid down in the case of *International Advance Research Centre for P.M. & N.M., Delhi Race Club* and *Radheyshyam (supra)*, the offence punishable u/S 420 and 406 of IPC is *prima-facie* not made out against the petitioner from the contents of



impugned FIR and the material on record. The impugned FIR based on complaint of petitioner is an attempt to cloak the civil dispute of specific performance of contract with criminal prosecution for cheating and criminal breach of trust. Hence, the exercise of inherent jurisdiction u/Sec. 482 of Cr.P.C. is needed to prevent abuse of the process of Court.

18. Consequently, this petition u/S 482 of Cr.P.C. is allowed. The FIR registered at Crime No. 422/2017 dated 08.08.2017 at P.S. Bhanwarkuan, Distt. Indore as well as the order dated 12.12.2018 in RCT No. 215/2018 passed by the JMFC, Indore is quashed. The Petitioner stands discharged.

(SANJEEV S KALGAONKAR)
JUDGE

sh/-