



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

**Criminal Application No. 1438 Of 2022**

1. Prajakta Mahendra Agrawal  
Age 35 years, Occ.: Household,  
R/o. Rajendra Prasad Road, Jalna.
  2. Giridharilal Shivdas Agrawal  
Age 70 years, Occ.: Business,  
R/o. Rajendra Prasad Road, Jalna.
- .. Applicants**

**Versus**

1. The State of Maharashtra  
Through Police Inspector,  
Sadar Bazar Police Station,  
Jalna.
  2. Jawahar s/o. Shankarlal Dembda  
Age 46 years, Occ.: Business,  
R/o. Vasundhara Nagar, Jalna.
- .. Respondents**

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- \* Advocate for the Applicants :  
**Mr. Vishal A. Bagdiya**
- \* APP for the Respondent No.1/State :  
**Mr. S. R. Wakale**
- \* Advocate for the Respondent No.2 :  
**Mr. Aditya N. Sikchi**

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**CORAM : SANDIPKUMAR C. MORE AND  
MEHROZ K. PATHAN JJ.**

**RESERVED ON : 8<sup>th</sup> SEPTEMBER 2025**

**PRONOUNCED ON : 20<sup>th</sup> SEPTEMBER 2025**

**J U D G M E N T (Per Mehroz K. Pathan, J.) :**

1. The Applicants have filed the present application for quashing of the First Information Report registered as Crime No.051/2022 at S.B. Police Station, Jalna for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code.

2. During the pendency of the present application, the Respondent/Sadar Bazar Police Station, where the crime was registered, has filed the charge-sheet before the learned jurisdictional Court i.e. Judicial Magistrate First Class, Jalna. The Applicants – Prajakta and Girdharilal have thus amended the application for quashing and now sought quashment of the entire charge-sheet and the proceeding bearing RCC No.1058/2022 pending before the Judicial Magistrate First Class, Jalna.

3. The brief facts in a nutshell are as under :

. That the complainant – Jawahar Dembda has filed a complaint before the police station, thereby stating that he was a resident of Jalna and friend of the Accused No.1/Mahendra Girdharilal Agrawal. The complainant used to visit the house of Mahendra Girdharilal Agrawal and therefore knew his father – Girdharilal Agrawal and Mahendra's wife – Prajakta Mahendra Agrawal. The Agrawal family had a business of Mahendra Tyres.

4. It is alleged by the complainant that in the year 2019, the accused/Girdharilal and Prajakta alongwith Mahendra had asked the complainant to join them into a new business venture as a

partner. The accused persons had assured that the business of real estate, is going to flourish in the future, and time and again induced the complainant to invest into the real estate project, despite of the initial reluctance of the complainant. On the day of Vijayadashami in the year 2019, there was a meeting with all the accused persons with the complainant and it was decided that they would purchase the land and after demarcating plots, the same would be sold to the public in general and whatever profits that would be coming out of such project, would be equally shared by all the four persons. It was further decided that if any of the partners wants to induct some new partners, it would be from their personal share and not the share of other partners. That the complainant has thus deposited an amount of Rs.25 Lacs alongwith the other partners to raise a capital to purchase the land after about eight to ten days of the meeting in the year 2019.

5. The three accused persons have allegedly assured the complainant that a land admeasuring area 10 acre would be purchased in the city of Jalna and that further plot would be demarcated and sold and it was assured that the registry of the said plot would be executed till Diwali 2019. However the registry of the said plot was not executed even after Diwali 2019 and as such the complainant inquired about the same from the accused persons. The accused persons replied that though the amount of consideration was paid to the land owner, however the land owner is demanding more amount of consideration as the land rates have increased due to passage of time. It was then stated

by the accused persons that additional amount of Rs.25 Lacs would be required to be deposited by all the partners.

6. The complainant was not ready to deposit such additional amount of Rs.25 Lacs and asked the accused persons to return back his initial amount of Rs.25 Lacs. However the accused persons have informed the complainant that if he does not deposit 25 Lacs rupees more, then the other partners would be induced by them as huge profits are going to be earned by purchase of such land by the partners. It was also informed that they would be returning the complainant 25 Lacs rupees only after the profits are gained out of the project. The complainant was therefore allegedly induced by the accused persons to additionally deposit an amount of Rs.25 Lacs. However this time the complainant got an agreement prepared on a stamp paper of Rs.100 thereby mentioning about the payment of Rs.25 Lacs in addition to the earlier amount of Rs.25 Lacs paid to the accused for purchasing of the land which was signed by accused No.1/Mahendra Girdharilal Agrawal. The accused persons have assured in the agreement that the registry/sale deed of the plot intended to be purchased would be executed by March, 2020.

7. It is stated that in the FIR that as Corona had spread its wings in the month of March 2020 and there was a lock-down, the registry could not be executed. The complainant had thereafter time and again requested the accused persons for execution of the sale deed. However it was informed that accused no. 1/Mahendra Girdharilal Agrawal had died due to

corona on 11.07.2020. After the mourning period was over, the complainant had visited the house of Mahendra, requesting for execution of sale deed to the Applicants – Girdharilal (father) and Prajakta (wife). However they refused to execute any such agreement or payback the amount deposited by the complainant. The complainant further alleges in the FIR that as the wife of the complainant is suffering from cancer, he was required to spend an amount of Rs.70 to 80 Lacs for her medical treatment and as such when he had approached the accused Girdharilal (father) and Prajakta (wife of the deceased Mahendra), the accused persons informed that the land owner has taken the money and is not returning back, however they did not disclose the name of the land owner. The complainant suspected the conduct of the accused no.2- Girdharilal (father) and Prajakta (wife of the deceased Mahendra), and realized that such act on the part of the complainant amounts to cheating the complainant of his hard earned money of Rs.50 Lacs and criminal breach of trust as the Applicants have not purchased the land in the city of Jalna nor returned back the amount to the complainant. The complainant thus prayed for appropriate action against the accused persons.

8. The Applicants Prajakta and Girdharilal (wife and father of Mahendra) have approached this Hon'ble Court, seeking quashment of the said FIR and the charge-sheet on the ground that this is the fit case, wherein the civil dispute has been given a colour of the criminal offence. The Counsel for the Applicants would submit that the agreement executed on a stamp paper dated 08.01.2020 which is mentioned in the FIR, is executed by

Mahendra Girdharilal Agrawal who has already expired on 11.07.2020. The said agreement nowhere bears the signature of the Applicants - Girdharilal (father) and Prajakta (wife of deceased Mahendra). The main thrust of the arguments of the Applicants is that prior to the said agreement dated 08.01.2020, also there is no agreement on record to show that the Applicants were the partners in any such firm, wherein the amount was allegedly deposited by the Applicants. The agreement dated 08.01.2020, cannot be used by the Complainant to lodge the criminal prosecution against the present Applicants who are the father and wife of the deceased Mahendra.

9. The learned Counsel for the Applicants would further submit that the cheque bearing no. 904816 drawn on State Bank of India mentioned in the agreement dated 08.01.2020, was never deposited by the complainant, for withdrawing amount of Rs.50 Lacs and the letter dated 17.02.2022 issued by the Bank in fact shows that the cheque bearing no.904816 issued by Mahendra was not presented by the complainant for encashment. The Counsel for the Applicants would also submit that there is nothing on record to show that such huge amount was there with the complainant to be paid in cash. The Income Tax Returns are not filed by the complainant to show that any such real transaction had ever taken place in such huge amount. It is further submitted that the agreement as well as FIR nowhere mention the details of the land which was decided to be purchased allegedly by the deceased Mahendra or the accused Applicants in partnership with the complainant.

10. The another limb of argument on behalf of the Counsel for the Applicants Mr. Bagdiya, is that the complainant has already filed a suit for recovery against the Applicants before the learned Civil Court. A copy of the civil suit is tendered at the bar, which shows that a civil suit bearing Special Civil Suit No.324/2023 is filed by the complainant – Jawahar Dembda against the Defendants – Prajakta and Girdharilal. That even in the said civil suit, there is a specific mention about the cheque no. 904816 issued at the State Bank of India branch Jalna, wherein the deceased Mahendra Agrawal alone had promised to pay back the amount of Rs.50 Lacs to the complainant, if the same is not utilized for purchasing of the land. It is thus submitted that apart from the bare allegations in the FIR, there is nothing on record to show that the Applicants were a party to any such agreement or subsequent additional agreement dated 08.01.2020. The Counsel for the Applicants vehemently submitted that in the absence of any intention on the part of the Applicants to cheat or defraud the complainant, the First Information Report and the consequent filing of the charge-sheet is nothing but an abuse of process of law which is one of the grounds for interference of this Court to exercise inherent powers under Section 482 of the Code of Criminal Procedure.

11. The learned Counsel for the Applicants has relied upon the recent judgment delivered by the Hon'ble Supreme Court reported in (2024) 10 SCC 690 in the matter of **Delhi Race Club (1940) Limited and Others Vs. State of Uttar Pradesh and Another**, to buttress his submission that if the complainant

claims that the offence of criminal breach of trust as defined under Section 405, punishable under Section 406, is committed by the accused, then in the same breath it cannot be said that the accused had also committed the offence of cheating as defined and explained in Section 415 IPC, which is punishable under Section 420 IPC, wherein the Hon'ble Supreme Court has held as under :

"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."

**12.** The Hon'ble Supreme Court in the aforesaid judgment has also made observation as under :

"55. 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.."

**13.** The learned Counsel for the Applicants Mr. Bagdiya has further relied on the judgment of the Hon'ble Supreme Court in the case of **Rama Devi Vs. State of Bihar and Ors.**, reported in 2011 Cri. L.J. 652, wherein it is held that absence of any intention on the part of the accused to cheat or defraud complainant, the complainant at best can claim damages.

**14.** The learned Counsel Mr. Bagdiya has further relied on the



judgment of the Hon'ble Supreme Court in the case of **Anand Kumar Mohatta and Anr. Vs. State (Govt. of NCT of Delhi), Department of Home and Anr.**, reported in 2019(11) SCC 706, wherein it is held that "Essence of offence of criminal breach of trust lies in the use of property entrusted to person by that person in violation of any direction of law or any legal contract which he has made during discharge of such trust." Amount not paid is a dispute civil in nature and does not constitute criminal breach of trust.

15. The learned Counsel Mr. Bagdiya has further relied on the judgment of the Hon'ble Supreme Court in the case of **Sardar Ali Khan Vs. State of Uttar Pradesh through Principal Secretary Home Department**, reported in AIR 2020 SCC 626, wherein an identical First Information Report under Sections 419, 420, 467, 468, 471 was quashed and set aside, holding that the record shows that dispute was mainly civil in nature for which civil suit is already pending.

16. The final judgment relied upon by the learned Counsel for the Applicants Mr. Bagdiya is in the case of **Prof. R.K. Vijayasarathy & Anr. Vs. Sudha Seetharam & Anr.**, reported in 2019(16) SCC 739, wherein the Hon'ble Supreme Court has laid down as under :

"23. The jurisdiction under Section 482 of the Code of Criminal Procedure has to be exercised with care. In the exercise of its jurisdiction, a High Court can examine whether a matter which is essentially of a civil nature has been given a cloak of a criminal offence. Where the ingredients required to constitute a criminal offence are not made out from a bare reading of the complaint, the continuation of the criminal proceeding will constitute an abuse of the process of the Court."

17. Per contra, the learned Counsel for Respondent No.2 Mr. Sikchi has supported the First Information Report and the filing of the charge-sheet. It is stated that there are two witnesses of the agreement dated 08.01.2020 who have categorically made a statement about the execution of the agreement, wherein it was admitted that an amount of Rs.25 Lacs is being paid by the complainant, in addition to the earlier amount of Rs.25 Lacs deposited by the complainant as his share for purchasing the land in Jalna city. The witnesses- Kishor Bharuka and Sunil Agrawal, clearly state about the role of the present Applicants, in inducing the complainant to deliver the amount. Mr. Sikchi has further argued that there is a variance in the date of knowledge mentioned by the accused persons Girdharilal as well as Prajakta. The date of knowledge of such agreement is stated as 21.02.2022, the date of knowledge is stated by Prajakta as 07.02.2022. The Applicants being wife and the father of the deceased Mahendra, cannot claim ignorance particularly when the witnesses- Kishor Bharuka and Sunil Agrawal specifically asserted their involvement and presence at the time of initial payment of Rs.25 Lacs and also at the time of execution of agreement dated 08.01.2020.

18. Mr. Sikchi has further argued that the statement of Mr. Dilip Bhandarge at page 116 of the paper book, would show that he had sold the 100 rupees stamp paper to Mahendra Agrawal and the memorandum of agreement was written in his presence and that the deceased Mahendra Girdharilal Agrawal and Jawar Dembda had put his signature on the said bond in his presence.

The witness Dilip Bhandarge further states about the presence of the two other witnesses namely Kishor Bharuka and Sunil Agrawal at the time of the execution of the said document before the notary public Mr. Dilip Bhandarge. Mr. Sikchi has further relied upon the notary register at page 117 to show the entries of the register taken by the notary public which shows the presence of Mahendra Agrawal and the complainant Jawahar Dembda.

**19.** The learned Counsel Mr. Sikchi for Respondent No.2 has vehemently argued that the Applicants being the father and the wife of the deceased Mahendra, was having knowledge right from the inception about the investment of Rs. 25 Lacs initially in the year 2019 by the complainant. The complainant was induced in fact not only by Mahendra Agrawal, but also by Girdhari (father) and Prajakta (wife of the deceased Mahendra) to invest in the business, for purchasing of the land and doing the business of real estate. The initial reluctance was persuaded by Girdhari, Prajakta and Mahendra together and as such they cannot feign ignorance about the transaction. Thus Mr. Sikchi has prayed for dismissal and rejecting the application for quashing. According to his submission the prima facie material is sufficient enough to establish a cognizable offence committed by the Applicants. The evidence collected by the prosecution also supports the allegations and as such no case is made out for interference of this Hon'ble Court in exercise of powers under Section 482 Cr.P.C.

20. Mr. Sikchi learned Counsel for Respondent No.2 has relied upon the judgment of the Hon'ble Supreme Court delivered in **Kathyayini Vs. Sidharth P.S. Reddy and Ors.**, reported in 2025 INSC 818, wherein the Supreme Court has laid down in Paragraph Nos. 19 and 20 as under :

“19. We now come to the issue of bar against prosecution during the pendency of a civil suit. We hereby hold that no such bar exists against prosecution if the offences punishable under criminal law are made out against the parties to the civil suit. Learned senior counsel Dr. Menaka Guruswamy has rightly placed the relevant judicial precedents to support the above submission. In the case of K. Jagadish V. Udaya Kumar G.S. and another<sup>3</sup>, this Court has reviewed its precedents which clarify the position. The relevant paragraph from the above judgment is extracted below:

“8. It is thus well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law.”

20. In Pratibha Rani Vs. Suraj Kumar and another, this Court summed up the distinction between the two remedies as under :

“21. ... There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution under Section 406 IPC or render the ingredients of Section 405 IPC nugatory or abortive. To say that because the stridhan of a married woman is kept in the custody of her husband, no action against him can be taken as no offence is committed is to override and distort the real intent of the law.”

21. Learned Counsel Mr. Sikchi has further relied upon the recent judgment of the Supreme Court in **Punit Beriwal Vs. The State of NCT of Delhi and Ors.**, 2025 INSC 582, wherein it is held in paragraph no.28 which reads as under :

“28. It is trite law that mere institution of civil proceedings is not a ground for quashing the FIR or to hold that the dispute is merely a civil dispute. This Court in various judgments, has held that simply because there is a remedy provided for breach of contract, that does not by itself clothe the Court to conclude that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court. This Court is of the view that because the offence was committed during a commercial transaction, it would not be sufficient to hold that the complaint did not warrant a further investigation and if necessary, a trial.”

. Learned Counsel Mr. Sikchi has further relied upon the paragraph no.32 of the judgment in Punit Beriwalla (supra), which reads as under :

“32. This Court is of the view that the learned Single Judge misdirected himself by concluding that the only allegation against Vikramjit Singh and Maheep Singh (Respondent Nos. 2 and 3) is that they were witnesses to the Receipt-cum-Agreement to Sell dated 12th April 2004, whereas, the gravamen of the allegation was that Vikramjit Singh and Maheep Singh (Respondent Nos. 2 and 3) were equally guilty of misrepresentation as, despite their knowledge to the contrary (as they were all closely related as well as members of the said HUF and Vikramjit Singh was actual Karta), they allowed Bhai Manjit Singh who was not competent to execute the Receipt-cum-Agreement to Sell on behalf of Bhai Manjit Singh HUF to represent himself as the Karta and execute the same. Consequently, the underlying act of misrepresentation by Bhai Manjit Singh, Vikramjit Singh and Maheep Singh (all three) is the offence by which the Appellant is aggrieved, and not the mere act of signing the receipt as witnesses. However, the learned Single Judge has neither dealt with nor examined the said aspect in the impugned judgment.”

. Learned Counsel Mr. Sikchi has lastly relied upon the paragraph no.33.15 quoted from the judgment reported in Neeharika Infrastructure Vs. State of Maharashtra, (2021) 19 SCC 401 which states that the Court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and has to only consider whether the allegations in the FIR disclose commission of a cognizable offence or not.

**22.** It is therefore strenuously argued by the learned Counsel

for Respondent No.2 that the precedents noted by the Hon'ble Supreme Court in its earlier judgments make it crystal clear that the mere pendency of a civil proceeding on the same subject matter involving the same parties is no justification to quash the criminal proceeding, if a prima facie case exists against the accused. It is his further submission that a prima facie case exists against Respondents in the present case and as such the Applicants should be put to a criminal trial to ensure justice to the complainant.

**23.** The learned APP Mr. Wakale appearing for the State has also supported the arguments of Mr. Sikchi for the Complainant and has specifically stated that no case is made out for interference as the prosecution has found sufficient evidence so as to file charge-sheet against the present Applicants for cheating and criminal breach of trust. He, therefore, prays for rejecting the present application.

**24.** We have heard Mr. Vishal Bagdiya for the Applicants, Mr. Aditya Sikchi for Respondent No.2 and Mr. Wakale, APP for the State.

**25.** After having considered the submissions made by the parties, it is found that the complainant has allegedly entered into an oral agreement with the deceased person Mahendra, Prajakta, Girdharilal in the year 2019 for investing into the real estate. It has also emerged from the record that the agreement

dated 08.01.2020 was entered into between the complainant and the deceased Mahendra. The agreement further states about the cheque of Rs. 50 Lacs signed by Mr. Mahendra (deceased), handed over as a security deposit to the complainant. Counsel for the Applicants has also produced on record a copy of the suit for recovery filed by the complainant for the recovery of the amount of Rs. 50 Lacs paid by the complainant which is registered as Special Civil Suit No.324/2023 pending before the Civil Judge Senior Division, Jalna which is also admitted by the respondent/complainant.

**26.** It is also pertinent to note that Mr. Mahendra Agrawal had also handed over a cheque of Rs.50 Lacs to the complainant as a security, in case the amount is not paid back or the sale deed is not executed for the land intended to be purchased. Thus the intention to cheat is missing at the inception on the part of Mr. Mahendra Agrawal. The Applicants as it is, were never signatories to such agreement and thus the *mens rea* of cheating the complainant, also cannot be attributed to the present Applicants.

**27.** Insofar as the allegation of criminal breach of trust is concerned, it is almost a settled law that 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 the *mens rea* gives rise to a criminal prosecution as well.

28. In the present case, the *mens rea* for criminal breach of trust on the part of the Applicants is missing inasmuch as there is no written agreement between the Applicants and the complainant. All that the complainant relies upon is an agreement dated 08.01.2020 entered into between the complainant and the deceased Mahendra Agrawal. The *mens rea* on the part of the Applicants is therefore, absent and as such the offence of criminal breach of trust punishable under Section 406 of Indian Penal Code, is thus not made out as against the present Applicants.

29. The perusal of the charge-sheet filed by the prosecution, only contains a statement of the complainant, witnesses and notary and the other relevant documents pertaining to the transaction between the complainant and the deceased Mahendra Agrawal. Perusal of the agreement dated 08.01.2020 merely shows that there was an earlier agreement between the complainant and Mahendra (deceased), Girdharilal, Prajakta. However the agreement does not bear the signatures of the Applicants as a party to such agreement or as witness or consentors to the said agreement dated 08.01.2020, wherein an additional amount of Rs.25 Lacs was handed over by the Applicants to the deceased Mahendra. There is no allegations in the FIR that the Applicants had a dishonest or fraudulent intention at the time of receiving the initial amount of Rs.25 Lacs from the complainant or the additional amount of Rs.25 Lacs as stated in the agreement dated 08.01.2020.



**30.** The Hon'ble Supreme Court in the judgment reported in **Hari Prasad Chamaria Vs. Bishun Kumar Surekha**, (1973) 2 SCC 823 has observed 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 of the 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 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent 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 by the respondents to him at or before the time he paid the money to them and that at the time the 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 of them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

. From the perusal of the above judgment, it would be clear that 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 receiving the movable property, though receives initially as legal, however illegally retains it or converts it to his own use against the terms of the contract.

**31.** The law pertaining to the applications under Section 482 of Cr.P.C. for quashing of FIR, is laid down in the seven exceptions carved out by the Hon'ble Supreme Court in the landmark judgment reported in the case of **State of Haryana Vs. Bhajan Lal**, AIR 1992 SC 604, wherein the Hon'ble Supreme Court has laid down as under :

**“102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

**32.** After going through the entire record including the First Information Report and the charge-sheet filed by the

prosecution, we are of the considered opinion that the present case clearly falls under clauses first and third exception carved out by the Hon'ble Apex Court in paragraph no.102 of the Apex Court judgment of Bhajan Lal cited supra. The Hon'ble Supreme Court in its judgment in the case of State of Karnataka Vs. L. Muniswamy and Ors. reported in (1977) 2 SCC 699, was pleased to hold that the High Courts are entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice would require that the proceeding ought to be quashed. The saving of the High Court's inherent powers under Section 482, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice.

**33.** The facts of the present case clearly shows that the dispute which is mainly civil in nature is tried to be turned into a criminal prosecution only with the sole intention of recovering the amount which may not be permitted in view of the judgment of the Hon'ble Supreme Court in Vijayasathy's case cited supra. In the present case, there is no such allegation that the Applicants or the deceased Mahendra had an intention of cheating or dishonest intention at the very inception of the

transaction. As could be reflected from the FIR, the entire allegations are that the intention of all the partners were to enter into some land transactions and to earn profits. Thus the dishonest intention from the very inception, is missing. Neither there is any allegation about dishonest misappropriation or disposal of that property. The only allegation is that the complainant is cheated and that the amount is not paid back to the complainant. The Hon'ble Supreme Court in the judgment reported in 2006 (6) SCC 736, M/S Indian Oil Corporation vs M/S Npc India Ltd. and Ors., was pleased to observe as follows :

“13. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.....”

**34.** The complainant has also failed to deposit the cheque to withdraw the amount of Rs. 50 Lacs as the deceased Mahendra has given the said cheque by way of security in case of non-payment of the amount. The complainant has filed a civil suit even though subsequently for recovery of the amount. In our considered view, the ingredients required to constitute a criminal offence of cheating and criminal breach of trust, are not made out from a bare reading of the complaint or the charge-sheet, much less against the Applicants.

**35.** At this stage, we are only concerned with the question whether the averments in the complaint/FIR and the charge-sheet taken at their face value make out the ingredients of

criminal offence. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, moreover, there are no allegations as to the dishonest intention of the appellants at the inception in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the complainant. There is no iota of allegation as to the dishonest intention in misappropriating the property. Even if all the allegations in the complaint taken at the face value are true, in our view, the basic essential ingredients of dishonest misappropriation and cheating are missing. The criminal proceedings are not a shortcut for other remedies.

**36.** The judgment relied upon by Mr. Sikchi for Respondent No.2 i.e. *Kathyayini Vs. Sidharth P.S. Reddy and Ors.* (supra), lays down a proposition that in certain cases the very same set of facts may give rise to remedies in civil as well as criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceeding in criminal law. There is no doubt that the very same fact may give rise to remedies in civil as well as criminal proceedings, however in the present case, it is seen that the dishonest intention at the very inception is missing and equally missing, is the allegation of criminal misappropriation of the entrusted property. Hence the judgment relied upon by Mr. Sikchi, the learned Counsel for Respondent No.2, is not applicable in the facts of the present case.

**37.** The another judgment relied upon by Mr. Sikchi, the learned learned Counsel for Respondent No.2 i.e. Punit Beriwalla Vs. The State of NCT of Delhi and Ors. (supra) is again on the same lines that civil proceeding is not a ground for quashing of the FIR or to hold that the dispute is merely a civil dispute. The other paragraphs relied upon by Respondent No.2, is paragraph no.32 of the said judgment, wherein the Court has recorded a finding of the fact that the Respondents/accused persons who were witnesses to the receipt-cum-agreement to sell and were equally guilty of misrepresentation.

. However in the present case, the agreement dated 08.01.2020 does not even bear the signatures of the Applicants as either witnesses, or consentors to the agreement which was executed only between the deceased Mahendra and the complainant. The judgment relied upon by Respondent No.2 i.e. Punit Beriwalla cited supra, is therefore distinguishable on the facts of the present case. The filing of the civil suit is only an additional reason apart from the basic allegation of intention of cheating from inception and dishonest intention of misappropriation which is missing in the complaint.

**38.** The Hon'ble Supreme Court in the judgment of Delhi Race Club (1940) Limited (supra) was pleased to hold as under:

"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.”

“55. 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..”

. The Hon’ble Supreme Court in the judgment in the case of Rikhab Birani Vs. State of Uttar Pradesh reported in 2025 INSC 512 was also pleased to impose a cost of Rs.50,000/- upon the State of Uttar Pradesh, thereby observing as under :

“We are also constrained to impose costs of Rs.50,000/- on the State of Pradesh as in spite of repeated judgments/orders of this Court, we are being flooded with cases of civil wrongs being made the subject matter of criminal proceedings by filing charge-sheets etc. where a civil grievance was attempted to be prosecuted as a criminal case, thereby causing harassment to the litigants. Since no case of criminal breach of trust or dishonest intention of inducement is made out and the essential ingredients of sections 405/420 IPC are missing, the prosecution of the appellants under section 406/120B IPC, is liable to be quashed and set aside.”

**39.** The continuation of the criminal proceeding would thus, constitute abuse of process of the Court. The grievance of the complainant which is essentially of a civil nature has been given a cloak of a criminal offence. In our view, therefore, the First Information Report and the consequent charge-sheet is thus, liable to be quashed and set aside. Hence, the following order :

### **ORDER**

(i) The Criminal Application is allowed.

(ii) The First Information Report bearing Crime No.051/2022 registered at S.B. Police Station, Jalna for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code, is hereby quashed and set aside.

(iii) The charge-sheet filed by the Respondent No.1 and the further proceeding bearing RCC No.1058/2022 pending before the Judicial Magistrate First Class, Jalna, are also quashed and set aside.

(iv) There shall be no order as to cost.

**MEHROZ K. PATHAN**  
**JUDGE**

**SANDIPKUMAR C. MORE**  
**JUDGE**

*Najeek*