IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC. APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 17867 of 2020

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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BHARATBHAI BABUBHAI VACHHETA & ANR.
Versus
NAVINCHANDRA MOHANLAL SHAH & ANR.

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Appearance:
MR RJ GOSWAMI(1102) for the Applicant(s) No. 1,2
MR. R. K. RAJPUT(6988) for the Respondent(s) No. 1
MR ROHAN SHAH, APP for the Respondent(s) No. 2

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

Date : 22/07/2026

ORAL JUDGMENT

1. This application under Section 482 of the Criminal Procedure Code, 1973 (the Code) is filed by the applicants praying to quash and set aside the FIR being C.R. No. 11191023201627 of 2020 dated 07.11.2020, registered with Vadaj Police Station, District: Ahmedabad City for the offence punishable under Sections 406,

420, 506(2), 120B and 114 of the Indian Penal Code, 1860 (IPC).

2. Brief facts of the case are that the applicants herein, between 01.05.2016 and 30.06.2017, purchased Coal from the *de facto* complainant worth Rs.58,80,639/- under different Bills, for which, the applicants allegedly paid only Rs.27,56,628/- by cheque and for the rest amount of Rs.31,24,011/- 21 cheques were given which, the applicants did not allow the *de facto* complainant to deposit in the bank during their validity period and thereafter, refused to pay the said amount also allegedly threatened the *de facto* complainant to death and thereby, committed fraud with the *de facto* complainant. On the said facts, FIR in question came to be lodged against the applicants.

3. Heard, learned advocate Mr. R. J. Goswami for the applicants, learned advocate Mr. R. K. Rajput for the *de facto* complainant and learned Additional Public Prosecutor Mr. Rohan Shah for the respondent – State.

4. The learned advocate for the applicants would submit that the applicants entered into purchase of Coal from the *de facto* complainant on an assurance being given that the Coal shall be imported from Indonesia and would be of optimum quality for industrial use and thus the applicants decided to purchase the Coal from the *de facto* complainant herein costing approximately Rs.4,500/- per tonne and thus, regular payment were also made on

various occasions.

4.1 It is further submitted by the learned advocate for the applicants that applicants decided to cross verify the quality of the Coal and sent it for the laboratory test therefrom, it was found that the *de facto* complainant was not supplying the Coal from Indonesia but it was found to be Indian Lignite brought from Bhavnagar, which was available at Rs.1,800/- per tonne and thus, the present complainant misrepresented the Coal as imported and thereby, cheated the applicants for which, an FIR being C.R. 11191023201623 of 2020 dated 05.11.2020 was also lodged before the Vadaj Police Station, Ahmedabad for the penal provision of Sections 406, 420 and 506(1) of the IPC against the *de facto* complainant and his son.

4.2 The learned advocate for the applicants would further submit that the applicants decided to stop purchasing Coal from the respondent – complainant and demanded Rs.22 lakh to be returned to the applicants for the loss sustained by them for supplying the low quality Coal. However, the *de facto* complainant filed a written complaint being Local Application No. 58/2018 dated 26.04.2018 before the Crime Branch, Ahmedabad and thereafter, one written complaint dated 02.08.2019 against the applicants before the Vadaj Police Station and one more written complaint dated 16.10.2019 before the DCP, Zone 1 Police Station, Ahmedabad. The said complaints were inquired, however, since it was found that the transaction in question is purely of commercial, Vadaj Police Station closed the application.

4.3 It is further submitted by the learned advocate for the applicants that period of the alleged incident is between 01.05.2016 and 30.06.2017 whereas, the first application was filed on 26.04.2018 and the FIR has been lodged on 07.11.2020 . Thus, there is a delay of approximately one year from the last alleged transaction and the FIR is lodged after approximately three and half years and thus, there is a huge delay which has remained unexplained, more particularly, when in the FIR against the present complainant, Charge-sheet is filed and the proceedings are at the stage of framing charge.

4.4 The learned advocate for the applicants submitted that dispute is purely civil in nature arising out of commercial transactions between the parties of sale and purchase of goods (Coal) and it is being given a criminal colour and as, no offence, as alleged in the FIR, has been committed by the present applicants which requires criminal prosecution against the applicants.

4.5 The learned advocate for the applicants would submit that had the intention of the applicants was to cheat the *de facto* complainant, they would not have paid a single penny towards the purchase but it is not the case and FIR itself reveals that on several occasions payments were made by the applicants to tune of

Rs.27,56,628/-.

4.6 Making such submissions, the learned advocate for the applicants would urge to allow this application.

5. *Conversely*, the learned advocate for the respondent No. 1 - *de facto* complainant would submit that the Test Report dated 19.07.2016 Testo Global Laboratories would reveal that the samples were not physically drawn by the representative of the said Test Laboratory and that the present complainant was also not present and also not informed while drawing such samples cannot be looked into, to see that the quality of the Coal supplied was of inferior quality more particularly, there is nothing to point out from the said Report that the Coal is not matching the global standards as prescribed.

5.1 He would further submit that the Test Reports are also not verified by the investigation agency in the present case and that the Test Reports are fabricated.

5.2 It is further submitted by the learned advocate for the respondent No. 1 that if the Coal was of sub-standard quality, the said sub-standard would have been returned, however, after utilizing / trading the said Coal, the contention that the quality of the Coal was of sub-standard is a dishonest contention for not making the outstanding payment to the tune of Rs.31,24,011/-.

5.3 The learned advocate would further submit that if the quality of the Coal was found to be of sub-standard in the year 2016, more particularly on 19.07.2016, however, the applicants kept on purchasing the goods from the *de facto* complainant even in the year 2017 which reflects that the contention of the applicants that the Coal was of sub-standard quality cannot be believed.

5.4 It is further submitted that two FIRs for the offences punishable under Sections 406 and 420 etc. IPC are also lodged before the Dani Limda Police Station and the Maninagar Police Station, respectively, and thus, the applicants are used to commit such types of acts, is also surfacing from record of the case.

5.5 The learned advocate for the respondent No. 1 - *de facto* complainant would further submit that it is for the first time in the year 2020, more particularly, on 05.11.2020 that an FIR against the present complainant came to be lodged before the Vadaj Police Station for the offences punishable under Sections 406, 420, 506(1) and 114 of the IPC with regard to the loss sustained by the present applicants because of the sub-standard quality Coal supplied and despite the alleged Test Report dated 19.07.2016.

5.6 The learned advocate for the *de facto* complainant would submit that Notice under the provisions of the Negotiable Instruments Act, 1881 (NI Act) was also refused by the present applicants and to substantiate the said aspect, he drew attention of the Court to Annexure 'F' at page 73 and 74 wherein, postal endorsement of "Refused" is there, and thus, it is stated that dishonest intention of the applicants is writ large on the face of record. Thus, it is argued that the applicants could have very well raised the contention of sub-standard quality of Coal in the reply to the notice issued by the present complainant under the NI Act but it is not done which reflects the conduct of the applicants and their dishonest intention from the inception.

5.7 Making above submissions, it is argued that this application may not be entertained and requested to be rejected.

6. Learned Additional Public Prosecutor for the respondent – State, drew attention of the Court to a statement of one witness from whom the complainant used to purchase the Coal and supply to the applicants, to point out that had there been any complaint with regard to the quality of the goods *i.e.* Coal, other purchasers would also have raised such dispute, however, the same quality of goods which was given to the present complainant and supplied to Morbi had received the payment from the present complainant full and final and therefore, the contention raised by the present applicants with regard to the sub-standard quality of good is dishonest contention to wriggle out criminal liability under the FIR and thus, argued to reject this application.

7. Prior to assessing the factual matrix on the touchstone of

criminal jurisprudence, it is apposite to reinforce the settled legal position governing the scope, ambit, and limits of the inherent jurisdiction vested under Section 482 of the Code. The jurisprudential parameters regulating the exercise of this extraordinary power have been authoritatively catalogued by Hon'ble Supreme Court in a long line of precedents, chief among them being the authoritative in the case of ***State of Haryana v. Bhajan Lal [AIR 1992 SC 604]***. Therein, Hon'ble Supreme Court crystallized seven distinct, illustrative categories of cases where judicial intervention under Section 482 of the Code or Article 226 of the Constitution is necessitated to secure the ends of justice and clip any abuse of the process of Court. The relevant portion of Paragraph 102 of the said judgment is extracted below:

> *"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 have given 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 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.*
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> > *(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 FIR 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."

7.1 Evaluating the present applications on the anvil of the principles enunciated in ***Bhajan Lal (supra)***, this Court has to determine whether the allegations in the FIR, even when accepted at face value, satisfy the essential statutory ingredients of Sections alleged in the crime in question. This Court must ensure that criminal machinery is not permitted to degenerate into an engine of harassment where liability under criminal law is completely absent.

7.2 From the facts of the case as well as from a perusal of the record, following salient aspects emerge:

> *i) the applicants and de facto complainant indulged in the business transaction with each other and the period in question for the transaction done is between 01.05.2016 and 30.06.2017;*
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> *ii) indisputably, they had commercial transaction with regard to purchase and sale of goods namely Coal;*
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> *iii) the de facto complainant does not dispute receipt of regular payments being made by the applicants towards purchase of Coal;*
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> *iv) it is also not in dispute by the de facto complainant that out of total Rs.58,80,639/- under different Bills, the applicants allegedly paid only Rs.27,56,628/- by cheque*
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> *v) that, for the rest amount also of Rs.31,24,011/-, 21 cheques were given by the applicants;*
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> *vi) FIR reveals that the applicants did not allow the de facto complainant to deposit said cheques in the bank to recover remaining dues and passed the time till the cheques' validity expires. Nonetheless, there is nothing on record to show that any*

force or pressure and/or criminal intimidation applied by the applicants, save and except bald statement, to stop the de facto complainant to deposit the cheques' in the bank;

v) on the contrary, it appears that the de facto complainant willingly has not deposited the said cheques, which shows the gravity of business transaction between them;

vi) so far as quality of goods (Coal) is concerned, the Court is not required to delve into the same as that is not an issue to be decided by the Court;

viii) there is an inordinate delay in lodging the FIR for which, no satisfactory, plausible explanation is forthcoming on record;

ix) indisputably, it is the business transactions between the parties and thus, the issue is purely of civil in nature, which has been given criminal cloak inasmuch as, had it been the intention of the applicants from inception to cheat the de facto complainant, the applicants would have not paid a single penny to the de facto complainant. In the case on hand, admittedly, the applicants have paid Rs.27,56,628/- by cheque and also, for the rest amount, 21 cheques had been issued;

x) it is also not in dispute that the applicants have also filed FIR against the de facto complainant in which, Charge-sheet has been laid and it is at the stage of framing charge;

7.3 From the above, it clearly transpires that neither of the ingredients of the offences alleged against the applicants, are satisfied.

7.4 At this juncture, if the decision of the Apex Court in Delhi Race Club (1940) Ltd. and Others v. State of Uttar Pradesh and Another, 2024 (0) AIJEL-SC 73929, wherein, the Court held:

"DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING

24. This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. Reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under:-

> *"9. The ingredients in order to constitute a criminal breach of trust are: (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 (I) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
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> *10. 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 deliver 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. "*

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

> ***In order to constitute a criminal breach of trust (Section 406 IPC): -***
>
> *1) There must be entrustment with person for property*

or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC)

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of *the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:

> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."*

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by

deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

31. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.

32. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

33. It has been held in State of Gujarat v. Jaswantlal Nathalal reported in (1968) 2 SCR 408 , "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter-see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429] . Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust – see Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing *over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment"".*

34. Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

> *"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression entrusted appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression tuts in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods.*

> *The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. [...]" (Emphasis supplied)*

35. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24 respectively of the Sale of Goods Act, 1930.

> *"20. Specific goods in a deliverable state. - Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.*
>
> *xxx xxx xxx*
>
> *24. Goods sent on approval or "on sale or return". - When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer -*
>
> *(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;*
>
> *(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time."*

36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Pradesh and Another : 2024 SCC OnLine SC 171 & Lalit Chaturvedi and Others v. State of Uttar Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another : 2023 SCC OnLine Jhar 301]

37. The case at hand falls in category No. 1 as laid in Smt. Nagawwa (supra) referred to in para 7 of this judgment.

38. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust.

39. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

40. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law."

8. The Apex Court in the decision in ***Madhavrao Jiwaji Rao Scindia & Another etc. v. Sambhajirao Chandrojirao Angre & Others Others, AIR 1988 SC 709***, the Court held as under:

> *"The legal position is well-settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage. A case of breach of trust may be both a civil wrong and criminal offence. But there would be certain situations where it would predominantly be a civil wrong and may or may not amount to criminal offence. The instant case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offence are wanting".* (Para 7)

9. Thus, while cheating and criminal breach of trust cannot co-exist in a given situation, it would predominantly appear to be a civil wrong and the ingredients of the criminal offence are wanting. At the most, the *de facto* complainant may resort to the civil remedies available to him under the law.

10. So far as Section 506(2) IPC is concerned, it is trite that the prosecution must prove:

> *(i) That the accused threatened some person.*
>
> *(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of some one in whom he was interested;*

> *(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat." A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above."*

10.1 A bare perusal of Section 506 of the IPC makes it clear that a part of it relates to criminal intimidation. Before an offence of criminal intimidation is made out, it must be established that the accused had an intention to cause alarm to the complainant. In the instant case, there is nothing on record to show that the applicants cause alarm to the complainant so as to attract the provision of this offence.

11. In view of the distinct absence of the essential ingredients required to attract Sections 406, 420, 506(2), 120B and 114 of the Indian Penal Code, 1860, forcing the parties to endure a full-fledged criminal trial, would be an exercise in futility, more particularly, the facts on hand constitute civil wrong lacking ingredients of afore-stated offences.

12. As a necessary corollary, this application succeeds and is allowed, accordingly. FIR being C.R. No. 11191023201627 of 2020 dated 07.11.2020, registered with Vadaj Police Station, District: Ahmedabad City for the offence punishable under Sections 406, 420, 506(2), 120B and 114 of the Indian Penal Code, 1860 with all consequential proceedings arising therefrom, is quashed and set

aside *qua* the present applicants only. Rule is made absolute, accordingly.

12.1 It goes without saying that the observations made herein above are solely for the purpose of deciding this application and shall not come in way in deciding any other pending litigation between the parties for the subject matter and the same shall take its own course in accordance with law.

13. **Direct service** is permitted.

[P. M. Raval, J.]

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