NEUTRAL CITATION
2026:GUJHC:43195

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 4536 of 2014

With
CRIMINAL MISC.APPLICATION (DIRECTION) NO. 1 of 2026

In R/CRIMINAL MISC.APPLICATION NO. 4536 of 2014

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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VIRAL MUKUND SHAH
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR TEJAS BAROT, SR ADVOCATE with APURVA R KAPADIA(5012) for the Applicant(s) No. 1
MR ROHAN SHAH, APP for the Applicant(s) No. 1
MR SUNIL S JOSHI(2925) for the Respondent(s) No. 2

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 08/07/2026

JUDGMENT

1. The Hon'ble Supreme Court *vide* order dated 13.01.2026 passed in Criminal Appeal No. 293 of 2026 (@ SLP (Crl.) No. 2125/2024) set aside the judgment and order dated 15.09.2023 passed by the Coordinate bench of this Court, and remanded the matter back for fresh consideration after duly hearing the parties (more particularly the informant) of the FIR being I-C.R. No.17 of 2014 dated 14.03.2014, lodged before the Vasai Police Station, Mehsana for the offences punishable under Sections 406, 420 & 114 of the Indian Penal Code, 1860. Accordingly, the matter is

heard afresh.

2. The present application has been filed by the applicant - original accused under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) seeking quashing and setting aside the above-stated FIR.

3. The facts and circumstances giving rise to the filing of the present application are such that on 14.11.2005, a *tripartite* Agreement was entered between M/s. Gyscoal Alloys Limited, M/s. MSTC Limited, Calcutta and M/s. Transafe Services Limited, whereby M/s. Gyscoal Alloys Limited had shown the willingness to procure the material being H.S.S. and Stainless Steel from Kandla and Mundra Port from the respondent No. 2 -Company. As per the *tripartite* Agreement, the material sold by the respondent No. 2 - Company to the Company of the present applicant was required to be stored at a specified place to be provided by third party to the agreement viz. M/s. Transafe Services Limited. Pursuant to the said agreement, on 17.07.2010, a material of 477.610 Metric Tons worth Rs.9,57,00,000/- was sold by the respondent No. 2 - Company to the Company of the present applicant. Out of which, sum of Rs.1,87,00,000/- was paid by the Company of the present applicant and sum Rs.7,70,00,000/- was outstanding.

3.1 On 27.07.2012, the officers of the respondent No. 2 - Company visited the Company of the present applicant at Village: Ubkhal, Tal: Vijapur and found that the goods sold by the respondent No. 2 - Company to the Company of the present applicant were not present and no proper information as regard the goods was received by them. On 27.07.2012 itself one Mr. Suryakant, Branch Manager, Vadodara intimated to the officer in-charge Vasai Police Station with regards to illegal removal/appropriation of pledged materials by M/s. Gyscoal Alloys Pvt. Ltd and M/s. Transafe Services Ltd from the stockyard situated at Ubhkal, Kukurwada, Taluka Vijapur, District Mehsana with an intention to cheat M/s. MSTC Limited.

3.2 The present FIR came to be lodged with the aforesaid facts by respondent No. 2 herein before the Vasai Police Station, Dist: Mehsana and on the basis of the same, an offence punishable under Sections 406, 420 and 114 of the IPC came to be registered against the present applicant on 14.03.2014. Hence, the present application.

4. Learned Senior Counsel for the applicant has submitted that *tripartite* Agreement was entered into between the parties, as mentioned herein above and on the basis of the said *tripartite* Agreement; the said goods were procured by the Company of the present applicant from the respondent No. 2. In the FIR itself, it has been stated on the basis of the said *tripartite* Agreement, the Company of the present applicant regularly used to procure the material from the respondent No. 2 and the Company of the present applicant used to make payment for the goods procured from the respondent No. 2 within due course of time.

5. Learned Senior Counsel for the applicant has submitted that the *tripartite* Agreement in question contained an arbitration

clause and on the basis of the same, the respondent No. 2 -Company has already invoked the proceedings under the Arbitration and Conciliation Act, 1996 against the Company of the present applicant for resolving the dispute in question.

6. Learned Senior Counsel for the applicant has submitted that the respondent No. 2 - Company had also deposited the cheques issued by the Company of the present applicant towards security for recovering the amount involved in the present transaction and since the said cheques got dishonored, the respondent No. 2 - Company has also lodged a complaint against the Company of the present applicant under the provisions of Section 138 of the Negotiable Instruments Act. Thus, the first informant has already taken recourse to the other remedies available to it for recovery of the amount in question and since respondent No. 2 could not yield the desired result in the aforesaid proceedings, the present FIR has been lodged with an ulterior motive to pressurize the present applicant.

7. Learned Senior Counsel for the applicant has submitted that the *tripartite* Agreement on the basis of which the Company of the present applicant had procured goods from respondent No. 2, was entered into in the Year 2006, the goods were procured by the Company of the present applicant in the Year-2010 and the present FIR has been lodged in the Year-2014. Thus, the FIR in question has been lodged by the present applicant after considerably long time. The delay caused in lodging the FIR has not been explained satisfactorily by the first informant, and therefore, the said delay would vitiate the

entire proceedings.

7.1 Learned Senior Counsel for the applicant has submitted that considering the fact that the FIR has been lodged after the period of more than 4 years, would indicate that the same has been lodged as an afterthought and with an ulterior motive.

7.2 Learned Senior Counsel for the applicant has submitted that the Company of the present applicant was never entrusted with any property nor was there any intention on the part of the Company of the present applicant to cheat the first informant from the very inception and therefore, the ingredients for the offence under Sections 406 and 420 of the IPC are not made out. Therefore, he submitted to allow the present application and quash and set aside the impugned FIR.

8. Learned Senior Counsel for the applicant has relied upon the following judgments in support of his submissions:-

i) Kishan Singh (Dead) Through LRS. Vs. Gurpal Singh & Ors. Reported in (2010) 8 SCC 775.

ii) Manoj Kumar Sharma & Ors. Vs. State of Chhattisgarh & Anr. Reported in (2016) 9 SCC 1.

iii) Vinod Natesan Vs. State of Kerala reported in 2019(2) SCC 401.

iv) R.K. Vijayasarathy Vs. Sudha Seetharam reported in 2019 (16) SCC 739.

v) Deepak Gaba & Ors. Vs. State of Uttar Pradesh reported in 2023 (2) SCC 423.

vi) Bhikhubhai Govindbhai Patel and Anr. Vs. State of Gujarat 2026 SCC OnLine SC 915.

vii) Delhi Race Club (1940) Limited and Others Vs. State of Uttar Pradesh and Another (2024) 10 SCC 690.

9. Learned Senior Counsel Mr.Tejas Barot, assisted by Mr. Aditya Pandya, submitted that a plain reading of the complaint dated 27.07.2012 lodged before the Officer-in-Charge, Vasai Police Station, reveals allegations of dishonest misappropriation of the pledged goods belonging to the informant , MSTC Limited, by the applicant in connivance with GAL Transafe, with an intention to defraud the informant of its legitimate goods and money. It was submitted that the dishonest intention of the applicant is evident from the complaint itself. Merely because the Investigating Officer did not act upon the complaint dated 27.07.2012 and the FIR came to be registered subsequently on 14.03.2014, it cannot be said that there was any delay on the part of the informant in setting the criminal law into motion. Immediately upon discovering, during the inspection of the stockyard at Ubhkal, Kukarwada, Taluka Vijapur, District Mehsana that the pledged goods were missing from the applicant's custody the informant had informed the concerned police station by a written complaint/communication dated 27.07.2012.

10. Learned Senior Counsel further submitted that under the *tripartite* Agreement, both Transafe and GAL were custodians of the pledged goods on behalf of the informant . Upon noticing that the pledged goods were missing during the inspection on

27.07.2012, the matter was immediately reported to the police. It was, therefore, contended that the informant had acted promptly and cannot be accused of inaction.

11. Inviting the attention of the Court to Clauses 1(a) and 15.8 of the *tripartite* Agreement and Clauses 5.2 and 9 of the Memorandum of Agreement between MSTC and GAL, learned Senior Counsel submitted that the goods remained under the joint custody of Transafe and the applicant and could not have been removed from the stockyard without prior authorization from MSTC and receipt of the requisite payment. Neither GAL nor Transafe was authorized to take delivery or remove the pledged goods without MSTC's prior approval. The unauthorized removal of the goods, therefore, constituted a clear breach of the contractual arrangements. It was further submitted that the dishonour of the cheques issued by the applicant clearly indicates that, from the very inception, the applicant had no intention to honour its obligations and had entered into the transaction with the sole intention of cheating and defrauding the informant. Transafe, according to the learned Senior Counsel, actively participated in the transaction and was a party to the criminal conspiracy.

12. Learned Senior Counsel further submitted that merely because the informant had initiated proceedings under Section 138 of the Negotiable Instruments Act, arbitration proceedings, and winding-up proceedings, it cannot be contended that criminal proceedings are not maintainable. It was submitted that the informant had merely availed of all remedies available in law,

including the criminal remedy. The intention to initiate criminal action is evident from the written intimation dated 27.07.2012 and is reflected in the impugned FIR registered on 14.03.2014.

13. Learned Senior Counsel further relied upon the order dated 07.05.2025 passed by the Hon'ble Supreme Court in ***SLP (Crl.) Nos. 9574–9575 of 2019, MSTC Ltd. v. Bipin Kumar Vohra & Ors.***, whereby the judgment dated 12.07.2019 quashing the FIR lodged by MSTC Ltd. against the private respondents was set aside. It was submitted that the Hon'ble Supreme Court held that the High Court had virtually conducted a mini trial while exercising its jurisdiction to quash the proceedings, despite the investigation *prima facie* disclosing the commission of cognizable offences. The Hon'ble Supreme Court further observed that the High Court had erroneously relied upon an arbitral award founded on a compromise and, upon examining the material on record, concluded that the allegations warranted a thorough investigation. It is argued that in the present case also the applicant has parted with pledged goods and therefore, petition be rejected.

14. Learned Additional Public Prosecutor Mr. Rohan Shah contended that a bare reading of the FIR clearly indicates that the applicant had, from the very inception, a dishonest intention to cheat the informant. It was submitted that, in furtherance of such intention, the applicant Company procured the goods from respondent No. 2, dishonestly misappropriated the same, and failed to make payment therefor.

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14.1 Learned APP further submitted that the cheque issued by the applicant Company towards discharge of its liability was dishonoured, which further strengthens the prosecution case and prima facie demonstrates the dishonest intention of the applicant from the inception of the transaction. It was, therefore, contended that the essential ingredients of the offences punishable under Sections 406 and 420 of the IPC are prima facie made out against the Directors of GAL, and accordingly, the present petition deserves to be rejected.

15. Heard the learned advocates for the respective parties and perused the FIR as well as the material available on record.

16. Following undisputed facts emerge from the record:

(a) The Applicant Company, respondent No. 2 – informant, and M/s. Transafe Services Ltd. entered into a tripartite Agreement.

(b) Pursuant to the said tripartite Agreement, the applicant Company procured goods from the informant, and the pledged goods were kept in the custody of the applicant Company in terms of the agreement.

(c) In all, 477.610 metric tonnes of goods were procured by MSTC Ltd. at a total value of Rs.9.57 crore. Out of the said amount, the applicant Company paid Rs.1.87 crore, leaving an outstanding balance of Rs.7.70 crore payable by GAL.

(d) Cheques aggregating to Rs.12,04,90,351/- issued by the applicant Company towards discharge of its liability were dishonoured, pursuant to which the informant instituted proceedings under Section 138 of the Negotiable Instruments Act, being Criminal Case No. 13 of 2010, before the Chief Judicial Magistrate, Alipore, Kolkata. The fact that

arbitration proceedings as well as winding-up proceedings were also initiated between the parties is not in dispute.

17. It is the case of the informant that the applicant has committed offences punishable under Sections 406 and 420 read with Section 114 of the Indian Penal Code, 1860.

18. For ready reference, Sections 405, 406, 415 and 420 of the Indian Penal Code, 1860 are extracted hereunder:

Section 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'.

Section 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 415 – Cheating:

Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall *retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.*

<u>Section 420 – Cheating and dishonestly inducing delivery of property:</u>

Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

19. In order to constitute the offence of Criminal Breach of Trust, the following ingredients are required to be established:

(i) entrusting a person with property or with any dominion over property:

(ii) that person entrusted:
(a) dishonestly misappropriating or converting that property to his own use; or

(b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation;

(b-i) of any direction of law prescribing the mode in which such trust is to be discharged;

(b-ii) of any legal contract made, touching the

discharge of such trust.

20. The ingredients of an offence of Cheating are:

(i) there should be fraudulent or dishonest inducement of a person by deceiving him,

(ii) (a) the person so deceived should be induced to delivery any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

21. Thus, to constitute the offence of criminal breach of trust under Section 405 or the offence of cheating under Section 415 of the IPC, the essential ingredients of the respective offences must be satisfied. As held by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Limited (Supra)***, the existence of a dishonest or fraudulent intention is the sine qua non for both offences. In the case of cheating, such dishonest intention must exist from the very inception of the transaction. In paragraphs 40 to 43 of the said decision, the Hon'ble Supreme Court has observed as under:

"40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to

his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly *induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”*

22. It is alleged that the goods pledged in favour of the respondent No. 2 – informant Company were found missing from the stockyard situated at Ubhkal, Kukarwada, Taluka Vijapur, District Mehsana. However, it is an admitted position that although the informant addressed a written communication/ complaint dated 27.07.2012 to the Officer-in-Charge, Vasai Police Station, no investigation was undertaken at that point of time.

23. Even if the said communication/complaint is read conjointly with the impugned FIR dated 14.03.2014, both documents merely state that, during the inspection carried out on 27.07.2012 by the representative of MSTC Ltd., Vadodara, the pledged goods were found missing. Significantly, neither the communication/complaint nor the FIR specifies the exact quantity of goods allegedly found missing or dishonestly misappropriated by the applicant. The FIR records that goods worth Rs.9.57 crore were supplied, out of which Rs.1.87 crore had admittedly been paid by the applicant, leaving an outstanding amount of Rs.7.70 crore. It further records that cheques aggregating to Rs.12,04,90,351/- issued by the applicant were dishonoured, pursuant to which proceedings under Section 138 of the Negotiable Instruments Act were initiated.

24. The payment of Rs.1.87 crore is not disputed by the informant. However, there is no material to indicate the quantity of goods corresponding to the said payment and the balance of goods found missing. Equally, neither the FIR nor the earlier intimation discloses the quantity of goods allegedly found short. It is also not the informant's case that the entire stock of pledged goods had disappeared. The absence of these foundational particulars assumes significance while considering the allegations of criminal breach of trust and cheating.

25. It also emerges from the undisputed material that, under the *tripartite* Agreement, the goods were kept in the custody of M/s. Transafe Services Ltd. at the godown provided by the applicant. Mere allegations that goods were found missing, in the absence of particulars regarding the quantity allegedly misappropriated, would not by themselves constitute the offences of cheating or criminal breach of trust. The dispute essentially relates to the outstanding amount payable under the commercial transaction, for recovery of which the informant has already invoked proceedings under Section 138 of the Negotiable Instruments Act.

26. In the absence of any material demonstrating that the applicant had a dishonest intention from the very inception of the transaction, the essential ingredient of the offence of cheating is not prima facie established. Likewise, even assuming entrustment of the pledged goods, the allegations of criminal breach of trust remain unsupported by any specific assertion as to the quantity of goods allegedly misappropriated by the

applicant. The FIR is also silent on the aspect of fraudulent intention for cheating right from the beginning of the entering in to transaction. Both the communication/complaint dated 27.07.2012 and the impugned FIR dated 14.03.2014 are conspicuously silent on this vital aspect.

27. It is further the case of the applicant that, upon receipt of the informant's application dated 27.07.2012, a reply was submitted to the Officer-in-Charge, Vasai Police Station. It is an admitted position that no further action was taken by the police pursuant to the said communication/complaint.

28. It is also required to be noted that respondent No. 2 – Company had already initiated arbitration proceedings, proceedings under Section 138 of the Negotiable Instruments Act, Arbitration proceedings and winding-up proceedings way back in year 2010. Despite having addressed a complaint dated 27.07.2012, the respondent remained silent till 14.03.2014, when the impugned FIR came to be lodged on the basis of the allegations contained in the earlier complaint.

29. Even assuming that the FIR is not vitiated on the ground of delay, a plain reading of the complaint dated 27.07.2012 and the impugned FIR dated 14.03.2014 does not disclose the essential ingredients of the offences punishable under Sections 406 or 420 of the IPC. It is not in dispute that the goods were stored in the applicant's stockyard. However, the FIR clearly alleges goods being missing. The allegations remain vague and bereft of the necessary particulars to constitute the alleged offences.

30. The material on record further indicates that the FIR appears to have been lodged primarily because the cheque issued by the applicant was dishonoured and certain outstanding amounts were allegedly recoverable by the informant. This Court is conscious of the fact that the initiation of arbitration proceedings, proceedings under Section 138 of the Negotiable Instruments Act, or winding-up proceedings does not, by itself, bar the lodging of an FIR. However, the allegations contained in the complaint dated 27.07.2012 and the FIR dated 14.03.2014 falls short of the necessary ingredients of criminal breach of trust or cheating.

31. On the contrary, the minutes of the proceedings dated 09.03.2013 submitted by the Court Commissioner appointed by the learned Arbitrator reveal that goods were found lying outside the applicant's stockyard. The Commissioner, however, expressed his inability to weigh or take physical possession of the goods in view of the practical difficulties relating to weighing, transportation, and safe custody of the goods. Therefore, the said report does not support the allegation that the entire stock of pledged goods was missing. Rather, it demonstrates that disputes existed regarding the quantity, identification, and physical possession of the goods.

32. Such disputed questions of fact require adjudication on the basis of evidence and cannot be resolved through a criminal investigation. Even if the investigation is permitted to proceed, the investigating agency would not be in a position to determine

these contractual disputes. Thus, having regard to the facts of the present case, the dispute essentially arises out of the alleged non-fulfillment of obligations under the *tripartite* Agreement and the Memorandum of Agreement executed between MSTC and GAL Ltd., and is predominantly civil in nature.

33. Learned Senior Counsel for the informant has relied upon Clause 5.2 of the Memorandum of Agreement to contend that GAL was required to keep the material purchased on a high-seas-sale basis or as a facilitator under pledge with MSTC until lifting of the goods. However, a plain reading of Clause 9 of the Memorandum of Agreement makes it clear that GAL was obliged to make payment and take delivery of the entire material from the stockyard under the control of MSTC, its agent, or nominee, in accordance with the agreed schedule. Thus, the obligations of the parties arise out of the contractual terms, and the alleged breach thereof, by itself, does not give rise to the offences alleged in the impugned FIR.

33.1 GAL shall make payment and take delivery of the entire purchased material on their account from stockyard under control of MSTC/its agent/nominee as per the following schedule

By 30 days from BL/RR/LR date	*50% of the Material*
By 90 days from BL/RR/LR date	*Balance Quantity*

33.2 Even as per the Memorandum of Agreement, GAL was required to lift 50% of the material within 30 days from the date of the BL/RR/LR and the remaining quantity within 90 days therefrom. However, the core issue pertains to the goods allegedly pledged with the informant and stated to be missing. Significantly, while the complaint dated 27.07.2012 alleges that the pledged goods were missing, no such specific averment finds place in the impugned FIR dated 14.03.2014. This material omission assumes significance while examining whether the allegations disclose the commission of the offences alleged.

34. Learned Senior Counsel for the applicant has also invited the attention of this Court to Annexure-A2, a letter dated 05.09.2008 addressed to the Chairman of MSTC Limited, wherein the applicant complained of short supply and inferior quality of material procured by MSTC on its behalf. The letter further records that payments aggregating to approximately Rs.3.25 crore had been made during July and August, 2008, whereas material worth only about Rs.2.25 crore, measuring approximately 10,000 metric tonnes, was supplied under three delivery orders. Details of the excess payment were also enclosed with the said communication. The said document prima facie indicates that disputes regarding the quantity and quality of the goods had existed between the parties since 2008, which ultimately culminated in the complaint dated 27.07.2012 and the impugned FIR dated 14.03.2014.

35. The Apex Court in the case of ***Vinod Natesan (supra)*** has observed as under:

> "*The dispute between the parties at the most can be said to be the civil dispute and it is tried to be converted into the criminal dispute. Therefore, we are also of the opinion that continuing the criminal proceedings against the accused will be an abuse of process of law and, therefore, the High Court has rightly quashed the criminal proceedings. Merely because the original accused might not have paid the amount due and payable under the agreement or might not have paid the amount in lieu of one month Notice before terminating the agreement by itself cannot be said to be a cheating and/or having committed offence under Sections 406 and 420 of the IPC as alleged.*"

36. The Apex Court, in its recent judgment in case of ***Sarabjit Kaur Vs. State of Punjab reported in 2023 (5) SCC 360***, in Paragraph No.13 has observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

37. Learned Senior Counsel for the applicant has relied on the case of ***Kishan Singh (Dead) Through LRS. (supra)*** to butters the argument that lodging delayed FIR without any plausible explanation if fatal. In the cited case Hon'ble Supreme Court held as follows:

> "*In cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a*

coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to an abuse of the process of law in the facts and circumstances of the case."

38. Thus, in the case on hand as such it cannot be said that there is delay since the information was given on 12.07.2012 the day itself when the Manager visited the stockyard that he found goods missing however, in the facts of the case more particularly when dispute regarding quantity and quality has been raised right from the year 2008 and for the reasons stated herein above present FIR is quashed based on the facts of the case.

39. The next case relied by learned Senior Counsel for the applicant is ***Manoj Kumar Sharma & Ors. (supra)*** wherein it is held that delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. Though the ratio of the case is binding however, the facts in the cited case are totally different and the

FIR in the cited case came to be lodged after 5 (five) years of the closing of the case under Section 174 of the Code, a fresh FIR being No. 194 of 2005 was registered on the basis of anonymous letters received by Respondent No. 2 therein. Hence, cited case is of no help to the applicant as the facts on hand are totally different.

40. Learned Senior Counsel for the applicant has further relied upon the judgment in the case of ***R.K. Vijayasarathy (supra)*** to contend that after filing civil proceedings of Arbitration, winding up and also lodging complaint under section 138 of Negotiable Instrument Act, way back in the year 2010 the informant has lodged the present FIR which is not tenable. In the cited case Supreme Court held that the son of the appellants therein had instituted a civil suit for the recovery of money against the first respondent. The suit was pending. The first respondent had filed the complaint against the appellants six years after the date of the alleged transaction and nearly three years from the filing of the suit. The averments in the complaint, read on its face, did not disclose the ingredients necessary to constitute offences under the Penal Code and thus held that an attempt was made by the first respondent to cloak a civil dispute with a criminal nature despite the absence of the ingredients necessary to constitute a criminal offence and thus constitutes an abuse of process of court and quashed the FIR.

40.1 In the case on hand the complaint was lodged in year 2012 while the informant found goods pledged were missing and FIR is lodged in 2014 however, after initiating proceedings under the

Arbitration, Companies Act for liquidation and availing 138 compliant in the year 2010 has lodged complaint in year 2012 and FIR in year 2014. Thus, there is delay in lodging complaint as well as FIR and even the compliant and FIR prima face do not disclose the correct facts which are not controverted by the informant more particularly existence of shortage of goods as well as with regards the quality of goods.

40.2 Learned Senior Counsel for the applicant has further relied upon the judgment in the case of ***Deepak Gaba & Ors. (supra)*** to contend that even at the stage of issuance of a process in a private complaint the Court has to come to a *prima facie* conclusion that ingredients of invoking relevant provisions of IPC are made out. In the present case Criminal breach of trust is alleged which would, *inter alia*, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust. Hence, even if respondent no. 2 - informant is of the opinion that the monetary demand or claim is still payable, given the failure to prove the requirements of Section 405 of the IPC, an offence under the same section is not constituted. In the absence of factual allegations which satisfy the ingredients of the offence under Section 405 of the IPC, a mere dispute on monetary demand does not attract criminal prosecution under Section 406 of the IPC. In the present case as noted above though the applicant was under obligation by a *tripartite* Agreement and Memorandum of Agreement and was holding goods under trust, the *factum* of non-mentioning of amount and quantity of goods missing and by cleverly drafting complaint (Since FIR is completely missing the ingredients to attract any provisions of IPC) without disclosing such material fact is nothing but abuse of process of law.

40.3 Lastly, the learned Senior Counsel for the applicant has relied on the judgment in the case of ***Bhikhubhai Govindbhai Patel (supra)*** to contend that where delay is coupled with circumstances creating serious doubt about the genuineness of the prosecution, the proceedings may warrant quashing. In the present case even if the compliant as well as FIR is read as it is the ingredients of the offence of cheating punishable under Section 420 of the IPC are also absent *i.e.* to constitute the offence of cheating, there must exist deception, fraudulent inducement and consequential delivery of property coupled with dishonest intention at the inception of the transaction. There is no allegation in the complaint as well as FIR that respondent No. 2 delivered any property, money or valuable security to the applicant herein pursuant to deception or inducement and importantly, the material on record does not disclose dishonest intention at inception.

41. The learned advocate for the informant has relied on the order dated 07.05.2025 passed by the ***Hon'ble Supreme Court in SLP (Crl.) Nos. 9574–9575 of 2019, MSTC Ltd. v. Bipin Kumar Vohra & Ors.***, wherein, by judgment dated 12.07.2019 quashing the FIR lodged by MSTC Ltd. against the private respondents was set aside. It was submitted that the Hon'ble Supreme Court held that the High Court had virtually conducted

a mini trial while exercising its jurisdiction to quash the proceedings, despite the investigation *prima facie* disclosing the commission of cognizable offences. The Hon'ble Supreme Court further observed that the High Court had erroneously relied upon an arbitral award founded on a compromise and, upon examining the material on record, concluded that the allegations warranted a thorough investigation.

41.1 In the said case, despite the subsistence of the pledge agreement, SPS Steel Rolling Mills Ltd. had allegedly illegally removed and consumed 19,360.42 MT of pig iron valued at more than Rs.65 crore, which had been pledged in favour of MSTC Ltd., as reflected in the communication dated 27.11.2017. It was also alleged that SPS Steel Rolling Mills Ltd. falsely attributed the shortage of the pledged goods to wastage and inadvertent consumption. However, the facts of the present case are different inasmuch as though the applicant had pledged the goods the *factum* of quantity and/or amount of missing goods is conspicuously silent in the complaint as well as the FIR. There are no allegation to counter the shortage of goods as well as with regards to quality of goods raised by the applicant way back in year 2008. Thus, the cited case is of no help to the informant.

42. The Hon'ble Supreme Court in the case of ***Mahmood Ali v. State of U.P. reported in (2023) 15 SCC 488 : 2023 SCC On-Line SC 950 at page 498*** thus observed:

> *"12. We say so because once the complainant decides to proceed against the accused with an ulterior motive for*

wreaking personal vengeance etc. then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not.

13. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."

43. It emerges from the record that since the Company of the present applicant did not pay the amount due to the respondent No. 2, it had deposited the cheques issued by the Company of the present applicant in favour of the respondent No. 2 in its bank account for clearance and the said cheques were dishonored and respondent No. 2 herein has already lodged a complaint in that regard for the offence punishable under Section 138 of the Negotiable Instruments Act before the competent Court at Calcutta (Kolkata). Thus, the proceedings of

criminal nature are already pending, which are arising out of the very same transaction. The record also indicates that the present applicant has approached the High Court at Calcutta for quashing of the proceedings arising out of the said complaint and an interim-relief is operating in favour of the present applicant in the said proceedings. Arbitration proceedings as well as winding up proceedings are also initiated in the year 2010 and the informant has lodged compliant by cleverly drafting complaint dated 12.07.2012 and FIR dated 14.03.2014, the payment of Rs.1.87 crore and dispute of over payment in year 2008 along with dispute of quantity and quality in 2008 is also neither denied nor dislodged by the informant. More particularly, the facts as narrated in complaint dated 12.07.2012 are conspicuously missing from FIR dated 14.03.2014. The facts narrated in compliant dated 12.07.2021 and FIR dated 14.03.2014 suppresses number of facts to give pure civil dispute a criminal colour.

44. For the forgoing discussion and observations, this application succeeds and is, accordingly allowed. The impugned FIR being I-C.R. No. 17 of 2014, registered with Vasai Police Station, District: Mehsana, for the offences punishable under Sections 406, 420 and 114 of the Indian Penal Code, 1860, and all consequential proceedings arising therefrom, are hereby quashed and set aside *qua* the present applicant only. Rule is made absolute, accordingly.

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45. In view of the disposal of the main matter, Criminal Misc. Application No. 1 of 2026 does not survive and is accordingly disposed of.

(P. M. RAVAL, J)

MOHD SAIF ULLAH