

Sri Muniyappa vs State of Karnataka

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Court : Karnataka

Decided On : Jan-10-2025

Judge : M.Nagaprasanna

Appeal No. : CRL.P/4255/2024

Appellant : Sri Muniyappa

Respondent : State of Karnataka

Judgement :

Reserved on : 10.12.2024

Pronounced on : 10.01.2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 10TH DAY OF JANUARY, 2025 BEFORE THE HON'BLE MR. JUSTICE M. NAGAPRASANNA CRIMINAL PETITION No.4255 OF 2024 BETWEEN: 1 . SRI MUNIYAPPA S/O ANNAYAPPA AGED ABOUT 71 YEARS RESIDING AT 80/1, 1ST MAIN, 7TH CROSS NEAR GANESH TEMPLE YAMALUR BENGALURU - 560 037.

2 . SRI RAJKOTI S/O ANNAYAPPA AGED ABOUT 54 YEARS Digitally signed RESIDING AT 21-13, 7TH CROSS, by VISHAL NINGAPPA NEAR MADDURAMMA TEMPLE PATTIHAL Location: High YEMALUR Court of

Karnataka BENGALURU - 560 037. ... PETITIONERS (BY SRI P.P.HEGDE, SR.ADVOCATE FOR SRI MOHAMMED MOIN ULLA, ADVOCATE) AND: 1 . STATE OF KARNATAKA MARATHAHALLI POLICE STATION, REPRESENTED BY SPP HIGH COURT OF KARNATAKA BENGALURU - 560 001. 2 . SRI DR. MOHAN S. MANGHNANI

S/O S.B.MANGHNANI AGED ABOUT 62 YEARS NEW HORIZON COLLEGE OF ORR, KADUBEESANAHALLI BENGALURU - 560 103. ... RESPONDENTS (BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1; SRI PRABHULING K.NAVADGI, SR.ADVOCATE A/W SRI SMT.NAYANATARA B.G., ADVCOATE FOR R-2) THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C., PRAYING TO QUASH THE FIR IN CR.NO.158/2024 FOR THE OFFENCE P/U/Ss 406, 418, 420, 464, 465, 468, 120-B AND 34 OF IPC, REGISTERED BY MARATHALLI P.S., PENDING BEFORE 3RD ADDL. CMM COURT, NRUPATUNGA ROAD, BENGALURU CITY, AS PER ANNEXURE A. THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 10.12.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:- CORAM: THE HON'BLE MR JUSTICE M.NAGAPRASANNA

CAV ORDER

Petitioners/accused Nos. 1 and 2 are knocking at the doors of this Court in the subject petition calling in question registration of a crime in Crime No.158 of 2024 registered for offences punishable under Sections 406, 418, 420, 464, 465, 468, 120B and 34 of the IPC and pending before the 3rd Additional Chief Metropolitan Magistrate, Bengaluru.

2. Heard Sri P.P. Hegde, learned senior counsel appearing for

the petitioners, Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for respondent No.1 and Sri Prabhuling K. Navadgi, learned senior counsel appearing for respondent No.2.

3. Facts, in brief, germane are as follows:-

2nd respondent is the complainant. The complainant is said to be running several educational institutions under the name and style of New Horizon Engineering College and other educational institutions in and around the City of Bengaluru. The crux of the complaint is that the petitioners/accused had represented that they were the sole and absolute owners of property sold to the complainant. The complainant is said to have conducted due diligence based upon the documents furnished and believed that the petitioners/accused are the only children of their father. The petitioners and their father also entered into a registered agreement of sale with M/s Epsilon Ventures Private Limited, pursuant to which, by virtue of a gift deed the petitioners were granted 8 guntas of land each in Sy.No.93/3. Thereafter, a sale deed dated 16-10-2023 comes to be executed in favour of the complainant and the complainant is also said to have taken possession of the property.

4. Such being the case, two persons - one Sri Ganesh and

Sri Muniyappa said to be the sons of accused fathers sister registered claim over the property by filing an application before the Revenue Authorities. When the complainant comes to know of this claim, it is alleged, that the petitioners have falsely represented to the complainant that they are the sole and absolute owners and have hatched a plan to cheat the complainant and since money had been transferred, they have made illegal gain and caused wrongful loss to the complainant. Based upon the aforesaid facts, several offences have emerged against the petitioners as afore-quoted. The registration of crime has driven these petitioners to this Court in the subject petition.

5. The learned senior counsel Sri P.P. Hegde appearing for the

petitioners would vehemently contend that the petitioners are the children of the grantee. The grant was way back in the year 2005 to the father of the petitioners. The claimants who have sought to register a case before the Revenue Authorities in the year 2023 have nothing to do with the petitioners or the property. They are the heirs of the sister of the original grantee, the father of the petitioners. After the grant, a registered partition deed comes about in which certain portions are given to the petitioners and it is those portions that are sold now to the complainant.

Merely registering a claim before the Revenue Authorities will not take away crystallized right of these petitioners. He would, above all, contend that the issue is purely civil in nature, as there is neither cheating nor breach of trust nor criminal conspiracy or forgery as is alleged. The complainant has deliberately sought to register the crime on an issue which is purely civil in nature to achieve or arm-twist the petitioners into agreeing to whatever they would say. He would seek quashment of the crime.

6. Per contra, Sri Prabhuling K. Navadgi, learned senior

counsel representing the 2nd respondent/complainant would vehemently refute the submissions to contend that the petitioners were very well aware of two children who staked a claim over the property. The petitioners have deliberately suppressed the said fact to the complainant. If only the complainant was made known by the petitioners about this fact, the complainant would not have entered into the transaction with the petitioners alone. The learned senior counsel would submit that Sri Muniyappa son of Muniyamma and Sri Ganesh, grandson of Muniyamma have instituted proceedings before the Assistant Commissioner under Section 136(2) of the Land Revenue Act. It is instituted prior to the execution of sale deed. The petitioners have deliberately suppressed the said litigation. On such suppression, close to a sum of 17/- crores has been transferred to the petitioners. Sri Muniyappa and Sri Ganesh stake their claim to the property after the complainant took possession and make it known to the complainant that proceedings were pending before the Assistant Commissioner. This dishonest suppression would amount to criminal breach of trust and cheating is the submission of the learned senior counsel. He would contend that it is a matter of investigation and investigation in such cases is a must. The Court should not interdict investigation in such cases as huge amount of 17 crores has been transferred to the petitioners.

7. The learned senior counsel for the petitioners would join

issue to contend that though proceedings before the Assistant Commissioner were filed before the sale deed could take place, the notice to the petitioners comes only after registration of sale deed. They were not aware of the proceedings. He

would contend that the entire amount received are lying in the Bank and the Bank account has been frozen on account of registration of crime. In all, he would reiterate quashment of the crime.

8. I have given my anxious consideration to the submissions made by the respective learned senior counsel and have perused the material on record.

9. The afore-narrated facts, link in the chain of events are not

in dispute. On 19-03-2005 24 guntas of land in Sy.No.93 is granted to one Annaiappa, the father of the petitioners. The said land after Phodi was renumbered as Sy.No.93/3. The grant order is appended to a memo filed before the Court by the petitioners and the re-grant

order dividing it to Sy.No.93/3 is also produced along with the

memo. The grant order reads as follows:

, , ..93 2-16 .. 0-06 , , . . ABS 4 , 1 , 0-24 , 2 0-24 , 3 0-24 , 4 0-24 , . . , .

, :19-3-05 . (Emphasis added) A perusal at the grant order would indicate that it was granted only to Annaiappa and the grant was to the extent of 24 guntas of land. On 06-11-2012 the petitioners along with their father enter into an agreement of sale with one M/s Epsilon Ventures. After the agreement of sale, it appears that Annaiappa, father of the petitioners gifts the property to the petitioners under a registered gift deed dated 20-08-2015. After execution of the gift deed, Annaiappa, the original grantee dies on 29-07-2019. The petitioners along with other family members enter into a partition on 04-02-2021. The partition deed partitions the property into four schedules and is divided between the petitioners. Nobody questions the partition deed. The complainant then began talks with the petitioners about buying the property from the hands of the petitioners. In furtherance thereof, the complainant rolls out a public notice, both in English and Kannada daily, inviting objections or claims over the property which was to be purchased by the complainant. Nobody files objections.

10. On 13-09-2023 Sri Muniyappa and Sri Ganesh filed

application before the Assistant Commissioner in R.A.No.307 of 2023 claiming to have share in the property that is to be sold to the complainant since they belonged to the family of the petitioners. A month thereafter the sale deed is executed by the petitioners in favour of the complainant and the complainant is handed over possession of the property. On the same day, an assignment deed comes to be executed between the complainant and M/s Epsilon Ventures Private Limited by which all the rights of the property purchased by the complainant are transferred to the assignee. After the sale deed and assignment deed, the petitioners received notice from the office of the Assistant Commissioner in the aforesaid revenue appeal proceedings instituted by Sri Muniyappa and Sri Ganesh. The complainant comes to know of it and walks to the jurisdictional Police Station to register the complaint. The complaint becomes a crime in Crime No.158 of 2024 for the afore- quoted offences. Since the entire issue has now triggered from the complaint, I deem it appropriate to notice the complaint. It reads as follows: To Dt: 05.04.2024 The Inspector of Police, Marathahalli Police Station, Bangalore. Sub: Complaint against Muniyappa and others for cheating, forgery and other offences. Sir.

1. I am running several educational institutions under the

name of New Horizon School, New Horizon Engineering College and other educational institutions. I commenced the educational institutions in Indiranagar and later expanded in several parts of Bangalore.

2. I was on the lookout for purchasing a suitable

property, where in the process one Muniyappa and Rajkoti met me stating that they have a converted property situated near Belandor, Bangalore. After inspection of the property I found the said location very conducive for my need and hence I showed interest in the same.

3. Said Muniyappa and Rajkoti informed me that each of

them own 08 guntas of land and further informed that they are in extreme financial difficulty and to meet their financial needs, they are selling their

property. They also informed me that they are the sole and absolute owners of their respective portion of the property with absolute right to sell and dispose of the same. Pursuant to negotiations they offered to sell both their properties measuring 08 guntas each ie in all 16 guntas for a total sale consideration of Rs. 16,88,35,200/- which was more than the market price. They also furnished the title documents and assured that they are the sole and absolute owners of the said 16 guntas with no other person having any rights to the said property.

4. Due diligence was conducted based on the documents furnished and believing the documents so furnished by them as true and the representation and assurance given. In the process of the due diligence they

furnished the family tree. I believed the family tree and also that said Muniyappa and Rajkoti are the only two children of their father late Anniyappa and I agreed to proceed with the sale.

5. Muniyappa and Rajkoti and their late father Anniappa

had entered into a registered agreement for sale with one Epsilon Ventures Private Limited and had received the advance amount promising to sell the land in Sy. No. 93/3, situated at EPSILON, Yamalur Village, VarthurHobli, Amani Belandur Khane Village, measuring 24 guntas. This agreement was confirmed by Muniyappa and Rajkoti Post the said agreement for sale there was a partition and by virtue of gift deed. Muniyappa and Rajkoti were gifted 08 guntas each in said Sy. No. 93/3 which is the present property where new katha numbers are assigned. Thereafter, Muniyappa, his wife Sandhya Vani along with their children and family members and Rajkoti along with his wife Shashikala and children and others executed the sale deed on 16-10-2023 registered as Document No.INR-1-09877-2023-24, Book I dated 17-10-2023 making representation and assurances that they are the absolute owners having absolute right title and interest in the said property and based on such assurances and representation, I paid the entire sale

consideration amount of Rs. 16,88,35,200/- (rupees sixteen crore eighty-eight lakhs thirty-five thousand and rupees two hundred) through Demand Draft, Vide Indian Bank, A/c No-484682106 NHCE Branch to Muniyappa and his family members and Rajkoti and his family members as per their instruction. All of them acknowledged the receipt of the entire sale consideration. Epsilon Ventures Private Limited consented the sale in my favour and have attested their signature as consenting witness.

6. After the purchase, I took possession of the said

property and was in the process of proceeding further in my project. When that being the case, to my shock and dismay, one Ganesh and Muniyappa staked their claim over the said property stating that they are the legal heirs of late Muniyamma who was the sister of

said Anniyappa and claimed 50% of the share in the property purchased by me. Thereafter we also conducted further inquiry and found that the above said persons Ganesh and Muniyappa had filed a petition before the land revenue authority in R.A (BE) 3072023 claiming that they are the legal heirs and have a share in the said property. When I confronted Muniyappa and Rajkoti, they said that she has expired in 1990 itself and that the said Muniyappa and Ganesh do not have any rights.

7. As seen from the records in RA (BE) 307 of 2023

where Ganesh and Muniyappa have initiated proceedings against the Tahsildar and Muniyappa and Rajkoti, it appears that it was initiated during the month of August 2023. It appears that both Muniyappa and Rajkoti were aware of this proceeding and the claim made by Ganesh and another since both of them are the respondents in the said case. Despite the said fact, they dishonestly suppressed the said ownership and had falsely represented and assured that they are the only owners of the said property and no one else is the owner of the same. They also suppressed the proceedings initiated by said Ganesh and Muniyappa

however making false representations, they have made me pay them over 16 crores and cheated me.

8. I believed and relied on the representation and

assurance given by Muniyappa and Rajkoti that they are the sole and absolute owners of the said property and apart from them there are no other owners paid valuable consideration under the above sale deed. By their assurance and representation they induced me to part with monies to purchase the said property by paying huge amount of sale consideration.

9. It now comes to light that both Muniyappa and Rajkoti

had falsely represented and assured in the sale deed that they are the only sole and absolute owners of the said property and also presented the same for registration before the Sub-Registrar.

10. Thus it is very clear that both Muniyappa and Rajkoti

had hatched a plan and conspired to sell the said property to me despite being in full knowledge that they are not the sole and absolute owners of the same and making false representation, and assurance made me to believe that they are the sole and absolute owners and collected the sale consideration of sixteen crore plus.

11. Thus they have made illegal gains for themselves

while causing wrongful loss to me breaching the trust I had placed in them. Further they have also forged the sale deed by way of making false representation assurances and knowing the same as false they have presented it for registration.

12. Thus said Muniyappa, Rajkoti and others have cheated

me and are guilty breach of trust by making false assurance and representation of their ownership to the said property and have committed the crime under the

provisions of cheating, criminal breach of trust among other offences Hence I request you to take action against Muniyappa, Rajkoti and others. Thanking you, Yours faithfully. Sd/- Dr. Mohan Manghnani, Chairman, New Horizon College of Engineering. Ring Road, Bellandur Post, Near Marathahalli, Bangalore - 560103. Mobile No. 9845064444

In the entire complaint it is the case of the complainant that the petitioners have suppressed that there are other claimants also over the property and the property is not free from all encumbrances. The petitioners are alleged to have lured the complainant into the transaction and thereby broken the trust reposed upon them by the complainant. Therefore, the afore- quoted offences have sprung.

11. The grant order is quoted hereinabove. The grant order

does not make a mention of any other person except Annaiappa. Annaiappa is the father of the petitioners. Therefore, every right from the State fell into the kitty of Annaiappa and nobody else. This was in the year 2005. Sri Muniyappa and Sri Ganesh who have now registered their claim have kept quiet for 18 years and now coming to know of the talks of sale have registered the claim. On what motive, it is for the Assistant Commissioner to decide, as for the first time in the year 2023 i.e., on 13-09-2023 an application under Section 136(2) of the Land Revenue Act is filed before the Assistant Commissioner. By then, Annaiappa had perfected his title on the grant made by the State Government. Annaiappa had gifted the property to the petitioners and on the death of Annaiappa, the petitioners by way of registered partition deed divided the property among themselves. With all these factors, it is ununderstandable as to how the petitioners have indulged in criminal breach of trust, cheating, forgery or criminal conspiracy. For an offence under Section 406 of the IPC it is necessary that ingredients of Section 405 should be present. Sections 405 and 406 of the IPC read as follows:

405. Criminal breach of trust.-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 of 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.

Explanation 1.-A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.-A person, being an employer, who

deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person,

dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey,

entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at

Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but

in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue officer, is entrusted with public

money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

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.

Section 405 of the IPC makes it mandatory that there must be entrustment of property and such entrustment must be misused or misappropriated with a dishonest intention, it is only then, it becomes an offence under Section 406 of the IPC. In the case at hand, the petitioners are the owners of the property. There is no entrustment of property. It is an agreement of sale between the petitioners and the complainant on complete payment and possession. It is the breach of agreement now that is alleged or the suppression of facts. Where from criminal breach of trust could emerge is a mystery. Therefore, the offence under Section 406 is loosely laid against the petitioners.

12. The next is the offence under Section 420 for which the

ingredients under Section 415 are to be present. The offence alleged against these petitioners is suppression of a particular claim that is made, about which the petitioners themselves did not know. The claimants have registered their claim after a gross delay of 18 years. Even then, there can be no offence of cheating, as the petitioners have not lured the complainant into any transaction with any dishonest intention right from the inception of the transaction. Therefore, there is no question of cheating in the case at hand. It thus becomes apposite to refer to the judgment of the Apex Court in the case of DELHI RACE CLUB (1940) LIMITED v. STATE OF UTTAR PRADESH¹, wherein the Apex Court holds that Sections 406 and 420 cannot co-exist. It reads as follows: . . .

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

2024 SCC OnLine SC 2248 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*, 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.

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 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.

42. When dealing with a private complaint, the law

enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police - to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the

country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other. (Emphasis supplied)

The Apex Court, a little earlier, in the case of NARESH KUMAR v. STATE OF KARNATAKA², has held as follows: . . .

5. Under these circumstances, we are of the

considered view that this is a case where the inherent powers should have been exercised by the High Court under Section 482 of the Criminal Procedure Code as the powers 2024 SCC OnLine SC 268 are there to stop the abuse of the process

and to secure the ends of justice.

6. In the case of *Paramjeet Batra v. State of*

Uttarakhand, (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court. (emphasis supplied)

7. Relying upon the decision in *Paramjeet*

Batra (supra), this Court in *Randheer Singh v. State of U.P.*, (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty v. State of West Bengal*, 2023 SCC OnLine SC 90, relying upon *Paramjeet Batra* (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

8. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract

prosecution for criminal offence in every case, as held

by this Court in *Sarabjit Kaur v. State of Punjab*, (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in *Vesa Holdings (P) Ltd. v. State of Kerala*, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

(Emphasis supplied) The Apex Court directs that the Court exercising its jurisdiction under Section 482 of the Cr.P.C., must see whether the dispute which is essentially civil in nature is dressed with a colour of crime. If civil remedy is available, the Court should step in and quash criminal proceedings. The issue in the case at hand, as observed hereinabove, is undoubtedly civil in nature, as every strand of the allegation made by the complainant, in the complaint cannot but be civil in nature. Setting the criminal law into motion would be arm-twisting the petitioners to return the money or recovery of money. The transaction which is civil in nature must be nipped in bud, is what the Apex Court holds in the case of *LALIT CHATURVEDI v. STATE OF UTTAR PRADESH*³ wherein the Apex Court has held as follows: . . .

5. This Court, in a number of judgments, has

pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be

referring to these judgments. The impugned judgment

dismisses the application filed by the appellants under Section 482 of the Cr. P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In Mohammed Ibrahim v. State of Bihar, this

Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:- 18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of cheating are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that

person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and 2024 SCC OnLine SC 171

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

7. Similar elucidation by this Court in V.Y.

Jose v. State of Gujarat, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of cheating, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in Hira Lal Hari Lal Bhagwati v. CBI, Indian Oil Corporation v. NEPC India Ltd., Vir Prakash Sharma v. Anil

Kumar Agarwal and All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain.

8. Having gone through the complaint, which was registered as a FIR and the assertions made therein, it is

quite clear that respondent no. 2/complainant - Sanjay Garg's grievance is regarding failure of the appellants to pay the outstanding amount, in spite of the respondent no. 2/complainant - Sanjay Garg's repeated demands. The respondent no. 2/complainant - Sanjay Garg states that the supplies were made between the period 01.12.2015 and 06.08.2017. The appellants had made the payments from time to time of Rs. 3,76,40,553/- leaving a balance of Rs. 1,92,91,358/-.

9. We will assume that the assertions made in

the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 of the IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the

time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money.

10. The chargesheet also refers to Section 406 of

the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of

cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The

chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money. (Emphasis supplied)

13. In the light of the afore-quoted judgments of the Apex

Court what would unmistakably emerge is that the allegations are loosely laid against these petitioners, for afore-quoted offence, which is an issue purely civil in nature and the criminal law being set into motion for the purpose of recovery of money. There is neither forgery, nor criminal breach of trust, nor cheating in the case at hand.

14. What remains is Section 120B of the IPC which would also

get subsumed on the reasons so rendered on the afore-quoted offences. In that light, permitting further investigation in the case at hand would run foul of what the Apex Court has observed in NARESH KUMAR supra, that the High Court should not hesitate to quash criminal proceedings to prevent abuse of the process of law. If the facts narrated hereinabove are considered on the touchstone of what the Apex Court has held in the afore-quoted judgments, permitting investigation would become an abuse of the process of law and ultimately result in patent injustice.

15. For the aforesaid reasons, the following:

ORDER

(i) Criminal Petition is allowed.

(ii) FIR in Crime No.158 of 2024 registered by Marathahalli Police Station and pending before the 3rd Additional Chief Metropolitan Magistrate, Bengaluru stands quashed.

(iii) It is made clear that the observations made in the

course of the order are only for the purpose of consideration of the case of petitioners under Section 482 of Cr.P.C. and the same shall not bind or influence the proceedings pending before any other fora. SD/- (M. NAGAPRASANNA)
JUDGE Bkp CT:MJ

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