IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 5863 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MRS. JUSTICE M. K. THAKKER

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Approved for Reporting	Yes	No
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KAMLESHBHAI MEGHJIBHAI GODANI & ORS.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR SHAKEEL A QURESHI(1077) for the Applicant(s) No. 1,2,3
MR C P CHANIYARA(6836) for the Respondent(s) No. 2
MR DIPAK A LADOLA(10817) for the Respondent(s) No. 2
MR RONAK RAVAL, ADDL. PUBLIC PROSECUTOR for the Respondent(s) No. 1

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CORAM:**HONOURABLE MRS. JUSTICE M. K. THAKKER**

Date : 02/04/2026

JUDGMENT

1. The present application is filed for quashing of the FIR being I-C.R. No.219 of 2018 dated 28.06.2018 registered with Sarthana Police Station, District Surat, for the offences punishable under Sections 406, 420 and 114 of the Indian Penal Code against four accused, of whom accused Nos.1, 3 and 4 have

approached this Court by way of the present application.

2. It is the case of the complainant (respondent No.2) that in the year 2016, he came into contact with accused No.2, as both belonged to the same village. The complainant intended to invest in land and construction projects, and accordingly, invested in an ongoing project known as “Somnath Villa,” undertaken by Parth Developers, wherein accused Nos.1 and 4 are partners and accused No.3 acted as a broker. The plots bearing Nos.79 to 88 were agreed to be sold for a total consideration of Rs.4,48,11,283/-, out of which the complainant paid Rs.1,86,00,000/- during the period between 22.08.2016 and 06.05.2016. A period of 14 months was stipulated for payment of the balance amount; however, accused No.2 failed to pay the remaining consideration, pursuant to which a Memorandum of Understanding came to be executed between the complainant and accused No.2 on 06.01.2018. Additionally, a “soda chiththi” dated 22.08.2016 was executed between accused No.2 and accused Nos.1 and 4, recording the agreed consideration and payment terms. Owing to the failure of accused No.2 to fulfill his financial obligations, the said “soda chiththi” came to be cancelled on 22.08.2018 by and between accused Nos.1 and 4 and accused No.2. As

per the terms of the cancellation, accused No.2 agreed to hand over possession of plots Nos.79 to 88, with an understanding that in the event the said plots were sold prior to payment of the final instalment, the amount of Rs.1,86,00,000/- lying with Parth Developers would be repaid. Alleging breach of trust and cheating, the FIR came to be lodged against accused No.2 as well as the present applicants, who are partners of Parth Developers and the broker respectively, which is under challenge in the present proceedings.

3. Heard learned advocate Mr. Shakeel Qureshi for the applicant, learned advocate Mr. C.P. Chaniyara for respondent No.2, and learned APP Mr. Ronak Raval for the respondent-State.

4. Learned advocate Mr. Qureshi submits that there exists no privity of contract between the present applicant and the complainant, inasmuch as the investment in question was made by accused No.2 with the present applicant. It is submitted that by the learned advocate Mr. Qureshi that, as per the FIR itself, the understanding regarding investment was between the complainant and accused No.2, who, in turn, invested the amount with the present applicant. However, owing to failure on the part of accused No.2 to pay the entire consideration, the “soda chiththi”

executed between the applicant and accused No.2 came to be cancelled. It is submitted that by the learned advocate Mr. Qureshi that, as on date, the plots in question have not been sold to third parties and, as per the understanding between accused No.2 and the present applicant, the amount is to be repaid as and when the plots are sold. It is contended that the essential ingredients of offences under Sections 406 and 420 of the IPC are not made out and, therefore, continuation of the proceedings against the present applicant would amount to gross abuse of the process of law. It is submitted that by the learned advocate Mr. Qureshi that, as per the FIR, the alleged offence pertains to 22.06.2016, whereas the FIR came to be lodged on 28.08.2018, after an inordinate delay of nearly two years without any plausible explanation. In that background, it is prayed that the present application be allowed and the impugned FIR be quashed.

5. Per contra, learned advocate Mr. Chaniyara appearing for the complainant submits that though the complainant had invested the amount along with accused No.2, the said accused, in connivance with the present applicant, has duped the complainant by collecting an amount of Rs.1,86,00,000/- towards consideration of the plots. It is submitted by the

learned advocate Mr. Chaniyara that neither has the said amount been returned nor has any agreement been executed in favour of the complainant. Therefore, it is contended that the FIR and the chargesheet warrant adjudication before the learned trial Court. It is submitted by the learned advocate Mr. Chaniyara that the "soda chiththi" executed between the present applicants and accused No.2 was subsequently cancelled without the knowledge of the complainant, who had invested the money through accused No.2. It is contended that at this stage, interference with the impugned FIR would result in irreparable loss to the complainant, as he would neither be able to recover the amount nor secure execution of the agreements. In this view of the matter, it is prayed that the present application be dismissed.

6. Learned APP Mr. Ronak Raval, supporting the submissions advanced by learned advocate Mr. Chaniyara appearing for the original complainant, submits that a bare reading of the FIR discloses the commission of a cognizable offence, and therefore, the FIR as well as the chargesheet warrant adjudication by the competent Court.

7. Having considered the submissions advanced by the learned advocates for the respective parties and

upon perusal of the allegations in the FIR, it emerges that the present applicants are arraigned as accused Nos.1, 3 and 4, with accused Nos.1 and 4 being partners of Parth Developers and accused No.3 acting as a broker. It is an undisputed position that the amount alleged to have been invested by the complainant was routed through and is lying with accused No.2. The Memorandum of Understanding executed between the complainant and accused No.2 does not bear the signatures of the present applicants, nor does it establish any privity of contract between the applicants and the complainant. As per the understanding, the complainant was to invest 50% of the sale consideration, while the remaining share was to be contributed by accused No.2. In furtherance thereof, a “soda chiththi” was executed between the applicants and accused No.2 stipulating the total consideration and a payment period of 14 months. The recitals of the said document indicate that an amount of Rs.1,86,00,000/- had been paid, with the balance to be paid within the stipulated time. It is not in dispute that accused No.2 failed to pay the remaining amount, as a result of which the “soda chiththi” came to be cancelled on 03.01.2018, with an understanding that the amount lying with the applicants would be repaid upon sale of the plots prior to the final instalment. In the aforesaid factual background, it is evident that there exists no privity of contract between the present applicants and the complainant. In order to attract the provisions of Sections 406 and 420 of the Indian Penal Code, the relevant ingredients as contemplated under Sections 403 and 415 are required to be examined, which are reproduced hereinbelow:

> “**406**:Punishment for criminal breach of trust.**—**Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.
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> “**415**
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> The ingredients of the cheating as defined under section 415 is- (1) deception of any person
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> (2) (a) fraudulently or dishonestly inducing that person; or
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> (i) to deliver any property to any person or
>
> (ii) to consent that any person shall retain any property; or
>
> (b) intentionally inducing that person to do or omit to do anything which he would not do or omit, if he was not so deceived which act or omission causes or likely to cause damage or harm to that person in body, mind, reputation or property.

8. At this stage, reference is required to be made to the

decision of the Apex Court in **Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another**, reported in **2024 (10) SCC 690**, wherein it has been held that offences under Sections 406 and 420 cannot co-exist simultaneously. The relevant observations read as under:

> "35. This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -
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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.
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> 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
b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -
1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that

person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

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 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

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 & Ors., reported in (1973) 2 SCC 823 as under:

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under

Section 420 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 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.*”*

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 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.

44. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.
45. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

46. It has been held in State of Gujarat v. Jaswantlal Nathalal reported in (1968) 2 SCR 408, "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment

need conform to all the technicalities of the law of trust — see Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment".

47. Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that 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 that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties 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. [...]"
(Emphasis supplied)

48. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24 respectively of the Sale of Goods Act, 1930.

"20. Specific goods in a deliverable state. — Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

Xxx xxx xxx

24. Goods sent on approval or "on sale or return". — When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer—
(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time."

49. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi and

> Others v. State of Uttar Pradesh and Another : 2024 SCC OnLine SC 171 & Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another : 2023 SCC OnLine Jhar 301]
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> 50. The case at hand falls in category No. 1 as laid in Smt. Nagawwa (supra) referred to in para 7 of this judgment.
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> 51. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.
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> 52. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law."

9. Considering the aforesaid legal position, for an offence under Section 406 of the IPC, the essential requirement is entrustment of property and its subsequent dishonest misappropriation. On the other hand, for an offence punishable under Section 420 of the IPC, it is necessary to establish cheating, i.e., deception by the accused and dishonest inducement of the person deceived to deliver property. In cases

of criminal breach of trust, the property is initially acquired lawfully or with consent, but is subsequently misappropriated. In contrast, in cases of cheating, the property is obtained by deception from the very inception. In the present case, the essential ingredients of the alleged offences under both the provisions are conspicuously absent, inasmuch as there is neither any entrustment nor any element of deception attributable to the applicant on the part of the complainant. Additionally, there is an unexplained delay of two years in initiating the proceedings, which further weakens the prosecution case.

10. This Court has referred to the decision of the Apex Court in **State of Haryana v. Bhajan Lal,** reported in **1992 Supp (1) SCC 335**, wherein the Apex Court has laid down the guidelines governing the exercise of inherent powers under Section 482 of the Code of Criminal Procedure which are reproduced hereinbelow:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration

wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(i) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(ii) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(iii) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(iv) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(v) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(vi) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(vii) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. This case falls under the criteria (i) and (v) from the case of **Bhajan Lal (supra),** therefore the application deserves to be allowed.

12. Considering the aforesaid provisions, this Court is of the opinion that none of the essential ingredients of the alleged offences are made out against the present applicant, and no prima facie case is disclosed. In this view of the matter, the impugned FIR deserves to be set aside.

13. Resultantly, present application is allowed. The FIR being I-C.R. No.219 of 2018 dated 28.06.2018 registered with Sarthana Police Station, District Surat as well as, as well as all consequential proceedings arising therefrom, are hereby quashed and set aside. Rule is made absolute accordingly.

(M. K. THAKKER,J)

M.M.MIRZA