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2026:GUJHC:66536

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 17844 of 2015

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No

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CHANDRABHAN DULHANOMAL TANWANI (PETITION ABATED QUA APPLICANT 1) & ANR.
Versus
MOHAN NATTHUNAL DHANWANI & ANR.

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Appearance:
ABATED for the Applicant(s) No. 1
MR DR BHATT(165) for the Applicant(s) No. 2
MR P P KASVALA(2404) 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 : 21/10/2026

JUDGMENT

1. The petitioner herein has invoked Section 482 of the Code of Criminal Procedure, 1973, seeking to quash and set aside Enquiry Case No. 13 of 2012 pending before the learned Metropolitan Magistrate, Court No. 17, Ahmedabad.

2. The facts in nutshell of the case of the complainant is that:

2.1 The complainant and the applicant-accused are related to each other. The deceased applicant No. 1 herein was the maternal uncle, and

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applicant No. 2 herein is the cousin brother of the complainant-Respondent No. 1 herein.

2.2 That the applicants, since they wanted to sell their shop and the complainant was interested in purchasing the same, agreed to enter into a sale transaction. Accordingly, an agreement to sell came to be executed between the parties for the sale and purchase of the shop. The consideration was fixed at Rs.14,00,000/-, out of which the complainant paid Rs.7,50,000/- to the applicants herein on different dates. However, thereafter, the applicants did not execute the sale deed and, despite repeated requests made by the complainant, did not honour the said agreement to sell. Being fed up with the same, the complainant thereafter filed a civil suit for specific performance before the competent Civil Court. However, thereafter, on 21.03.2011, the applicants-accused allegedly went to the house of the complainant, where an exchange of words took place regarding the sale transaction. Thereafter, the applicants allegedly threatened to kill the complainant and categorically denied executing the sale deed as well as refunding the amount. Thus, on the basis of the aforesaid facts, the complaint in question came to be filed by the complainant before the competent Court.

3. Learned advocate Mr. Dhruvil Singh, appearing for the applicant, is present online. Learned advocate Mr. D.R. Bhatt, appearing for the applicant, at the outset, submits that, in view of the order dated 25.09.2026, the petition qua petitioner No. 1 has stood abated. Therefore, the present petition is pressed only qua petitioner No. 2.

4. Learned advocate Mr. D.R. Bhatt further submits that respondent

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No. 1 herein, the original complainant, had, prior to lodging the present private complaint, instituted Regular Civil Suit No. 264 of 2011 before the learned City Civil Judge, Ahmedabad, seeking specific performance of a contract and, inter alia, praying for a permanent injunction against petitioner No. 1. However, the learned Chamber Judge, Court No. 17, City Civil and Sessions Court, Ahmedabad, vide judgment and order dated 30.06.2012, dismissed the injunction application. Aggrieved thereby, the complainant preferred Appeal from Order No. 263 of 2012 along with Civil Application No. 8050 of 2012 before this Court, which ultimately came to be dismissed vide judgment and order dated 17.12.2013.

5. Learned advocate further submits that the dispute relates to a transaction alleged to have taken place on 06.02.2004, in respect of which the civil suit was instituted in the year 2011. He further submits that an application was also preferred before the Police Commissioner on 22.03.2011, pursuant to which the present Enquiry Case No. 13 of 2012 came to be instituted by respondent No. 1, the original complainant.

6. Learned advocate further submits that another FIR, being C.R. No. II-3129 of 2013, was lodged at Sardarnagar Police Station, Ahmedabad, for the offences punishable under Sections 506(2) and 294(b), read with Section 114 of the Indian Penal Code. However, while preferring the said complaint, no allegation was made regarding the commission of offences under Sections 406 and 420 of the Indian Penal Code. It is, therefore, submitted that the allegations subsequently made in the present complaint are nothing but an afterthought, intended to

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pressurize the present petitioner and give a criminal colour to a dispute that is purely civil in nature. Accordingly, learned advocate submits that the present application deserves to be allowed.

7. Lastly, learned advocate submits that the basic ingredients of the alleged offences are conspicuously absent from the complaint and that the learned Trial Court ought not to have taken cognizance on the basis of such vague and ambiguous allegations. It is, therefore, submitted that the impugned proceedings reflect non-application of mind on the part of the learned Trial Court and, accordingly, the present application deserves to be allowed.

8. *Per contra*, learned advocate Mr. P.P. Kasvala, appearing for respondent No. 1 – original complainant, and learned APP Mr. Rohan Shah, appearing for the State, would submit that merely because a civil suit has been instituted, it cannot be said that no criminal proceedings can be initiated, as both proceedings can proceed simultaneously. It is further submitted that the learned Trial Court, having found a prima facie case upon perusal of the complaint, has issued process against the present petitioner. Therefore, at this initial stage, no interference is warranted in the exercise of the inherent jurisdiction of this Court. Accordingly, both learned advocates have urged that the present application be rejected.

9. Having heard the learned advocates for the respective parties, the only issue that arises for consideration of this Court is whether, in the peculiar facts and circumstances of the case, the proceedings of Enquiry

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Case No. 13 of 2012 warrant interference by this Court or not.

10. Having gone through the private complaint in Enquiry Case No. 13 of 2012, the application at Exhibit 7 seeking injunction in Regular Civil Suit No. 264 of 2011, the order dated 30.06.2012 passed therein by the learned Chamber Judge, Court No. 17, City Civil and Sessions Court, Ahmedabad, and the judgment dated 17.12.2013 passed in Appeal from Order No. 263 of 2012, it clearly transpires that the dispute is purely civil in nature and that a criminal colour has been given to the same by lodging the present private complaint.

11. In this regard, reliance is placed on the judgment of the Hon'ble Supreme Court in ***Radheyshyam & Ors. v. State of Rajasthan & Anr., 2024 INSC 1064***.

> *"9. From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the appellants. A commercial transaction took place between the parties during which the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. 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.*
>
> *10. Additionally, the appellants have also been accused of committing*

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the offence of criminal breach of trust under Section 406, IPC. This offence is defined under Section 405, IPC as follows: "Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes off that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

11. For an offence punishable under Section 406, IPC, the following ingredients must exist: i. The accused was entrusted with property, or entrusted with dominion over property; ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

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 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."

12. Tested on the anvil of the aforesaid principles and keeping in view the judgment of the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh***, reported in **(2024) 10 SCC 690**, it is evident that, in the facts of the present case, the essential

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ingredients of the alleged offences are required to be examined. It cannot be said that there was any entrustment of property by respondent No. 1 – original complainant to the present petitioner. The amount allegedly paid by the complainant to the petitioner was towards the agreement to sell entered into between the parties, which, by itself, cannot be construed as entrustment of property. Thus, the mere refusal by the petitioner to execute a sale deed in favour of the complainant would not amount to misappropriation of the advance payment, in the absence of entrustment of property. Consequently, the essential ingredients of the offence of criminal breach of trust are not made out. The advance payment towards the sale consideration pursuant to the agreement to sell gives rise to a dispute of a purely civil nature, for which the complainant may avail appropriate remedies under civil law by instituting a suit for specific performance, a remedy which the complainant has already availed.

13. However, in view of the decision of the Hon'ble Supreme Court in Delhi Race Club (1940) Ltd. v. State of U.P., (2024) 10 SCC 690, ...

Difference between criminal breach of trust and cheating

"35. This Court in its decision in ***S.W. Palanitkar v. State of Bihar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129***] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10).

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"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.

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."

36. 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

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(*b*) Dishonestly used or disposed of the property or wilfully 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. Palanitkar* [*S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).

Similarly, in respect of an offence under Section 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 person 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 [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

37. 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.

38. 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 405IPC, punishable under Section 406IPC, is

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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 415IPC, punishable under Section 420IPC.

39. 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 [Hari Prasad Chamaria v. Bishun Kumar Surekha****, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082] as under : (SCC p. 824, para 4)*

> *"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 of the 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 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent 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 by the respondents to him at or before the time he paid the money to them and that at the time the 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 for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."*

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

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

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

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or

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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."

14. In the result, the present application is allowed. Enquiry Case No. 13 of 2012 pending before the learned Metropolitan Magistrate, Court No. 17, Ahmedabad and all consequential proceedings arising therefrom are hereby quashed and set aside.

14.1 Rule is made absolute accordingly. Direct service is permitted.

15. It goes without saying that the observations made herein shall not come in the way of the concerned Civil Court, and the Civil Court shall proceed with the suit independently and in accordance with law, without being influenced by the observations made in this order.

(P. M. RAVAL, J)

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