

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE
FIR/ORDER) NO. 23359 of 2019****With****R/CRIMINAL MISC.APPLICATION NO. 23385 of 2019**

=====

ANIL RATILAL BATAWALA & ANR.

Versus

STATE OF GUJARAT & ANR.

=====

Appearance:

MR HARSHADRAY A DAVE(3461) for the Applicant(s) No. 1,2

MR CHINTAN DAVE, ADDL. PUBLIC PROSECUTOR for the Respondent(s)
No. 1

RULE SERVED for the Respondent(s) No. 2

=====

CORAM:HONOURABLE MR. JUSTICE J. C. DOSHI**Date : 25/09/2025****ORAL ORDER**

1. By way of these petitions under Section 482 of the Code of Criminal Procedure, 1973, the petitioners prayed to quash and set aside the FIR being C.R.No.I-530 of 2019 registered with Salabatpura Police Station for the offences under Sections 406, 420, 120B, 114 of Indian Penal Code and all the consequential proceedings arising therefrom.

2. Heard learned advocates for the respective parties. Though private respondent is served, he did not remain present.

3. Learned advocate for the petitioners after reading FIR would submit that civil dispute has been given colour of

criminality, as the debt for recovering of money and dispute is relating to settlement of account and as such, the FIR has been filed to achieve something, which cannot be achieved otherwise. He would further submit that there is delay in filing the FIR and no proper explanation has been coming forth. In view of that, prima facie, alleged offences are not attracted.

3.1. Upon above submissions, learned advocate for the petitioners submitted to allow the application and quash the FIR.

4. Learned APP for the respondent - State after arguing to some extent, failed to point out that how the offences u/s 406, 420, 120B 114 of the IPC is made out, as commercial transaction between the parties have been given colour of criminality. He has relied upon the judgment of the Hon'ble Apex Court in case of Kaptan Singh Vs. State of U.P., 2021(9) SCC 35 to submit that the Court should not held mini trial at the stage where the FIR is sought to be quashed. Upon such submission, he prays to pass necessary orders.

5. Having heard learned advocates for both the sides and considering the role of the present petitioners, it appears that the dispute between the parties is pertaining to commercial transaction and it has been given colour of criminality. Recently, Hon'ble Apex Court in the case of **Ashok kumar Jain v/s. State of Gujarat [SLP Criminal No.1850 of 2020]**, had addressed the issue and held that non payment of outstanding amount of payment in the ongoing business would be civil dispute. The

findings of Hon'ble Apex Court squarely covers the present issue.

The relevant para reads as under:-

“9. The FIR has been registered under sections 406 and 420 of the IPC. The scope and expanse of these sections is better appreciated in the company of sections 405 and 415 of the IPC. This court in the case of Radheyshyam v. State of Rajasthan⁴, culled out the following ingredients to constitute the 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.”

6. In the result, the petitions are allowed. The impugned FIR being C.R.No.I-530 of 2019 registered with Salabatpura Police Station as well as all consequential proceedings initiated in pursuance thereof are hereby quashed and set aside qua the petitioners herein. Rule made absolute to the aforesaid extent. Direct service is permitted.

SHEKHAR P. BARVE

(J. C. DOSHI,J)

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: SHEKHAR PRAFULBHAI BARVE(HC00200), Principal Pvt. Secretary, at High Court of Gujarat on 25/09/2025 13:33:46