2026:HHC:13551

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MMO No. 1268 of 2025

Reserved on: 18.3.2026

Date of Decision: 27.4.2026.

Small Industries Development Bank of India (SIDBI)

.... Petitioner

Versus

Valence Healthcare & ors. .... Respondents

Coram

Hon'ble Mr Justice Rakesh Kainthla, Judge.

Whether approved for reporting?[1] ***No.***

For the Petitioner : Mr Naveen Awasthi, Advocate.

For the Respondents : None.

Rakesh Kainthla, Judge

The present petition is directed against the order dated 21.3.2024, passed by learned Chief Judicial Magistrate Shimla (learned Trial Court) vide which the application filed by the petitioner under Section 156 (3) of CrPC was dismissed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned trial Court for convenience)*.

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[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

2. Briefly stated, the facts giving rise to the present petition are that the complainant filed an application under Section 156 (3) of the CrPC for appropriate direction to Station House Officer (SHO), State CID, Shimla to register an FIR for the commission of offences punishable under Section 206, 403, 406, 420, 421 and 425 of the Indian Penal Code (IPC) read with Section 120B of the IPC. It was asserted that the complainant is a corporation established under the Small Industrial Development Bank of India. Accused No. 1 is a partnership firm having its manufacturing unit at Plot Nos. 8 and 9, New Industrial Area, Bain Attarian, P.O. Kanrori, Tehsil Indora, District Kangra, H.P. Accused Nos. 2 and 3 are active partners of Accused No. 1. Accused No.1 was engaged in the manufacturing of tablets, capsules and ointments and their marketing. Accused Nos. 2 and 3 approached the complainant, representing that they had set up a unit for pharmaceutical formulation, tablets, capsules, ointment and other allied products. The complainant sanctioned financial assistance of ₹270.00 lacs. An amount of ₹143.00 lacs was sanctioned under the Direct Credit Scheme for the purchase/acquisition of additional plant and machinery. A sub-debt of ₹127.00 lacs was sanctioned under the Growth, Capital,

and Equity Assistance for MSME (GEMS) Scheme. The loan under the direct credit scheme was secured by way of hypothecation of the plant, machinery, equipment, tools, spares, accessories and all other assets acquired/proposed to be acquired under the project. Subservient charge was extended on the Sub Debt Loan. Accused Nos. 1 to 3 created the first charge by way of hypothecation vide Deed of Hypothecation dated 30.8.2013 and the subservient charge by Deed of Hypothecation dated 24.10.2013. The accused informed the complainant about the purchase of various machinery and submitted the bills. The officials of the complainant also visited the factory sites on 19.9.2014 and 27.6.2015. The accused defaulted in the repayment of the loan, and an application was filed before the Debt Recovery Tribunal, Ahmedabad, on 24.1.2017 for the recovery of the dues. A demand notice was issued to the accused on 28.9.2017 under the SARFAESI Act, 2002. The complainant asked the accused to arrange the inspection. The accused represented that they would not be able to depute their representative to the factory on 8th August, 2016 and they requested the complainant to postpone the visit. Subsequent efforts to visit the factory and verification of assets could not materialise as the unit was closed, and the

accused did not respond to the demand for a visit. The officials of the complainant visited the factory on 16.5.2018 and found that the premises where the hypothecated assets were to be kept were locked. The accused told the official of the complainant that the machines were placed in the adjoining premises. However, the machines were not available, and only smaller components of some pharma machinery were found in bad condition. These did not match the photographs of the financed machines. The accused had removed the hypothecated machines after the complainant had taken steps to recover the loan. A complaint was made to the Superintendent of Police for taking action, but no action was taken. Hence, an application was filed before the learned Trial Court for referring the complaint to the police for investigation.

3. Learned Trial Court held that the jurisdiction under Section 156(3) Cr.P.C. cannot be exercised mechanically and is to be exercised judicially. The allegations in the complaint disclosed a civil dispute. The complainant had availed the remedies under the civil law, and there was no justification for invoking the criminal law. Hence, the complaint was dismissed.

4. Being aggrieved by the order passed by the learned Trial Court, the complainant has filed the present petition asserting that the learned Trial Court erred in dismissing the application. The application disclosed the commission of cognizable offences. Learned Trial Court erred in holding that the pendency of the civil proceedings would bar the initiation of criminal proceedings. The police were bound to record the FIR, and the Magistrate was bound to direct the police to register the FIR in case of their failure. Hence, it was prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

5. Mr Naveen Awasthi, learned counsel for the petitioner, submitted that the learned Trial Court erred in dismissing the application. The averments of the complaint disclosed the commission of a cognizable offence, and the learned trial Court erred in dismissing the application. Therefore, he prayed that the present petition be allowed and the order passed by the learned Trial Court be set aside.

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6. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

7. The allegations in the FIR show that the accused had hypothecated the property to the complainant to secure the loan. Subsequently, the property was not available, and according to the complainant, an offence punishable under Section 406 of the IPC is made out. It was laid down by the Hon'ble Supreme Court in ***Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736: 2006 SCC OnLine SC 747***, that taking away hypothecated property by the borrower will not constitute criminal misappropriation because, in hypothecation, the borrower retains the ownership and possession. It was observed at page 752:-

> **"25.** The question is whether there is "entrustment" in a hypothecation? Hypothecation is a mode of creating security without the delivery of title or possession. Both ownership of the movable property and possession thereof remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note: we are not expressing any opinion on the question whether possession can be taken by the creditor, without or with recourse to a court of law). The creditor may also have the right to claim payment from the sale proceeds (if such proceeds are identifiable and available). The following definitions of the term "hypothecation"

in ***P. Ramanatha Aiyar's Advanced Law Lexicon [3rd Edn. (2005), Vol. 2, pp. 2179 and 2180***] are relevant:

> "*Hypothecation.*—It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated assets whenever called upon to do so. The charge of hypothecation is then converted into that of a pledge, and the lender enjoys the rights of a pledgee.
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> 'Hypothecation' means a charge in or upon any movable property, existing or future, created by a borrower in favour of a secured creditor, without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes a floating charge and crystallisation of such charge into a fixed charge on movable property. [Borrowed from Section 2(*n*) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002.]"

But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee (creditor) to the hypothecator (debtor) in a hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obviously, there cannot be any entrustment by the creditor.

26. The question directly arose for consideration in ***Central Bureau of Investigation v. Duncans Agro Industries Ltd. [(1996) 5 SCC 591: 1996 SCC (Cri) 1045].*** It related to a complaint against the accused for offences of criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover a credit facility and that the said goods were disposed of by the debtor. It was contended that the

disposal of the goods amounted to criminal breach of trust. Negativing the said contention, this Court, after stating the principle as to when a complaint can be quashed at the threshold, held thus: (SCC pp. 607-08, para 27)

> "[A] serious dispute has been raised by the learned counsel ... 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 'trust' 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. *In*

the instant case, a floating charge was made on the goods by way of security to cover a credit facility. In our view, in such a case for disposing of the goods covering the security against a credit facility, the offence of criminal breach of trust is not committed." (emphasis supplied)

27. The allegations in the complaints are that the aircraft and the engines fitted therein belong to NEPC India, and that a charge was created thereon by NEPC India in favour of IOC by way of hypothecation to secure repayment of the amounts due to IOC. The terms of hypothecation extracted in the complaints show that the ownership and possession of the aircraft continued with NEPC India. Possession of the aircraft, neither actual nor symbolic, was delivered to IOC. NEPC India was entitled to use the aircraft and maintain it in a good state of repair. IOC was given the right to take possession of the hypothecated aircraft only in the event of any default as mentioned in the hypothecation deed. It is not the case of IOC that it took possession of the aircraft in exercise of the right vested in it under the deed of hypothecation. Thus, as the possession of the aircraft remained all along with NEPC India in its capacity as the owner and the deed of hypothecation merely created a charge over the aircrafts with a right to take possession in the event of default, it cannot be said that there was either entrustment of the aircrafts or entrustment of the dominion over the aircrafts by IOC to NEPC India. The very first requirement of Section 405, that is, the person accused of criminal breach of trust must have been "entrusted with the property" or "entrusted with any dominion over property", is, therefore, absent.

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31. We accordingly hold that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of "criminal breach of trust" as defined

> under Section 405 IPC can be made out against NEPC India.

8. A similar view was taken by this Court in ***H.P. Financial Corporation vs. Bindu Tyre Retreading and Vulcanising Works (25.07.2011 - HPHC): MANU/HP/1506/2011,*** and it was held:-

> "8. Otherwise, the Respondent also remained himself to be owner of the property alleged to have been hypothecated. At no point in time was its custody transferred to the Corporation, and the Corporation did not entrust the hypothecated items to the Respondent. The complainant has miserably failed to prove this essential ingredient by leading cogent evidence. Therefore, in these circumstances, the complainant has failed to prove the offence charged against the Respondent, which only creates a civil liability."

9. Therefore, the allegations do not show the criminal breach of trust.

10. The complaint was also filed for the commission of offences punishable under Sections 420 and 421 of the IPC. It was laid down by the Hon'ble Supreme Court in ***Lalit Chaturvedi v. State of U.P., 2024 SCC OnLine SC 171,*** that the same act or transaction cannot result in an offence of cheating and criminal breach of trust. It was observed: -

> "**10.** The chargesheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions that hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. ***Wolfgang Reim* v. *State*, *2012 SCC OnLine Del 3341*; *Mahindra and Mahindra Financial Services Ltd. v. Delta Classic (P.) Ltd.*, *(2011) 6 Gau LR 604*; *Mukesh Sharma v. State of Himachal Pradesh*, *2024: HHC: 35***. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case, entrustment is missing; in fact, it is not even alleged. It is a case of the sale of goods. The chargesheet does refer to Section 506 of the IPC, relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us that these allegations of threats, etc., have been made only with the intent to activate police machinery for the recovery of money.

11. This position was reiterated in ***Delhi Race Club (1940) Ltd. v. State of U.P.*, *(2024) 10 SCC 690***, and it was held that an offence of cheating and criminal breach of trust is independent and distinct. They cannot coexist similarly in the same set of facts. It was observed: -

> "**43.** There is a distinction between criminal breach of trust and cheating. For cheating, the criminal intention is necessary at the time of making a false or misleading representation, i.e. since inception. In a 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 misappropriates the same. Whereas, in the case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both offences cannot co-exist simultaneously.
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> **55.** It is high time that police officers across the country are imparted proper training in law to understand the fine distinction between the offence of cheating vis-à-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins, and they cannot survive without each other."

12. Therefore, it is impermissible to file the complaint for the commission of offences punishable under Sections 403, 406, 420 and 421.

13. The complaint was also filed for the commission of offences punishable under Section 206 and 421 of the IPC. Both of these offences are non-cognizable. Section 156(3) provides the jurisdiction to the Magistrate to order an investigation when a cognizable offence is disclosed. Since these Sections disclose a non-cognizable offence, the Magistrate could not have ordered the investigation of the offences punishable under Sections 206 and 421 of the IPC.

14. The complaint was also filed for the commission of an offence punishable under Section 425 of the IPC, which defines

the mischief and does not provide any offence; therefore, no action could have been taken under Section 425 of the IPC.

15. The allegations in the complaint are that the property was dishonestly removed and not that the property was damaged; therefore, the essential ingredient of mischief is not satisfied.

16. Learned Trial Court had rightly held that the complainant had initiated recovery proceedings and was using the criminal machinery to pressurise the respondent. It was laid down by the Hon'ble Supreme Court in ***Anukul Singh v. State of U.P., 2025 SCC OnLine SC 2060,*** that criminal proceedings cannot be used for enforcing civil rights. It was observed: -

> **17.** This Court has, in a long line of decisions, deprecated the tendency to convert civil disputes into criminal proceedings. In ***Indian Oil Corporation v. NEPC India Ltd. (2006) 6 SCC 736***, it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters, and that such misuse amounts to abuse of process. xxxxx
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> > 10. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time-consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes, also leading to an irretrievable breakdown of

> marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."

18. Similarly, in ***Inder Mohan Goswami v. State of Uttaranchal (2007) 12 SCC 1: AIR 2008 SC 251***, it was emphasised that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In ***Ganga Dhar Kalita v. State of Assam (2015) 9 SCC 647***, this Court again reiterated that criminal complaints in respect of property disputes of a civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

19. Most recently, in ***Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh 2025 INSC 869***, this Court disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil. The Court cautioned High Courts not to direct settlements in such matters but to apply the settled principles in Bhajan Lal. The following paragraphs are relevant in this context:

> "9. What we have been able to understand is that there is an oral agreement between the parties. The Respondent No. 4 might have parted with some money in accordance with the oral agreement, and it may be that the appellant, herein, owes a particular amount to be paid to the Respondent No. 4. However, the question is whether, prima facie, any offence of cheating could be said to have been committed by the appellant.
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> 10. How many times are the High Courts to be reminded that to constitute an offence of cheating,

there has to be something more than prima facie on record to indicate that the intention of the accused was to cheat the complainant right from the inception. The plain reading of the FIR does not disclose any element of criminality.

11. The entire case is squarely covered by a recent pronouncement of this Court in the case of "***Delhi Race Club (1940) Limited v. State of Uttar Pradesh", (2024) 10 SCC 690***. In the said decision, the entire law as to what constitutes cheating and criminal breach of trust, respectively, has been exhaustively explained. It appears that this very decision was relied upon by the learned counsel appearing for the petitioner before the High Court. However, instead of looking into the matter on its own merits, the High Court thought fit to direct the petitioner to go for mediation and that too by making payment of Rs. 25,00,000/- to the 4th respondent as a condition precedent. We fail to understand why the High Court should undertake such an exercise. The High Court may either allow the petition, saying that no offence is disclosed or may reject the petition, saying that no case for quashing is made out. Why should the High Court attempt to help the complainant recover the amount due and payable by the accused? It is for the Civil Court or Commercial Court, as the case may be, to look into a suit that may be filed for recovery of money or in any other proceedings, be it under the Arbitration Act, 1996 or under the provisions of the IB Code, 2016.

12. Why the High Court was not able to understand that the entire dispute between the parties is of a civil nature.

13. We also enquired with the learned counsel appearing for the Respondent No. 4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for the

> recovery of money to date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of the process of law.
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> 14. We could have said many things, but we refrain from observing anything further. If the Respondent No. 4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse to criminal proceedings.
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> 15. We are quite disturbed by the manner in which the High Court has passed the impugned order. The High Court first directed the appellant to pay Rs. 25,00,000/- to the Respondent No. 4 and thereafter directed him to appear before the Mediation and Conciliation Centre for the purpose of settlement. That's not what is expected of a High Court to do in a Writ Petition filed under Article 226 of the Constitution or a miscellaneous application filed under Section 482 of the Criminal Procedure Code, 1973, for quashing of FIR or any other criminal proceedings. What is expected of the High Court is to look into the averments and the allegations levelled in the FIR, along with the other material on record, if any. The High Court seems to have forgotten the well-settled principles as enunciated in the decision of this Court in the "***State of Haryana v. Bhajan Lal", 1992 Supp (1) SCC 335***.

17. Hon'ble Supreme Court held in ***Kapil Agarwal vs. Sanjay Sharma, (2021) 5 SCC 524: 2021 SCC OnLine SC 154*** that criminal proceedings cannot be permitted to become a weapon of harassment. It was observed:

> "18.1. As observed and held by this Court in a catena of decisions, inherent jurisdiction under Section 482 CrPC and/or under Article 226 of the Constitution is designed to achieve a salutary purpose that criminal proceedings ought not to be permitted to degenerate into weapons of harassment. When the Court is satisfied that criminal proceedings amount to an abuse of process of law or that it amounts to bringing pressure upon the accused, in the exercise of inherent powers, such proceedings can be quashed."

18. In the present case, an attempt is being made to convert a civil dispute regarding the payment of money into a criminal case, which is impermissible.

19. Therefore, the order passed by the learned Trial Court does not suffer from any illegality justifying the interference of this Court in the exercise of the inherent jurisdiction.

20. In view of the above, the present petition fails, and it is dismissed.

21. The observations made herein before shall remain confined to the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

27th April, 2026
(Chander)