IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

2026:PHHC:201250

CRM-M-35010-2019 (O&M)

Parminder Kaur **...Petitioner**

Versus

State of Punjab and another **...Respondents**

Sr. No.	Particulars	Details
1	The date when the judgment is reserved	12.11.2026
2	The date when the judgment is pronounced	17.11.2026
3	The date when the judgment is uploaded on the website	17.11.2026
4	Whether only operative part of the judgment is pronounced or full judgment is pronounced	Full
5	The delay, if any, of the pronouncement of full judgment, and reasons thereof	Not applicable

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R.S. Bajaj, Advocate
for the petitioner.

Ms. Ruchika Sabherwal, Senior DAG, Punjab.

None for respondent No.2.

MANISHA BATRA, J.

1. The present petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (for short *'Cr.P.C.'*) for quashing of the order dated 15.01.2018 (Annexure P-5) passed by the Court of learned Judicial Magistrate First Class, Jalandhar in case FIR No.67 dated 20.06.2016 registered under Sections 420/34 IPC at Police Station Bhogpur, District Jalandhar (Rural), whereby charges under Sections 406/34 of the Indian Penal Code, 1860 (for short *'IPC'*) have been framed against the petitioner, as well

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as of the order dated 17.05.2019 (Annexure P-6) passed by the Court of learned Sessions Judge, Jalandhar, whereby the revision petition filed by the petitioner against the said order had been dismissed.

2. Brief facts of the case relevant for the purpose of disposal of this petition are that the aforementioned FIR (Annexure P-4) was registered on the basis of a written complaint submitted by respondent No.2-Gurnam Singh to the Senior Superintendent of Police, Jalandhar (Rural) against the petitioner, one Rajesh Puri (a Food and Civil Supply Inspector) and one Gurpal Singh Dhillon, alleging therein that the petitioner had approached him for selling her land measuring 8 kanals 9 marlas situated at Village Jalalabad. A written agreement to sell was executed and the petitioner received a sum of Rs.11 lakh at that time. The total sale consideration was stated to be Rs.20 lakh per acre and the sale deed was to be executed on or before 05.04.2016. The complainant claimed to have remained present before the Sub Registrar on 05.04.2016 but the petitioner did not turn up for execution of the sale deed. It was further alleged that the other two accused were proclaiming in public that they had purchased the property from the petitioner. On these allegations, the complainant sought registration of an FIR for the offences of criminal breach of trust and cheating.

3. The complaint was inquired into by the then SHO, Police Station Bhogpur. In his report dated 16.04.2016, he recorded that the petitioner had executed an agreement to sell dated 03.03.2016 in favour of the complainant before Sub Tehsil Bhogpur after receiving Rs.11,00,000/-, with Sarabjit Singh and Jeet Singh Lambardar as attesting witnesses. He further recorded that the petitioner did not come present on 05.04.2016 and had, in connivance with

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Gurpal Singh Dhillon, already executed a sale deed of the land in favour of some other person. The petitioner did not appear in the inquiry. On the basis of this report, the FIR was registered under Sections 420/34 IPC against the petitioner and Gurpal Singh. Gurpal Singh was arrested on 23.06.2016 and was released on bail on the next day. The petitioner was granted interim bail by the Court of learned Additional Sessions Judge, Jalandhar on 22.07.2016 and she joined the investigation. Nothing was found against Rajesh Puri. After completion of investigation, challan (Annexure P-10) was presented against the petitioner and Gurpal Singh.

4. Vide order dated 15.01.2018 (Annexure P-5), learned trial Court, on finding a *prima facie* case, framed charges under Sections 406/34 IPC against both the accused. They filed separate revision petitions, which were decided by learned Sessions Judge, Jalandhar by a common order dated 17.05.2019 (Annexure P-6). The revision petition of Gurpal Singh was allowed and he was discharged, since there was no material connecting him with the sale deed executed by the petitioner. The revision petition of the petitioner was, however, dismissed. Learned Sessions Judge observed that the petitioner had agreed to sell the land to the complainant vide agreement to sell dated 03.03.2016 and had received Rs.11 lakh as earnest money, but she executed a sale deed dated 30.03.2016 regarding the same land in favour of Jeewan Puri, wife of Ramesh Puri, for a consideration of Rs.13,80,000/-. It was further observed that the question whether the petitioner had the intention to cheat the complainant from the very inception could be ascertained only after evidence. It was also noticed that the petitioner had not denied her signatures on the

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agreement to sell and had rather alleged that the same were obtained by misrepresentation.

5. It may also be noticed that respondent No.2 had filed a civil suit (Annexure P-1) for specific performance of the agreement to sell dated 03.03.2016 against the petitioner, which was instituted on 06.04.2016. In the plaint, the sale consideration was stated to be Rs.26 lakh per acre. The petitioner contested the suit by filing her written statement (Annexure P-2) and issues were framed on 20.02.2018 (Annexure P-3). The suit has since been dismissed with costs by learned Civil Judge (Junior Division), Jalandhar vide judgment dated 30.10.2023 (Annexure P-7).

6. Notice of motion was issued in the present petition on 27.08.2019 and respondent No.2 was impleaded as a party on the oral request of learned counsel for the petitioner. Vide order dated 10.10.2022, the trial Court was directed to adjourn the proceedings beyond the date fixed by this Court. The interim order has continued since then. The State has filed a reply as well as a status report dated 14.09.2024. No reply has been filed on behalf of respondent No.2. On 12.11.2026, when the matter was finally heard, there was no representation on behalf of respondent No.2 despite the matter having been passed over twice. Hence, this Court has heard the arguments of learned counsel for the petitioner and learned State counsel.

7. Learned counsel for the petitioner has argued that the petitioner is a widow who has been made a victim at the hands of respondent No.2, who is a travel agent operating from Bhogpur. It is further submitted that he had agreed to send petitioner’s son Jaskaranjit Singh to America for a sum of Rs.22 lakh. However, the son of the petitioner was sent to Mexico, where he was

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detained in a camp. Respondent No.2 then demanded Rs.5 lakh for getting him released. After receiving the said amount, he obtained the signatures of the petitioner on two stamp papers and some blank papers on the pretext that the same were required for the release of her son. These papers were later converted into the alleged agreement to sell. The petitioner had moved a complaint dated 08.04.2016 against respondent No.2, but no action was taken on gthe same. Learned counsel has further argued that the petitioner had already entered into an agreement to sell the same land with Jeewan Puri on 01.09.2014 and the sale deed was executed in pursuance thereof. Hence, there was no occasion for her to enter into any agreement with respondent No.2 on 03.03.2016. It is next argued that respondent No.2 first availed of his civil remedy and thereafter got the FIR registered only to put pressure upon the petitioner. The dispute is purely civil in nature and the civil suit filed by respondent No.2 has also been dismissed on merits. Learned counsel has also argued that no ingredient of criminal breach of trust is made out, since no property was ever entrusted to the petitioner. The Courts concerned have passed the impugned orders in a mechanical manner and the continuation of the proceedings is an abuse of the process of law. On these grounds, learned counsel has prayed for setting aside of the impugned orders. To buttress his arguments, learned counsel for the petitioner has relied upon the authority cited as ***Radheyshyam and others v. State of Rajasthan and another, 2024 SCC OnLine SC 2311***.

8. *Per contra*, learned State counsel has opposed the petition by relying upon the reply and the status report filed on behalf of the State. It is argued that the petitioner was the owner of the land and had agreed to sell it to

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the complainant vide agreement to sell dated 03.03.2016 after receiving Rs.11 lakh as earnest money. However, instead of honouring the agreement, she executed a sale deed regarding the same land in favour of Jeewan Puri, which shows her intention to cheat the complainant from the very inception. Learned State counsel has further argued that the petitioner has not denied her signatures on the agreement to sell and a person is presumed to have signed a document after understanding its contents unless fraud or misrepresentation is proved. The plea of the petitioner that her signatures were obtained by misrepresentation can be tested only during trial. It is further submitted that only a *prima facie* case is to be seen at the stage of framing of charge and the evidence cannot be evaluated at this stage. Hence, the Courts concerned have rightly framed the charge. Even otherwise, the petition is not maintainable as the petitioner has already availed the remedy of revision before the Court of Sessions. Therefore, it is urged that the petition is liable to be dismissed.

9. This Court has heard the rival submissions at considerable length, besides going through the material placed on record.

10. At the outset, it may be noticed that the petitioner has already availed of the remedy of revision against the order framing charge, which has been dismissed by learned Sessions Judge. A second revision at her instance is barred under Section 397(3) Cr.P.C. However, this bar does not take away the inherent power of this Court under Section 482 Cr.P.C. to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The Hon'ble Supreme Court in ***Krishnan and another v. Krishnaveni and another, (1997) 4 SCC 241*** has held that, even after the dismissal of a revision by the Court of Session, the High Court can interfere in exercise of its inherent power where it

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finds failure of justice or abuse of the process, though such power is to be exercised sparingly. The relevant observations are as under:

> "...The power of the High Court, therefore, is very wide. However, High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). **However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its juridical process or illegality of sentence or order.**"

11. Reliance can also be placed upon ***Dhariwal Tobacco Products Limited and others v. State of Maharashtra and another, (2009) 2 SCC 370***, wherein the same view has been reiterated. Hence, the present petition is maintainable and the question is whether the present case calls for the exercise of such power.

12. The FIR in question was registered under Sections 420/34 IPC. However, learned trial Court has framed charge against the petitioner only under Sections 406/34 IPC and no charge has been framed for the offence of cheating. The co-accused of the petitioner has already been discharged. The order under challenge is, thus, the order framing charge under Sections 406/34 IPC. At the same time, the trial Court has the power under Section 216 Cr.P.C. to alter or add to the charge at any time before the judgment is pronounced. Therefore, the first question is whether the material collected by the prosecution, taken at its face value, discloses the ingredients of criminal breach

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of trust punishable under Section 406 IPC. Before the proceedings arising out of the FIR can be quashed, this Court has also to be satisfied that the same material does not disclose the offence of cheating punishable under Section 420 IPC.

13. The distinction between criminal breach of trust and cheating has been explained by the Hon'ble Supreme Court in ***Delhi Race Club (1940) Limited and others v. State of Uttar Pradesh and another, (2024) 10 SCC 690***. It has been held that criminal breach of trust requires entrustment of property belonging to another person, whereas cheating requires a dishonest intention at the very inception of the transaction. The two offences are mutually exclusive and cannot coexist in respect of the same transaction on the same set of facts. It has further been held that once there is a sale, Section 406 IPC goes out of the picture. The relevant observations are as under:

> "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

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> 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.
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> 31. ... Once there is a sale, Section 406 of the IPC goes out of picture. ...
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> 43. ... Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. ...”

14. Reference can also be made to ***Rikhab Birani and another v. State of Uttar Pradesh and another, 2025 INSC 512***, wherein the Hon'ble Supreme Court deprecated the failure to distinguish between a civil wrong in the form of breach of contract and the offences under Sections 420 and 406 IPC. The relevant observations are as under:

> “15. During the last couple of months, a number of judgments/orders have been pronounced by this Court, especially in cases arising from the State of Uttar Pradesh, deprecating the stance of the police as well as the courts in

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> failing to distinguish between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offence under Sections 420 and 406 of the IPC, the ingredients of which are quite different and requires mens rea at the time when the contract is entered into itself to not abide by the terms thereof.
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> 21. ... "36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out."

15. Reference can also be made to ***S.N. Vijaylakshmi and others v. State of Karnataka and another, 2025 INSC 917***, facts of which are quite similar to those of the present case. In the said case, the complainant had filed a civil suit for specific performance of an agreement to sell and, soon thereafter, an FIR under Sections 406 and 420 IPC was also registered. The Hon'ble Supreme Court held that the accused were not entrusted with the property, since they were its owners with title. Hence, Section 406 IPC could not be invoked. It was further held that, where the element of criminality is absent and civil proceedings have already been instituted on the same issue, continuation

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of the criminal proceedings would amount to abuse of the process of the Court.

The relevant observations are as under:

> "39. From a bare reading of Section 405 of the IPC, criminal breach of trust would arise only in a situation where the accused in any manner has been entrusted with property, or with any dominion over property and dishonestly misappropriates or converts the same to his own use, or dishonestly uses or disposes of that property. Here, it is not a case where the accused were entrusted with the subject property. The subject property belongs to them and they had rights over it as owners with title. Thus, the very foundation for invoking Section 406 of the IPC falls to the ground.
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> 42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations qua the same person(s), the answer stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, ipso facto, is not sufficient ground to quash an FIR, as pointed out, inter alia, in P Swaroopa Rani v M Hari Narayana, (2008) 5 SCC 765 and Syed Aksari Hadi Ali Augustine Imam v State (Delhi Admn.), (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must prima facie disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a

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> stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. ...”

16. The judgment relied upon by learned counsel for the petitioner in ***Radheyshyam’s case (supra)*** is directly on the point. In that case, an advance of Rs.11 lakh had been paid under an agreement to sell. On the refusal of the owners to execute the sale deed, the purchaser lodged an FIR under Sections 420 and 406 IPC besides filing a suit for specific performance. The Hon'ble Supreme Court held that the amount paid towards the sale consideration was not entrusted to the owners and that mere refusal to register the sale did not amount to cheating. The relevant observations are as under:

> “9. ... Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant's right to resort to the remedies provided under civil law by filing a suit for specific performance.
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> 12. In the present case, the appellants were not entrusted with any property by respondent no.2 - complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing

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> to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out."

17. Coming to the facts of the present case, the entire case of the prosecution, as reflected in the FIR, the inquiry report and the challan (Annexure P-10), is that the petitioner agreed to sell her own land to the complainant, received Rs.11 lakh as earnest money and later sold the land to another person. The land always belonged to the petitioner and was never handed over to her by the complainant to be held for him. The amount of Rs.11 lakh, even as per the complainant, was paid as part of the sale consideration under the agreement to sell. Nothing in the prosecution material shows that this amount was handed over to the petitioner to be held for the complainant or to be dealt with in a particular manner on his behalf. The payment was, thus, made in the course of an ordinary transaction of sale and did not create any fiduciary relationship between the parties. However, this should not as the money paid as earnest can never be the subject of entrustment. The finding is confined to the material collected in the present case, which does not show entrustment of any property to the petitioner within the meaning of Section 405 IPC. Therefore, in view of the law laid down in ***Delhi Race Club's case (supra)***, ***Rikhab Birani's case (supra)***, ***S.N. Vijaylakshmi's case (supra)*** and ***Radheyshyam's case (supra)***, the very foundation of the charge under Section 406 IPC is missing.

18. With due respect, the Courts concerned have not dealt with the essential ingredient of entrustment, which is the foundation of an offence under

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Section 406 IPC. The order framing charge (Annexure P-5) merely records that a *prima facie* case under Sections 406/34 IPC is made out, without identifying the property allegedly entrusted to the petitioner. Learned Sessions Judge, while upholding the charge, observed that the intention of the petitioner to cheat the complainant from the very inception could be ascertained only after evidence. Such consideration pertains to the offence of cheating and cannot take the place of the requirement of entrustment. Hence, the approach of the Courts concerned is not in consonance with the law laid down in ***Delhi Race Club's case (supra)***.

19. Coming to the offence of cheating, the dishonest or fraudulent intention has to exist at the time when the promise or representation is made. A mere failure to keep a promise or a subsequent breach of contract does not amount to cheating. In the present case, the complaint of respondent No.2 does not allege any false representation made by the petitioner at the time of the agreement to sell dated 03.03.2016. His grievance is that the petitioner did not turn up on 05.04.2016 and that the land had been sold to another person. The inquiry report and the challan (Annexure P-10) proceed on the same footing. On the date of the alleged agreement, the petitioner was admittedly the owner of the land and the sale deed in favour of Jeewan Puri was executed only thereafter on 30.03.2016. In ***S.N. Vijaylakshmi's case (supra)*** also, the owners, after entering into an agreement to sell with the complainant, had taken money from a third party for transferring the same property and had conveyed it to one of the accused. Even so, the Hon'ble Supreme Court held that Section 420 IPC was not attracted. As in ***Radheyshyam's case (supra)***, it is not the case of the complainant that he was deceived into paying the earnest money. Thus, on

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the prosecution's own case, the allegations disclose at best a breach of the agreement to sell and not a dishonest intention at the inception of the transaction.

20. Another aspect of the matter may also be noticed. Respondent No.2 had availed of his civil remedy by filing a suit for specific performance, which was instituted on 06.04.2016 itself, a day before his complaint to the police. The suit has been dismissed with costs vide judgment dated 30.10.2023 (Annexure P-7). As per the said judgment, the plaintiff could not produce his passbook to show payment of Rs.11 lakh to the petitioner. The two attesting witnesses of the agreement did not appear for their cross-examination and their examination-in-chief was not read in evidence. In his cross-examination, the plaintiff admitted that an agreement to sell dated 01.09.2014 had already been executed between the petitioner and Jeewan Puri regarding the same land. He has not sought any relief against the sale deed executed in favour of Jeewan Puri.

21. It is also relevant to notice that the co-accused of the petitioner has already been discharged by learned Sessions Judge, there being no material connecting him with the sale deed in question. Nothing was found against Rajesh Puri during the investigation either. The prosecution material does not disclose participation of any other person with the petitioner in furtherance of a common intention. Hence, Section 34 IPC is also not attracted. The petitioner has been facing these proceedings since the year 2016, whereas the allegations, even if accepted in their entirety, do not disclose the ingredients of the offences alleged against her. Allowing such proceedings to continue would serve no useful purpose and would amount to an abuse of the process of the Court.

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22. In view of the above discussion, this Court is of the considered opinion that the prosecution material, taken at its face value, does not disclose the commission of the offence punishable under Section 406 IPC or under Section 420 IPC by the petitioner. Consequently, the order dated 15.01.2018 (Annexure P-5) framing charge under Sections 406/34 IPC against the petitioner and the order dated 17.05.2019 (Annexure P-6) dismissing her revision petition cannot be sustained. Accordingly, the present petition is allowed. The impugned orders dated 15.01.2018 and 17.05.2019 are set aside and all the proceedings arising out of FIR No.67 dated 20.06.2016 registered under Sections 420/34 IPC at Police Station Bhogpur, District Jalandhar (Rural) are hereby quashed *qua* the petitioner.

23. Pending miscellaneous application(s), if any, stand disposed of.

17.11.2026 **(MANISHA BATRA)**
Waseem R. Ansari **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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