



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Miscellaneous (Petition) No. 3377/2024

Sanyukt Shekhari S/o Inder Shekhari, Aged About 35 Years,
Resident Of Shekhari House, Batala, Gurdaspur, Punjab.

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Bhagwati Chouhan W/o Dhanraj Chouhan, Aged About 44
Years, R/o Near Adharshila, Jaloriyonka Bas, Jodhpur.

-----Respondents

For Petitioner(s) : Mr. Shreyash Ramdev, Adv.

For Respondent(s) : Mr. Vikram Singh Rajpurohit, PP

HON'BLE MR. JUSTICE ANIL KUMAR UPMAN

Order

REPORTABLE

07/04/2026

1. Instant Criminal Misc. Petition under Section 482 Cr.P.C. has been filed by the petitioner with the prayer to quash the entire criminal proceedings emanating from FIR No.139/2016, registered at Police Station Nagauri Gate, District Jodhpur (East) for offences punishable under Sections 420, 406 and 120B of the IPC along with charge-sheet dated 09.07.2018 and further proceedings pending before the Court of learned Metropolitan Magistrate No.10, Jodhpur in Criminal Case No.1417/2018.

2. The brief facts of the case are that a complaint was filed by the complainant-respondent No.2 under Section 156(3) of the Cr.P.C. against the petitioner and the co-accused, Sunil Baweja, pursuant to which FIR No.139/2016 came to be registered at Police Station Nagauri Gate, District Jodhpur (East). Upon completion of investigation, the police filed a charge-sheet against



the petitioner and the co-accused before the competent Court for offences punishable under Sections 420, 406 and 120B of IPC. Since the petitioner did not join the investigation, the charge-sheet qua him was filed under Section 299 Cr.P.C. After filing of the charge-sheet, the learned trial Court took cognizance and framed charges against the co-accused, Sunil Baweja. However, the proceedings against the present petitioner were kept pending as he was declared an absconder.

3. Counsel for the petitioner submits that essentially, there is a civil dispute between the parties arising out of monetary transactions which has been given a criminal colour. It is submitted that in the year 2018, the parties had entered into a compromise, pursuant to which the petitioner as well as the co-accused, Sunil Baweja, have already paid the entire disputed amount to the complainant. Counsel submits that while granting bail to the co-accused, this Court had taken note of the payment of Rs.50,000/- made to the complainant and had observed that the balance amount would be paid upon his release. It is contended that the said amount has since been fully paid and the compromise stands duly acted upon. In such circumstances, the continuation of the criminal proceedings in pursuance of the FIR is fruitless and would be a futile exercise and a waste of precious judicial time and resources. It is further submitted that even if the allegations in the FIR are taken at their face value, no criminal offence is made out against the petitioner or the co-accused. The dispute emanates from an agreement for local distributorship executed between the parties on certain terms and conditions. The



alleged non-supply of goods, owing to subsequent disputes, at best gives rise to a civil liability and does not attract criminal culpability. Counsel thus, prays that the entire criminal proceedings arising out of the impugned FIR be quashed.

4. Learned State Counsel places on record factual report dated 06.04.2026 received from SHO, Police Station Nagauri Gate, District Jodhpur (East). According to the factual report, on 10.05.2024, the Investigating Officer visited the residence of the petitioner, where he met the petitioner's father, Indra Shekhari. During the visit, Indra Shekhari produced an affidavit dated 13.07.2018, executed by the husband of the complainant, acknowledging the receipt of a sum of Rs.2,96,000/- through a demand draft. The Investigating Officer collected the certified copy of the affidavit along with a copy of the demand draft, and same were taken on record. The factual report further indicates that the petitioner does not have any criminal antecedents.

5. I have considered the contentions and perused the material available on record.

6. It is a settled proposition of law that a mere breach of contract, agreement, or promise, by itself, does not give rise to criminal liability under Sections 420 and 406 of the IPC. In order to constitute the offences of cheating or criminal breach of trust, it is imperative to establish the existence of fraudulent or dishonest intention at the very inception of the transaction. It is well settled that criminal proceedings cannot be resorted to for the purpose of resolving civil disputes or for recovery of money. In the absence of any allegation or material indicating such initial dishonest





intention, the continuation of criminal proceedings would amount to an abuse of the process of law.

7. The distinguishing factor between the offence of cheating and any other civil dispute lies in the presence or absence of mens rea at the inception of the transaction. To constitute the offence of cheating, it must be shown that the accused had a dishonest or fraudulent intention from the very beginning. A mere failure to honour a promise or fulfill a contractual obligation, by itself, does not give rise to a presumption of such dishonest intention. In the absence of any material to indicate that the intention to deceive existed at the inception, the dispute remains civil in nature and does not attract criminal liability.

8. In simple terms, a breach of contract constitutes an infringement of a private right, which is ordinarily remediable under civil law, such as by instituting proceedings for recovery of money. However, for such a dispute to attract criminal liability, there must be evidence indicating that the accused had no intention to fulfill the promise from the very inception of the agreement and, with such dishonest intention, persuaded the other party to believe the promise.

9. Hence, where the breach is due to mere non-fulfillment of the contract without any fraud or deceitful intentions during the initial stages of signing the contract, the dispute remains civil in nature and does not warrant initiation of criminal proceedings.

10. Hon'ble Supreme Court has consistently held that mere non-performance of an agreement is not cheating. In the case of **Arshad Neyaz Khan Versus the State of Jharkhand & Anr.**,





reported in **2025 SCC Online SC 2058**, it was held that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Paragraph Nos. 18, 19 and 20 of the aforesaid judgment are being reproduced for ready reference:-

"18. In light of the facts and circumstances of the present case, we find that the complainant/respondent No.2 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 IPC. We fail to understand as to how the allegations against the appellant herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the FIR as well as the complaint, we do not find that the offence of cheating as defined under Section 420 IPC is made out and we do not find that there is any cheating and dishonest inducement to deliver any property or a valuable security involved in the instant case.

19. It is settled law that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale. We must





hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No.2. Mere allegations by the complainant/respondent No.2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No.2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No.2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The





complainant/respondent No.2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust."

11. A bare perusal of the FIR as well as factual report does not disclose any material to indicate that the accused persons had an intention to deceive the complainant from the very inception, i.e., at the time of execution of the agreement for local distributorship between the parties. Subsequently, some dispute arose between the parties and therefore, the required goods were not supplied by the accused persons to the complainant. The complainant has alleged that the accused persons cheated her and dishonestly obtained an amount of Rs.2,96,000/- from her. However, the factual report reveals that on 13.07.2018, the husband of the complainant executed an affidavit on a stamp paper of Rs.50/-, declaring that the disputed amount of Rs.2,96,000/- has been received by way of a demand draft. The material on record does not prima facie disclose the existence of any fraudulent or dishonest intention at the inception of the transaction.

12. The aforesaid facts clearly demonstrate that the complainant had already received the disputed amount of Rs.2,96,000/- way back in the year 2018. In the event that any grievance still subsists, it would be open to the complainant to raise a civil dispute in this regard before the competent forum.





13. In the backdrop of the aforesaid discussions and in view of the law laid down by the Hon'ble Supreme Court in Arshad Neyaz (Supra), coupled with the fact that the disputed amount of Rs.2,96,000/- has already been paid by the petitioner as well as the co-accused, Sunil Baweja to the complainant, this Court is of the considered view that the criminal proceedings pending before the learned trial Court against the petitioner, as well as the co-accused, who is not before this Court but whose case stands on the same footing as that of the petitioner, deserve to be quashed as continuation of the criminal proceedings would amount to an abuse of the process of law.

14. In the instant case, this Court, upon a bare perusal of the FIR, finds that no offence is made out and the continuation of further proceedings based on the FIR against the petitioner and/or the co-accused would undoubtedly amount to an abuse of the process of law. It is well settled that where the foundational allegations do not disclose a cognizable offence, permitting criminal proceedings to continue would defeat the very purpose of instituting such a case and would result in injustice and harassment to the accused.

15. Despite the fact that the co-accused, against whom criminal proceedings are pending, has not separately approached and sought any relief from this Court, the Court cannot overlook that the allegations levelled in the FIR are identical against both the petitioner and the co-accused, and that the facts of the case are interdependent. Therefore, since no offence is made out even on a prima facie consideration of the FIR, this Court holds that the co-





accused is equally entitled to the relief granted to the petitioner, notwithstanding the fact that he has not approached this Court. This proposition is bolstered by the long held legal doctrine established by the Hon'ble Supreme Court, which recognizes that a Court has the power, in the interest of justice, to extend the benefit of its judgment to similarly situated persons, even if they are not before the Court. It is evident that a failure to grant such relief would result in a grave anomaly and injustice, particularly where the very foundation of the proceedings is found to be untenable.

16. Therefore, for the sake of justice and for avoiding any abuse of the judicial process, the benefit of this order shall be granted not only to the petitioner but also to the co-accused who is not before this Court.

17. Hon'ble Supreme Court in the case of **Javed Shaukat Ali Qureshi vs State of Gujarat, reported in 2023 0 AIR(SC) 4444**, while dealing with the identical issue, has observed that -:

"18. Now, we come to the case of accused no.2. By the order dated 11th May 2018, a special leave petition filed by accused no.2 was summarily dismissed without recording any reasons. The law is well settled. An order refusing special leave to appeal by a non-speaking order does not attract the doctrine of merger. At this stage, we may refer to a three judge Bench decision of this Court in the case of Harbans Singh v. State of U.P. & Ors., (1982) 2 SCC 101. In paragraph 18, this Court held thus:

"18. To my mind, it will be a sheer travesty of justice and the course of justice will be perverted, if for the very same offence, the petitioner has to swing and





pay the extreme penalty of death whereas the death sentence imposed on his co-accused for the very same offence is commuted to one of life imprisonment and the life of the co-accused is shared (sic-spared). The case of the petitioner Harbans Singh appears, indeed, to be unfortunate, as neither in his special leave petition and the review petition in this Court nor in his mercy petition to the President of India, this all important and significant fact that the life sentence imposed on his co-accused in respect of the very same offence has been commuted to one of life imprisonment has been mentioned. Had this fact been brought to the notice of this Court at the time when the Court dealt with the special leave petition of the petitioner or even his review petition, I have no doubt in my mind that this Court would have commuted his death sentence to one of life imprisonment. For the same offence and for the same kind of involvement, responsibility and complicity, capital punishment on one and life imprisonment on the other would never have been just. I also feel that had the petitioner in his mercy petition to the President of India made any mention of this fact of commutation of death sentence to one of life imprisonment on his co-accused in respect of the very same offence, the President might have been inclined to take a different view on his petition." (emphasis added)

19. We have found that the case of accused no 2 stands on the same footing as accused nos. 1, 5 and 13 acquitted by this Court. The accused no.2 must get the benefit of parity. The principles laid down in the case of Harbans Singh will apply. If we fail to grant relief to accused no 2, the rights guaranteed to accused no. 2 under Article 21 of the Constitution of India will be violated. It will amount to doing





manifest injustice. In fact, as a Constitutional Court entrusted with the duty of upholding fundamental rights guaranteed under the Constitution, it is our duty and obligation to extend the same relief to accused no.2. Therefore, we will have to recall the order passed in the special leave petition filed by accused no.2."

18. Hence, the Criminal Misc. Petition is allowed. The criminal proceedings pending before learned Metropolitan Magistrate No.10, Jodhpur in Criminal Case No.1417/2018 arising out of FIR No.139/2016 registered at Police Station Nagauri Gate, District Jodhpur (West) for offences under Sections 420, 406 & 120B of the IPC are hereby quashed against the petitioner and co-accused, Sunil Baweja.

19. The stay application and pending application(s), if any, also stand disposed of.

(ANIL KUMAR UPMAN),J

125-Manoj Solanki/-

