IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 1771 of 2022

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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MAHENDRAKUMAR SOMABHAI PRAJAPATI & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR EKANT G AHUJA(5323) for the Applicant(s) No. 1,2
MR JIGAR G GADHAVI(5613) for the Respondent(s) No. 2
MR. KANVA ANTANI, APP for the Respondent(s) No. 1

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

Date : 01/07/2026

ORAL JUDGMENT

1. In view of the fact that petitioner No.1 - Mahendrabhai Somabhai Prajapati has expired on 10.02.2026, the present petition qua the petitioner No.1 stands abated.

2. Rule is fixed forthwith. Learned Additional Public Prosecutor Mr. Kanva Antani for the respondent – State and learned advocate Mr. Jigar G. Gadhavi for the complainant waive service for the respective parties.

3. The petitioners before this Court invoking Section 482 of the Code of Criminal Procedure, 1973, for quashing and set aside the

FIR No.11206043210966 of 2021, dated 22.12.2021, lodged before the Mehsana Taluka Police Station for the offences punishable under Sections 406, 420 and 114 of the Indian Penal Code, by the respondent No.2 herein namely Niravkumar Shantilal Pandya.

4. The case of the complainant in nutshell are as under:

4.1. It is the case of the complainant that accused No.1 – Mahendrabhai Somabhai Prajapati, is complainant's friend since past ten years. That, it is also the case of the complainant that he wanted to purchase a house and hence he had a talk about the same with accused No.1 and accused No.1 informed complainant that one site of his friend is going on and if complainant wants to purchase house, then they can go and meet the builder. It is the case of the complainant that he along with accused No.1, Ashokkumar Ramanlal Mehta, Jayantibhai Ishwarlal Patel, all had gone on 20.11.2017 to meet the builder Piyushbhai Patel, who was constructing the scheme. It is further the case of the complainant that he had made deal for house on Plot No.33 in scheme named August Kutir.

4.2. It is the case of the complainant that sale consideration of Rs.51,51,000/- was agreed and Piyushbhai Patel, Partner in August Kutir was handed over cheque No.195127 to 195139 drawn on complainant's account. It is the case of the complainant that out of these cheques Piyushbhai Patel had given cheque NO.s195127 to 195130 to the original owner occupants on 20.11.2017, and on deposit of these cheques amount was received by the original owners' occupants, thereafter original owner occupants had executed the sale deed no.10749/2017.

4.3. It is further the case of the complainant that remaining signed blank cheques No.195131 to 195132 and cheques No.195134 to 195139 remained with the builder and whenever complainant demanded the unused cheques then assurance was given that the said cheques were lying misplaced somewhere in the office and when the cover will be found it will be handed over and also stated that we are builders and we never misuse the cheques, such assurance was given.

4.4. It is the case of the complainant that he had given Rs.14,00,000/- to accused No.1 as loan and towards the repayment of the said amount complainant was issued cheque No.624503 drawn on Indus Land Bank, Mehsana Branch dated 30.04.2019. That on deposit of this cheque it dishonored and therefore complainant had instituted proceedings under the provisions of Section 138 of the Negotiable Instruments Act and Criminal Case No.4375 of 2019 is pending against the accused No.1.

4.5. It is the case of the complainant that in order to escape from the proceedings instituted by the complainant and in order to see to it that complainant withdraws these proceedings against accused No.1. Accused No.1 was aware that 13 cheques of complainant were lying with Piyushbhai. Thus, accused No.1 procured two cheques out of these 13 from Piyushbhai (builder) who is friend of accused No.1 and wrong amounts were filled in these cheques to the tune of Rs.13,00,000/- and Rs.15,16,000/- and these cheques were presented and when said cheques came up for clearing in the complainant's account with Indus Land Bank and bank had informed complainant, therefore complainant had instructed the bank to stop payment for all the excess cheques issued to Piyushbhai.

4.6. It is the case of the complainant that Bhavnaben and her husband Mahendrabhai do not have any kinds of amounts due from complainant and in spite of this they have misused complainant cheques. That complainant has also filed Criminal Case No.4375 of 2019 against accused No.1, therefore, in order to escape from that liability and in order to bring pressure upon the complainant such cheques have been misused and accused No.2 has filed Criminal Case No.105 of 2020 against complainant under Section 138 of the Negotiable Instruments Act.

5. Learned advocate Mr. Ekant G. Ahuja appearing for the petitioner would submit that the husband of the petitioner No.2 and the complainant had good acquaintance and thus, both had gone together to Piyushbhai for the purchase of the property, wherein, it is alleged that out of some blank cheques, which were issued by the complainant to Piyushbhai, two cheques bearing No.195131 and 195132 had been deposited without any knowledge of the complainant, one in the name of Mahendrabhai and one in the name of Bhavnaben i.e. petitioners No.1 and 2, herein, and thus, it is alleged that offence under Sections 406 and 420 of the IPC had been committed in connivance. However, he would argue that there is no direct transaction whatsoever by the complainant to petitioner No.1 and petitioner No.2, nor those cheqeus had been handed over to them directly. Even as the case the complainant, if it is taken as it is, the cheques having been written in the year 2019, not bother to stop the payments of alleged blanks cheques handedover to Piyushbhai, and thus, when there was no direct handing over the cheques to the present petitioner, it cannot be said that the offence punishable under

Sections 406 and 420 of IPC is attracted.

5.1. Learned advocate Mr. Ahuja would further submit that Civil Suit with regards to the property in question wherein the accused are residing which is in the name of the complainant is also filed, therefore, he would argue that the criminal colour has been given to the case arising out of civil dispute, wherein also some oral agreement between the deceased petitioner No.1 and the complainant with regards to business, which would be also evident that the complainant knows petitioner No.1 since last ten years, thus, it is argued to allow the present petition.

5.2. Lastly, learned advocate Mr. Ahuja would submit that the cheque was handedover by the deceased husband to petitioner No.2, and therefore, also the allegations of criminal breach of trust for cheating has not been attracted, as none of the petitioners has fraudulently or dishonestly induced Piyushbhai to deliver any property to the present petitioner, under such circumstances, no case of cheating is also made out. Thus, argued to allow the present petition.

6. *Per contra*, learned advocate Mr. Jigar G. Gadhavi for the complainant – respondent No.2 and learned Additional Public Prosecutor Mr. Kanva Antani for the State would submit that the petitioner No.2 namely Bhavnaben having misused the cheque has lodged criminal complaint under the provisions of Section 138 of the Negotiable Instruments Act being Criminal Case No.6356 of 2019, which came to be rejected, against which Criminal Misc. Application (for Leave to Appeal) No.13433 of 2024 was preferred, which also came to be dismissed vide order dated 22.11.2024. Under

such circumstances, on the one hand, the petitioner No.2 has taken disadvantage of the filing of 138 complaint after having obtained the cheque from Piyushbhai dishonestly, as a pressure tactics to counter the complaint lodged by the present complainant against deceased-husband under Section 138 of the N.I. Act, which is pending, have argued that now coming up with the case of cheque handedover by the husband to the present petitioner No.1 is nothing, but cannot be looked into at this stage quashing nor a *mini trial* can be conducted as held by the Hon'ble Supreme Court in number of cases, and thus, argued to reject the present petition.

6.1. Learned advocate for the complainant would further submit that the investigating agency has not carried out proper investigation inasmuch as way bake in year 2020, the report was submitted by the then the Deputy Superintendent of Police, Mahesana, by letter dated 07.11.2020, has opined that the case is made out, however, while filing the chargesheet without naming Piyushbhai as an accused, who in connivance has handedover the cheque to the present petitioner No.2, and thus, argued that the application under Section 173(8) of Cr.P.C. is also pending before the trial Court for further investigation, and thus, argued to reject the present petition.

7. Few undisputed facts which required to be taken note are as under:

(1) Mahendrabhai Somabhai Prajapati – petitioner No.1 (expired on 10.02.2026) and the complainant namely Niravkumar Shantilal Pandya – respondent No.2 herein are friends since last ten years.

(2) As per the FIR, both the petition No.1 and the complainant had

gone to purchase property bearing Plot No.33, at August Kutir on 20.11.2017.

(3) Cheques were handedover to Piyushbhai.

(4) Registered sale deed has been executed bearing No.10749/2017, thus, it transpires that in the year 2017 the registered sale deed is entered in the name of the complainant.

(5) It is an admitted position that possession of the said property is with petitioner No.2, for which a Civil Suit is also filed.

(6) The factum of handing over cheques bearing No.195131 and 195132 as well as 195134 to 195139 are concerned, two cheques bearing No.195131 and 195132 are alleged to have been forged by the present petitioner.

(7) The factum of complaint under Section 138 of the Negotiable Instrument Act against petitioner No.1 - now diseased has been lodged by the present complainant being Criminal Case No.4735 of 2019.

(8) The factum of Criminal Case No.6356 of 2019 lodged by the petitioner No.2 and Criminal Case No.105 of 2020 by petitioner No.1 against the present complainant.

(9) The transcription place on record by the complainant for the talks between Piyushbhai and the complainant would reveals that the petitioner No.1 had some interest in the said property despite the property having been purchased in the name of the complainant.

8. At the outset, the judgment in the case of **S.W. Palanitkar & Ors. v. State of Bihar & Anr.** reported in **(2002) 1 SCC 241**, the

Hon'ble Apex Court expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420 IPC). The relevant observations read as under:

> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that persons entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or willfully 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."*

9. 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.

> (1) There must be entrustment with person for property or dominion over the property, and
>
> (2) The person entrusted:-

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

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

(c) 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 (supra).

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

(1) deception of any person, either by making a false or misleading representation of 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))

(3.1.) 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.

10. 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.

11. Thus, considering the aforestated principles, what is alleged is handing over the cheques by the Piyushbhai to Mahendrabhai and wife of Mahendrabhai i.e. petitioner No.2 – Bhavnaben and whereby misuse of the cheques.

12. At the outset, it is required to be noted that cheques were already handedover in the year 2017 and the sale deed also entered in the same year bearing registration No.10749/2017, the blank cheques lying with Piyushbhai, and the petitioners being the owner of the property still does not bother to take back the possession of those cheques till 2019, and that to also having applied for stop payment only after the lodging of the complaint by the present petitioner against the present complainant creates serious doubt with regards to the veracity of the complaint itself inasmuch as being parties are known to each other, more particularly, petitioner No.1 and the complainant. Coupled with the fact that this Court is not to indulge into *mini trial* by deciding application under Section 482 of the Cr.P.C. However, considering the peculiar facts and circumstances of the present case, which would certainly fall in exceptional circumstances, though this Court is not embarking upon the appreciation of evidence. But, it is the case of the complainant himself is that the complaint lodged by the petitioner No.2 against the present complainant under Section 138, which is rejected and leave to appeal has also been rejected, wherein it is also in the order

dated 22.11.2024, by this Court in Criminal Misc. Application (for Leave to Appeal) No.13433 of 2024, that during the cross-examination of the petitioner No.2 being complainant in Civil Case No.6356 of 2019 that the cheque was handedover by the deceased husband under the transaction in question with the present complainant which was done by her husband, this fact also cannot be ignored inasmuch as the petitioner No.2 had no role to play in the alleged cheque.

13. Learned advocate Mr. Jigar G. Gadhvi for the complainant – respondent No.2 has relied upon the judgment in the case of **Abhishek Singh v. Ajay Kumar**, reported in **2025 (0) AIJEL-SC 75477**, wherein it is held that fraud, if any, whether perpetrated at the first instance of valuation, or later, is a matter which could be unearthed only after a trial based on the evidence led by the parties. But, as of now, in no circumstances, it can be said that no prima facie case regarding commission of an offence, as alleged in the FIR, is made out from its perusal. The said observations state that it is not for the High Court to examine whether the charges may hold up in the court or not.

14. Learned advocate for the complainant has also relied on the judgment in the case of **Rajeev Kourav v. Baisahab**, reported in **2020 (0) AIJEL-SC 65758**, wherein, it is held that the statements of witnesses recorded under Section 161 of Cr.P.C. being wholly inadmissible in evidence cannot be taken into consideration by Court, while adjudicating a petition filed under Section 482 of Cr.P.C. and has thus, argued that the question of reliance of statement of Piyushbhai that he had not handedover blank cheques, cannot be relied at this stage.

15. This Court has as stated hereinabove not conducting a *mini trial*, however, from the facts on the record, it cannot be said that the petitioner No.2 had any role to play. If there was any, in alleged crime as stated in the FIR is taken into consideration as it is, without even looking at other documents, the cheques were handedover to Piyushbhai and not to the present petitioner, it is Piyushbhai who is to answer, as to how these cheques came into the possession of the present petitioner, if at all, such case is made out.

16. However, considering the overall facts and circumstances of the case as noted hereinabove, the factum of petitioner to having possession of suit property is also not disputed, for which Civil Suit is filed, there seems to be some transaction between the petitioners and the complainant and that with the Piyushbhai, which purely transpires to be the civil in nature, however, criminal colour is tried to be given by lodging of an FIR.

17. Under the circumstances, when there is no entrustment of property to the present petitioner by the complainant, question of criminal breach of trust, as defined under Section 405, attracting punishment under Section 406 is not made out. As far as the cheating and dishonestly inducing delivery of property is concerned, there is no direct contact with present complainant with the petitioner as far as handing over the cheques is concerned, therefore, the question of deceiving the complainant by the present petitioner, fraudulently or dishonestly inducing him so as to deliver the cheques is out of question. And therefore, the question of cheating and thereby dishonestly inducing the complainant to deliver the cheques is not made out.

18. In view of the above the FIR No.11206043210966 of 2021, dated 22.12.2021, lodged before the Mehsana Taluka Police Station, is hereby quashed and set aside qua only the petitioner No.2, since petitioner No.1 is already abated.

19. It is made clear that the application preferred by the complainant under Section 173(8) of the Cr.P.C. pending before the trial Court shall be decided by the trial Court in accordance with law, except against the present petitioner No.2.

20. Be that as it may, this Court has not gone into the factum of, whether the Piyushbhai has given such statement or not, and the petition is decided only on the averments made in the complaint as it is.

21. Rule is made absolute to the aforestated extent. Direct service is permitted.

(P. M. RAVAL, J)

NITIN MAKWANA