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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 7206 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL Sd/-

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Approved for Reporting	Yes	No
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BHAGABHAI RAMJIBHAI SAVALIYA
Versus
STATE OF GUJARAT & ANR.

==========

Appearance:
MR NIRAD D BUCH(4000) for the Applicant(s) No. 1
MRS. BHAVINI N. BUCH(5403) for the Applicant(s) No. 1
MR PREMAL S RACHH(3297) for the Respondent(s) No. 2
MR ROHAN SHAH, APP for the Respondent(s) No. 1

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

Date : 10/09/2026

ORAL JUDGMENT

1. By this application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners seek to invoke the inherent powers of this court praying to quash and set the FIR being C.R. No. 15 of 2017 registered with Patanvaav Police Station, Rajkot (Rural) on 04.03.2017 for the offence punishable under Ss. 306, 406 and 420 of the Indian Penal Code, 1860 read with Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ("Atrocities Act" for the sake of brevity).

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2. The facts narrated in the FIR in nutshell are to the effect that;

"I reside at the aforementioned address with my wife, my sons Rahul and Dhiraj (both unmarried), and my niece Hetalben (daughter of my brother Mohanbhai). About seven months ago, we took 57 bighas of land belonging to Bhagabhai Ramjibhai Savaliya (Caste: Patel, resident of Patanvav) on a sharecropping basis at a rate of 28 paise per share. In the current season, we planted groundnut and cotton, and the harvesting work was nearing completion. As the cotton crop matured, we harvested it repeatedly and divided our share after weighing it. About two months ago, after selling my share of the cotton, I had Rs. 60,000 in cash in hand. Our landowner needed money to present a Mameru (a traditional gift), but due to demonetization, he had deposited his old currency notes. He asked me to hand over the cash from my cotton sales, promising to return it once the remaining cotton was sold. Therefore, I gave Rs. 60,000/- to him at my home. Today morning at around 8:00 AM, my wife Hansaben, my son Rahul, my niece Hetalben, and I went to harvest cotton at the farm located in the Thaniyana outskirts (sim). We harvested about nine bundles of cotton. At around 2:00 PM, while we were picking cotton, the farm owner, Bhagabhai Ramjibhai Savaliya, arrived at the farm. At around 3:00 PM, my wife Hansaben went to fetch water from the water tank near the well. When she took a long time to return, I sent my niece Hetalben to check why her aunt (Mota Ba) had not

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returned. Upon reaching the well, Hetalben started screaming, whereupon my son Rahul and I rushed to the spot. We found my wife Hansaben vomiting. When I asked her about the cause, she told me that she had asked Bhagabhai to return our Rs. 60,000 and to weigh the harvested cotton. However, Bhagabhai refused to weigh the cotton or return the money, telling her, "Do whatever you can," and handed her a bottle of cotton pesticide, saying, "Here, drink this." Because he refused to return our money, she drank the pesticide given by him. I immediately called the 108 emergency ambulance service. Upon its arrival, my son Rahul and I took my wife in the ambulance to the Government Hospital in Upleta for treatment. The doctor there provided primary treatment and referred her to Junagadh for further medical care. Upon reaching the emergency department at Junagadh, the doctor examined her and declared her brought dead. The cause of this incident is that I had taken Bhagabhai Ramjibhai Savaliya's farm on a sharecropping basis for the current season and harvested the cotton crop. I had sold my share of the cotton and lent the proceeds of Rs. 60,000 to Bhagabhai. When my wife asked him to weigh today's cotton and return the lent amount of Rs. 60,000, he told her to "do whatever you can," handed her a bottle of pesticide, and compelled her to die. Consequently, she consumed the pesticide and passed away."

3. Learned advocate Mr. Nirad D Buch appearing for the applicant submits that the applicant is innocent and falsely booked

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as accused, though the Petitioner has not played any role in the commission of the offence. the contents of the FIR in question are completely absurd, false, frivolous, vague and vexatious. On bare reading of the FIR on hand, it clearly shows that even if the averments made therein are taken on its face value, the same do not constitute any offence, much-less the offence alleged against the petitioner herein. The uncontroverted allegations made in the FIR do not disclose the commission of any offence and make out a case against the petitioner.

4. Learned advocate appearing for the applicant has further submitted that the case on hand is nothing but an arm twisting technique, abuse of process of court and of law, malafide and that the same is filed with an ulterior motive of wrecking vengeance on the present petitioner and with a view to spite them due to private and personal grudge for not having succumbed to illegal, immoral, unjust and improper demands made by the First Informant. The impugned FIR is maliciously instituted with an ulterior motive. It appears that the deceased had some disputes with the first informant, because of which she consumed poison, and then, the petitioner has been booked so as to extort money from the petitioner under false pretext.

5. Learned advocate Mr. Buch appearing for the applicant further submits that the allegations made in the FIR are so absurd and inherently improbable on the basis of which no prudent

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person can ever reach a just conclusion that there is sufficient ground for proceeding against the applicant and having regards to the financial standing of the petitioner, it is improbable that he had borrowed such an meager amount from his labourer, and did not return the same. The fact must also be stated here that the none in the family of the petitioner was getting married and therefore, borrowing the amount for giving in marriage is also highly improbable story, and therefore, a glance at the financial background of the petitioner and his family members would clearly overshadow the allegations levelled against the petitioner.

6. Learned advocate appearing for the applicant would submit that a bare reading of the FIR does not make out an offence under S. 306, IPC and for an offence to be falling within the purview of Section 306 of IPC, elements required under Section 107 and 108 of the IPC must be present. But, on bare reading of the FIR, it does not disclose that the petitioner had intended that the wife of the first informant should commit suicide, or that the petitioner had created such circumstance in which, the wife of the first informant had no other alternate to end her life, Thus, in absence of element of instigation, it cannot be said that the petitioner has abated anything much less commission of offence.

7. Learned advocate for the applicant further submits that there is no allegation made to show existence of the ingredients of the aforementioned provision. It is not the case of the first informant

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that the petitioner was entrusted with any property, or had any dominion over any property which had been used for personal purpose in defiance of the trust or contract. At the best, it is a case of money lent to the petitioner, and not returned so far. Even if the allegations are taken to its face value, it does not make out a case of criminal breach of trust. The allegations of the first informant are therefore thoroughly baseless. Moreover, no act of inducement on the part of the petitioner has been alleged by the complainant. No allegation has been made that the petitioner had an intention to cheat the first informant from the very inception.

8. Learned advocate Mr. Buch appearing for the applicant submits that when the offence of S. 306, 406 or 420 of IPC are not made out and no other offence mentioned in the Schedule appended to the Amended Atrocities Act, 1989 are even allegedly made out, elements essential to constitute offence under S. 3(2)(va) of the Atrocities Act, 1989 are not made out. Moreover, the tool of offence under the Atrocities Act is pressed into service only to take an undue advantage of S. 18 of the said Act which bars exercise of powers under S. 438 of the Code of Criminal Procedure, 1973. Thus, he argued that impugned FIR is nothing but a sheer abuse process of law and thus, required to be quashed and set aside.

9. Per contra, learned advocate appearing for the respondent no.2 would submit that prima facie case is made out against the present applicant inasmuch not only he denied to return back the

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amount of Rs. 60,000/- of a rustic villager who was working at the field of the petitioner by sharing 28% shares of the crops was also handing over poisonous substance on the hands of the deceased and thus, the over act of the present petitioner would squarely fall within the four corners of Section 107 punishable under Section 306 of the Indian Penal Code.

10. Learned advocate for the respondent no.2 further submits that when the present complainant and his wife were working on the basis of share of crops, the petitioner was very well aware the fact to which caste the complainant and deceased belonged to, under such circumstances, offence under Section 3(2)(va) would also attract since the deceased and the complainant belonged to the scheduled caste/scheduled tribe, was well within the knowledge and therefore, Section 3(2)(va) of Atrocities Act has also prima facie made out, thus has argued to reject the present application.

11. Learned APP appearing on behalf of the respondent No.1-State has supported the arguments advanced by learned advocate appearing for the respondent no.2 and submitted that though Section 406 and 420 of IPC do not go together, however, the intention of the petitioner right from the beginning not to handover the amount of Rs,. 60,000/- is clearly made out, more particularly, in the fact that the petitioner even did not allow the deceased to carry out the work by stating that stop the work and that the crops will not be weighed and that you will also not get the

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amount and do whatever you want to do and under such circumstances, the intention of not returning the money and cheating by making false promise clearly surfaces prima facie from the record of the case, under circumstances also, has argued to reject present application.

12. Heard learned advocates for the respective parties.

13. This court has gone through the FIR and investigation papers. To attract the provisions of Section 306, the following principles are required to be taken into consideration namely;

> "306. Abetment of suicide. If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
>
> 107. Abetment of a thing- A person abets the doing of a thing, who-
> First.- Instigates any person to do that thing; or
> Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
> Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

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> Explanation 2.- Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act."

13.1 In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. Mere allegation of harassment of the deceased by another person would not suffice unless there be such action on the part of the accused which compels the person to commit suicide; and such an offending action ought to be proximate to the time of occurrence. Whether a person has abetted in the commission of suicide by another or not, could only be gathered from the facts and circumstances of each case. For the purpose of finding out if a person has abetted commission of suicide by another, the consideration would be if the accused is guilty of the act of instigation of the act of suicide. As explained and reiterated by Hon'ble Supreme instigation means to goad, urge forward, provoke, incite or encourage to do an act. If the persons who committed suicide had been hypersensitive and the action of the accused is otherwise not ordinarily expected to induce a similarly circumstanced person to commit suicide, it may not be safe to hold the accused guilty of abetment of suicide. But, on the other hand, if the accused by his acts and by his continuous course of conduct creates a situation which leads the deceased perceiving no other

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option except to commit suicide, the case may fall within the four corners of Section 306 IPC.

13.2 The question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused and if the acts and deeds are only of such nature where the accused intended nothing more than harassment or snap show of anger, a particular case may fall short of the offence of abetment of suicide. However, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Such being the matter of delicate analysis of human behaviour, each case is required to be examined on its own facts, while taking note of all the surrounding factors having bearing on the actions and psyche of the accused and the deceased.

13.3 Human mind could be affected and could react in myriad ways; and impact of one's action on the mind of another carries several imponderables. Similar actions are dealt with differently by different persons; and so far a particular person's reaction to any other human's action is concerned, there is no specific theorem or yardstick to estimate or assess the same. Each case is required to be dealt with on its own facts and circumstances.

13.4 In cases of alleged abetment of suicide, there must be a proof of direct or indirect act(s) of incitement to the commission of suicide. It has been held that since the cause of suicide particularly

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in the context of the offence of abetment of suicide involves multifaceted and complex attributes of human behaviour, the court would be looking for cogent and convincing proof of the act(s) of incitement to the commission of suicide. Mere allegation of harassment of the deceased by another person would not suffice unless there is such action on the part of the accused which compels the person to commit suicide. Further, such an offending action ought to be proximate to the time of occurrence. It was further clarified that the question of mens rea on the part of the accused in such cases would be examined with reference to the actual acts and deeds of the accused. If the acts and deeds are only of such nature where the accused intended nothing more than harassment or a snap-show of anger, a particular case may fall short of the offence of abetment of suicide, however, if the accused kept on irritating or annoying the deceased by words or deeds until the deceased reacted or was provoked, a particular case may be that of abetment of suicide. Thus, each case is required to be dealt with its own facts and circumstances.

13.5 Instigation or incitement on the part of the accused person is the gravamen of the offence of abetment to suicide. However, it has been clarified on many occasions that in order to link the act of instigation to the act of suicide, the two occurrences must be in close proximity to each other so as to form a nexus or a chain, with the act of suicide by the deceased being a direct result of the act of

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instigation by the accused person.

14. Tested on the principles as started hereinabove, if the facts of the case are considered, the averments in the FIR would clearly reveal that what has been stated by the deceased to the complainant is dying declaration, based on which the FIR came to be lodged. The direct act attributed to the present petitioner is handing over the poison in the hands of the deceased is clearly surfacing from averments made in the FIR. The action of the petitioner is proximate to the time of occurrence which would clear reveal the mensrea on the part of the accused and is in close proximity, which forms a chain with the act of suicide by the deceased is the direct result of the act by the present petitioner/original accused of handing over the poison which would clearly amount to instigation and which would squarely fall within the definition of Section 106 attracting the penal provision under Section 306 IPC.

15. As far as Section 406 and 420 of IPC are concerned, the Hon'ble Supreme Court in case of Delhi Race Club (1940) Ltd vs The State Of Uttar Pradesh, reported in 2024 SCC Online SC 2248 has held as follows;

> "25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420IPC) have specific ingredients. In order to constitute a criminal breach of trust (Section 406IPC): -
>
> 1) There must be entrustment with person for property or dominion over the property, and

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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 underSection 420IPC, 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 underSection 405of IPC, punishable underSection 406of 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 inSection 415of the IPC, punishable underSection 420of 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 mis-appropriation. 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 inHari 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 underSection 420Penal Code, 1860. For the purpose of the present appeal, we would assume that the various

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> allegations of fact which have been made inthe 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 underSection 420Penal 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 thetransaction 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 mislead-

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> ing 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."

16. As per the principle laid down in the afore-stated judgment, both the offences can not coexist simultaneously what is required to be seen as to whether either the offence under Section 406 criminal breach of trust or Section 420 cheating has been made out.

17. In the facts of the case, there is no entrustment with the petitioner of property nor is there any dominant for property and thus the question of entrustment is not made out as even as per informant, sum of Rs. 60,000/- was given to the accused as loan. As far as offence punishable under Section 420 of IPC is concerned, the essential ingredients would be deception of any person either by making misleading misrepresentation whereby the complainant was induced to deliver property (namely Rs.60,000/-) thus whatever to be seen is whether the petitioner intended to defraud or was there any dishonest intention and in case of cheating, such intention to defraud or dishonest intention must be there from the very beginning. If the allegation in the FIR are perused, whatever has been stated is when he asked the petitioner to return Rs. 60,000/- and to weigh the harvested cotton, the petitioner refused

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to weigh the cotton or even to return the money, and has also told the deceased to do whatever you can by handing over the bottle of pesticide, under such circumstances, prima facie, the intention of not returning the money can be seen from the factum of not allowing the deceased to even weigh the cotton bundles and also refusal to pay the money, coupled with the fact of handing over the poison to the deceased, would prima facie reveal such intention of making false or misleading representation that he would return the money as and when the cotton is sold induced the complainant to deliver Rs. 60000/- and having denied to pay and even weigh the cotton bundles would also prima facie reveal that right from the beginning or inception, the applicant had no intention to return the money falling within the four corners of Section 420 of IPC.

18. As far as attracting penal provisions of Section 3(2)(va) of the Atrocities Act is concerned, what has been provided by the legislature is who are not being a member of Scheduled Caste or Schedule Tribe commits any offence specified in the schedule against the person or property knowing that such person is a member of Scheduled Caste or Schedule Tribe or such property belongs to such member, shall be punishable with the punishment as specified under the Indian Penal Code for such offences and shall also be liable to fine. On bare perusal of the schedule appended to the Act, neither Section 406, 420 or 306 of Indian Penal Code are enumerated, under the circumstances, provision of

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Section 3(2)(va) of the Atrocities Act is not attracted as not falling within the schedule offence. Under the said circumstances, Section 3(2)(va) of the Atrocities Act is also quashed and set aside.

19. Hence, to secure the ends of justice, it would be appropriate to quash and set aside the impugned FIR qua Section 406 of IPC and Section 3(2)(va) of the Atrocities Act only.

20. Thus, present application is partly allowed. The impugned FIR qua Section 406 of IPC and Section 3(2)(va) of the Atrocities Act as well as all consequential proceedings initiated in pursuance of Section 406 of IPC and Section 3(2)(va) of the Atrocities Act only are hereby quashed and set aside.

20.1 Interim relief, if any, granted earlier stands vacated.

20.2 Rule is made absolute to the aforesaid extent.

Sd/-
(P. M. RAVAL, J)

FURTHER ORDER:

20. Learned advocate after rejection has requested to extend the protection of no coercive steps on the ground that since 2017, the stay is operating in favour of the petitioner which came to be modified by order 06.08.2019 of no coercive steps by modifying the original order of ad-interim relief dated 20.03.2017 and permitting the Investigating Officer to proceed with the investigation has thus prayed to continue the said no coercive step for a period of four weeks. For the reasons stated herein above,

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when the petition itself is partly allowed qua Section 406 of IPC and Section 3(2)(va) of the Atrocities Act only, the request is not acceded to, thus rejected.

Sd/-
(P. M. RAVAL, J)

K. S. DARJI

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