

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

PETITION FOR SPECIAL LEAVE TO APPEAL (CRL.) NO.11445 OF 2025

M/S. SHIKHAR CHEMICALS

PETITIONER(S)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

RESPONDENT(S)

ORDER

1. This petition arises from the order passed by the High Court of Judicature at Allahabad (Coram of Prashant Kumar, J.) in Criminal Miscellaneous Application No. 2507/2024 dated 05.05.2025 by which the application filed by the petitioner herein seeking quashing of the proceedings of Complaint Case no. 113283 of 2023 pending in the Court of Additional Chief Judicial Magistrate-I, Kanpur Nagar came to be rejected.

2. With all due deference and humility at our command, we are constrained to observe that the impugned order is one of the worst and most erroneous orders that we have come across in our respective tenures as judges of this Court.

3. The judge concerned has not only cut a sorry figure for himself but has made a mockery of justice. We are at our wits' end" to understand what is wrong with the Indian Judiciary at the level of High Court. At times we are left wondering whether such orders are passed on some extraneous considerations or it is sheer ignorance of law. Whatever it be, passing of such absurd and erroneous orders is something unpardonable.

4. It all started with a private complaint lodged by the respondent no.2 herein in the Court of Additional Chief Judicial Magistrate-I, Kanpur Nagar, which came to be registered as Complaint Case No. 113283 of 2023. The complaint reads thus:

"1. That the complainant is engaged in the wholesale and retail business of yarn (thread) used in fabric manufacturing, through his firm M/s Lalita Textile Concern. The respondent, through her firm M/s Shikhar Chemicals, is involved in the business of manufacturing and selling cloth made from yarn supplied by the complainant.

2. That since both parties are in the same trade, they have had business relations for the past 4-5 years. In this regard, the complainant, through his firm, supplied goods (yarn) to the respondent's firm worth a total of Rs.52,34,385/- (Fifty-two lakhs thirty-four thousand three hundred eighty-five only) between April 2019 and July 2019, against various attached tax invoices. Out of this, the respondent paid Rs.47,75,000/- (Forty-seven lakhs seventy-five thousand

only) through RTGS transfers. (Statement of account showing received and outstanding amounts is attached.) A balance of Rs.4,59,385/- (Four lakhs fifty-nine thousand three hundred eighty-five only) has remained unpaid since August 2019. As per Yarn Committee and market regulations, interest at the rate of 8% is payable on the outstanding amount if not cleared within 15 days. Till the date of filing this application, an additional amount of Rs.7,23,711/- has become due as interest, which is also recoverable from the respondent.

3. That the complainant attempted to contact the respondent several times via phone for the outstanding payment, but the respondent failed to make any payment. The complainant submitted a complaint to the concerned Deputy Commissioner of the GST Zone/Range/Sector. The GST department issued notices seeking explanation from the respondent, but she failed to respond or provide any clarification. Subsequently, another legal notice was issued under Section DRC-501A of GST Act, but the respondent again did not respond. The department, through proper legal process, imposed a penalty on the respondent for fraudulently availing tax benefits. The action was taken under Section 73(9) of the Act on 19/04/2023, as per information received by the complainant under RTI (copy enclosed).

4. That the complainant, through his advocate, sent a legal notice to the respondent, which was returned undelivered from all addresses (Factory/Home/Office) with the remark that the premises were locked. All notices were sent to addresses registered with the GST department. These events made the complainant reasonably believe that the respondent has absconded after fraudulently obtaining goods and financial benefits. (Returned notices with postal documents are enclosed.)

5. That the complainant again sent a legal notice through his advocate to all GST-registered addresses of the respondent (Factory/Home/Office) for recovery of dues and to initiate criminal proceedings for the fraud. The notice sent to 127/536 W-2, Damodar Nagar

was returned with the remark "no one found," and the notice sent to E-52, Site No. 1, Industrial Area, DahiChowki, Unnao was returned with the remark "refused to accept." (Copy of postal refusal is enclosed.)

6. That the complainant submitted written complaints to the Station Officer, P.S. Badshahi Naka, and the Police Commissioner, requesting registration of FIR against the respondent under applicable sections for fraud, cheating, and criminal conspiracy. However, no FIR was registered. (Copies of the complaint applications are enclosed.)

7. That the GST department has already found the respondent guilty under Section 73(9) of the GST Act and penalized her accordingly. Hence, there is no further doubt about the criminal conduct of the respondent, as established by facts and evidence mentioned herein. Therefore, it is just and proper that this Hon'ble Court may take cognizance of the matter, summon the accused, and punish her as per law."

(Emphasis supplied)

5. The statement of the complainant recorded by the Magistrate upon verification reads thus:

1. That I am the proprietor and authorized signatory of the complainant firm mentioned in the complaint and have full knowledge of the facts stated in this affidavit.

2. That I, through my firm M/s Lalita Textile Concern, am engaged in the wholesale and retail trade of yarn (used in the textile industry). The opposite party, through their firm M/s Shikhar Chemicals, carries on the business of manufacturing and selling fabric using the yarn supplied by my firm.

3. That since both our businesses are interrelated, I have been engaged in business transactions with the opposite party for the past 4-5 years. Between April

2019 and July 2019, yarn worth Rs.52,34,385/- (Rupees Fifty-Two Lakhs Thirty-Four Thousand Three Hundred Eighty-Five only) was supplied to the opposite party on order, through multiple Tax Invoices. Against this supply, the opposite party made a total payment of Rs.47,75,000/- (Rupees Forty-Seven Lakhs Seventy-Five Thousand only) via RTGS. A balance of Rs.4,59,385/- (Rupees Four Lakhs Fifty-Nine Thousand Three Hundred Eighty-Five only) has remained unpaid since August 2019. As per the Yarn Committee and market regulations, if payment is not made within 15 days, 8% interest becomes applicable on the outstanding amount. Accordingly, as of the date of filing this complaint/petition, the total outstanding amount including interest stands at Rs.7,23,711/-, which is yet to be received by me from the opposite party.

4. That I made several attempts to contact the opposite party telephonically for payment, but no amount was paid. A formal complaint was made to the Deputy Commissioner of the concerned GST Zone/Range/Sector. The GST department issued notices to the opposite party seeking clarification. However, no response or clarification was provided by them. The department again issued a notice under GST Section 501A for legal action, which was also ignored. Subsequently, the department penalized the opposite party for dishonestly and fraudulently availing tax benefits from my business. Based on my RTI application, the GST Department, in its reply dated 12.06.2023, confirmed that action was taken against the opposite party under Section 73(9) of the GST Act on 19.04.2023. (Copy enclosed).

5. That I also served a legal notice to the opposite party through my advocate, but all notices sent to the factory/home/office addresses were returned with remarks such as "Premises Locked." These notices were sent to addresses registered with the GST Department. After this entire process, I firmly believe that the opposite party has intentionally defrauded me by dishonestly benefiting from the business and has now absconded. (All claim notices along with postal

tracking documents are annexed.)

6. That again, through my advocate, I sent recovery notices and legal notices for initiating criminal action for fraud and cheating. These were sent to both GST- registered addresses of the opposite party (factory/home/office). The notice sent to home/office at 127/536 W-2 Damodar Nagar was returned with the remark "No one found," and the factory notice at E-52, Site No. 1, Industrial Area, DahiChowki, Unnao was returned with the remark "Refused to accept." (Returned envelopes with refusal remarks are enclosed.)

7. That I submitted written complaints to the SHO, Badshahi Naka Police Station, and the Commissioner of Police requesting registration of FIR under relevant sections for fraud, cheating, and criminal conspiracy against the opposite party, but no FIR was registered. (Copies of complaints enclosed.)

(Emphasis supplied)

6. Thus, the Magistrate thought fit to take cognizance upon the complaint but at the same time postponed the issue of process, as he thought fit to initiate magisterial inquiry under Section 202 of the Criminal Procedure Code, 1973 (for short "the Cr.PC."). At the end of the magisterial inquiry, the court concerned thought fit to issue process only for the offence punishable under Section 406 of the IPC i.e. criminal breach of trust.

7. We may reproduce some part of the order passed by the Magistrate while issuing process:-

"Upon perusal of the file, it is evident that both the complainant and the accused are businesspersons. As per the complainant's statement, goods worth Rs.52,34,385/- were supplied to the accused between April and July 2019, of which Rs.47,75,000/- was paid, and Rs.4,59,385/- remained unpaid since August 2019. According to market regulations of the Yarn Committee, if payment is not made within 15 days, 8% interest is applicable on the outstanding amount, which totals Rs.7,23,711/-, and remains unpaid. The complainant, in his statement under Section 200 Cr.P.C., also stated that Rs.7,23,711/- is still due from the accused. The witnesses under Section 202 Cr.P.C. corroborated the same. The complainant has submitted relevant invoices, bank statements, etc., in support. From the statements under Sections 200 and 202 Cr.P.C., a prima facie case under Section 406 IPC appears to be made out against Mrs. Kumkum Pandey, Proprietor of M/s Shikhar Chemicals. Hence, this case is fit for cognizance and summoning.

Order:

The accused, Mrs. Kumkum Pandey, Proprietor of M/s Shikhar Chemicals, is summoned for trial under Section 406 IPC. The complainant is directed to pursue the case within a week. Let the accused appear in court on 15.12.2023.

(Emphasis supplied)

8. The aforesaid Order passed by the Magistrate came to be challenged before the High Court under Section 482 of the Cr.PC.

9. The High Court rejected the application.

10. In such circumstances, the petitioner is here before this Court with the present petition.

11. The case of the respondent no.2 as a complainant, is plain and simple. He claims to be an unpaid seller. According to him, he delivered goods in the form of thread to the petitioner herein worth Rs.52,34,385/- out of which an amount of Rs.47,75,000/- came to be paid to the complainant by the petitioner herein, however, the balance amount has not been paid, till this date.

12. It is for the recovery of the balance amount that he thought fit to file a criminal complaint and institute criminal proceedings. It appears that the complainant in the first instance tried to lodge a FIR but the police declined to register the FIR saying that it was purely a civil dispute.

13. The Magistrate unfortunately remained unmindful of the fact that even as per the complainant's own say the case is one of sale of goods and recovery of some balance amount.

14. It was expected of the Additional CJM to know that in a case of sale transaction where is the question of any entrustment of goods so as to bring the case within the ambit of criminal breach of trust punishable under Section 406 of the IPC. This position of law came to be explained by this Court almost six decades back in the landmark decision titled “State of Gujarat vs. Jaswantlal Nathalal” reported in 1968 (2) SCR 408, wherein this Court stated that a mere transaction of sale cannot amount to an entrustment. We quote the relevant observations made by this Court as under:-

“8. 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 Jaswantrao Manilal Akhaney v. State of Bombay [[1956] SCR 483, 498-500] . 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. It is true that the Government had sold the cement in question to BSS solely for the purpose of being used in connection with the construction work referred to earlier. But that circumstance does not make the transaction in question anything other than a sale. After delivery of the cement, the Government had neither any right nor dominion over it. If the purchaser or his representative had failed to comply with the requirements of any law relating to cement control, he should have been prosecuted for the same. But we are unable to hold that there was any breach of trust.

9. A case somewhat similar to the one before us came up for consideration before a Division Bench of the Calcutta High Court in Satyendra Nath Mukherji v. Emperor [ILR [1947] 1 Cal 97]. These are the facts of that case. One Satya Sunder Mitra was a contractor. He was granted a permit by the Executive Engineer, A.R.P. (Shelters), construction division, to purchase seven tons of cement from Balmer Lawrie and Company. The permit was granted on the condition that the cement was to be used in the work connected with the construction of shelters, which work he had contracted to do for the Executive Engineer. The finding in the case was that with the help of an employee of Mitra and Chaudhuri who were banians of Balmer Lawrie and Company, six tons of cement were diverted and disposed of for another purpose. The trial court convicted Satya Sunder Mitra under Section 406 IPC and another for abetting the offence committed by Satya Sunder Mitra. The High Court allowed their appeal, holding that there was no entrustment of the cement in question within the meaning of the term as used in Section 405 of Indian Penal Code. In the course of the judgment it was observed:

"The permit was granted in accordance with the system of control established under the Defence of India Rules, under which an order has been issued by the Government of India preventing selling

agents such as Balmer Lawrie and Company from delivering any cement except under instructions from the Government or from the Cement Adviser. The transaction, so far as the contractor is concerned, was one of purchase and the property in the cement clearly passed to him. No doubt he could not have obtained the permit through the Executive Engineer if it had not been intended that the cement should be used for the purpose directed by the Engineer, but, in our opinion, in no sense can it be said that there was any entrustment either of the property or of any dominion over the property."

We are of the opinion that the legal position is as explained in that decision.

10. The decision of the Kings Bench Division in King v. Grubb [[1915] 2 KB 683] relied on by Mr Dhebar learned counsel for the appellant does not bear on the question under consideration. Therein, the factum of entrustment was not in dispute. The only question of law that arose for decision in that case was whether when a property is entrusted to a company, and the person directing and controlling the company, by whose instructions the property had passed into the possession of the company, had converted the same fraudulently, that person can be said to have committed an offence under Section 1 of the Larceny Act, 1901. The court answered that question in the affirmative.

11. In view of our conclusion that the prosecution has failed to prove the entrustment pleaded, it is unnecessary to consider whether on the material on record it can be concluded that the respondent had misappropriated 40 bags of cement referred to earlier."

(Emphasis supplied)

15. We are not taken by surprise with the Magistrate exhibiting

complete ignorance of law as regards the position of law, as to what constitutes cheating punishable under Section 420 of the IPC and criminal breach of trust punishable under Section 406 of the IPC. However, we expected at least the High Court to understand the fine distinction between the two offences and the necessary ingredients to constitute the offence of cheating and criminal breach of trust.

16. This very Bench in a very recent pronouncement in the case of *"Delhi Race Club (1940) Ltd. and Others v. State of U.P. and Another"*, reported in (2024) 10 SCC 690 has exhaustively explained what constitutes criminal breach of trust. However, it appears that the judgment was not looked into so as to understand what constitutes criminal breach of trust punishable under Section 406 of the IPC.

17. The most disturbing part of this matter is the manner in which the High Court dealt with the quashing application filed by the petitioner-herein and the observations made in para 12 of its impugned order.

18. We quote the paragraph 12 as under:-

"12. O.P. no.2 appears to be a very small business firm and for him, the aforesaid amount along with interest is a huge amount. In case, subject to filing civil suit, O.P. no.2 will not be in position to pursue the civil litigation. In case, O.P. no.2 files a civil suit firstly, it will take years for it to see any ray of hope and secondly, he will have to put more money to pursue the litigation. To be more precise it would seem like good money chasing bad money. If this Court allows the matter to be referred to civil court on account of civil dispute between the parties, it would amount to travesty of justice and O.P. no.2 would suffer irreparable loss and he might even not be in a position to emerge from the financial constraints to pursue the matter."

(Emphasis supplied)

19. The Judge has gone to the extent of saying that asking the complainant to pursue civil remedy for the purpose of recovery of the balance amount will be very unreasonable as civil suit may take a long time before it is decided and, therefore, the complainant should be permitted to institute criminal proceedings for the purpose of recovery of the balance amount.

20. Is it the understanding of the High Court that ultimately if the accused is convicted, the trial court would award him the

balance amount? The observations recorded in para 12 are shocking. It is an extremely sad day for one and all to read the observations contained in para 12 of the impugned order. It was expected of the High Court to know the well-settled position of law that in cases of civil dispute a complainant cannot be permitted to resort to criminal proceedings as the same would amount to abuse of process of law. It was expected of the High Court to understand the nature of the allegations levelled in the complaint. In substance the High Court has said in so many words that the criminal proceedings instituted by the complainant in a case of pure civil dispute is justified because it may take considerable time for the complainant to recover the balance amount by preferring a civil suit.

21. In such circumstances referred to above we are left with no other option but to set aside the order of the High Court even without issuing notice to the respondents.

22. In the result, we partly allow this petition and set aside the impugned order passed by the High Court. We remand the matter to the High Court for fresh consideration of the Criminal Miscellaneous Application No.2507 of 2024. The quashing petition

shall be reheard on its own merits keeping in mind the dictum laid in the two decisions of this Court referred to above.

23. We request the Hon'ble the Chief Justice of the High Court of Allahabad to assign this matter to any other Judge of the High Court as he may deem fit.

24. The Chief Justice of High Court shall immediately withdraw the present criminal determination from the concerned Judge.

25. The Chief Justice shall make the concerned judge sit in a Division Bench with a seasoned senior judge of the High Court.

26. We further direct that the concerned judge shall not be assigned any criminal determination, till he demits office. If at all at some point of time, he is to be made to sit as a single judge, he shall not be assigned any criminal determination.

27. We have been constrained to issue directions as contained in Paras 22, 23, 24, 25 and 26 respectively, referred to above, keeping in mind that the impugned order is not the only erroneous order of the concerned Judge that we have looked into for the first time. Many such erroneous orders have been looked into by us over a period of time.

28. Registry to forward one copy of this order to Hon'ble the Chief Justice of Allahabad High Court at the earliest.

29. Pending application(s), if any, stands disposed of.

..... J.
[J.B. PARDIWALA]

..... J.
[R. MAHADEVAN]

New Delhi;
04th August, 2025.

ITEM NO.57

COURT NO.8

SECTION II

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition for Special Leave to Appeal (Crl.) No.11445/2025

[Arising out of impugned final judgment and order dated 05-05-2025 in A482 No. 2507/2024 passed by the High Court of Judicature at Allahabad]

M/S. SHIKHAR CHEMICALS

Petitioner(s)

VERSUS

THE STATE OF UTTAR PRADESH & ANR.

Respondent(s)

IA No. 183167/2025 - EXEMPTION FROM FILING O.T.

Date : 04-08-2025 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.B. PARDIWALA

HON'BLE MR. JUSTICE R. MAHADEVAN

For Petitioner(s) :

Mr. Surjadipta Seth, Adv.

Mr. Arindam Ghosh, AOR

For Respondent(s) :

UPON hearing the counsel the Court made the following
O R D E R

1. The Special Leave Petition is partly allowed in terms of the signed order.

2. The relevant part of the signed order is as under:-

"...We request the Hon'ble the Chief Justice of the High Court of Allahabad to assign this matter to any other Judge of the High Court as he may deem fit.

24. The Chief Justice of High Court shall immediately withdraw the present criminal determination from the concerned Judge.

25. The Chief Justice shall make the concerned judge sit in a Division Bench with a seasoned senior judge of the High Court.

26. We further direct that the concerned judge shall not be assigned any criminal determination, till he demits office. If at all at some point of time, he is to be made to sit as a single judge, he shall not be assigned any criminal determination.

27. We have been constrained to issue directions as contained in Paras 22, 23, 24, 25 and 26 respectively, referred to above, keeping in mind that the impugned order is not the only erroneous order of the concerned Judge that we have looked into for the first time. Many such erroneous orders have been looked into by us over a period of time.

28. Registry to forward one copy of this order to Hon'ble the Chief Justice of Allahabad High Court at

the earliest."

3. Pending application(s), if any, stands disposed of.

(CHANDRESH)
ASST.REG-CUM-P.S.

(POOJA SHARMA)
COURT MASTER (NSH)
(Signed order is placed on the file)