

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 4450/2023

Ashutosh Parashar Son of Shri Tara Chand Sharma, aged about 38 Years, Resident of 90/46, Patel Marg, Mansarover, Jaipur.

-----Accused-Petitioner

Versus

1. State of Rajasthan, through P.P.
2. Shri Dinesh Kumar Son of Shri Munna Lal, aged about 36 Years, Resident of 114, Parthirajnagar, Maharani Farm, Mansarover, Jaipur.

-----Respondents

For Petitioner(s) : Mr. Shivam Sharma for
Mr. Ajay Shukla

For Respondent(s) : Mr. Rishiraj Singh, PP
Mr. Dushyant Gour

HON'BLE MR. JUSTICE CHANDRA PRAKASH SHRIMALI

Order

1.	Arguments Concluded On:	02.04.2026
2.	Order Reserved On:	02.04.2026
3.	Full Order/Operative Part Pronounced:	Full Order
4.	Pronounced On:	13.04.2026

1. This petition has been preferred under Section 482 of the Code of Criminal Procedure (528 B.N.S.S) for quashing of the FIR No.557/2023 registered at police station Shipra Path, Jaipur City (South) against the petitioner for the offences punishable under Sections 420 and 406 of the Indian Penal Code at the instance of respondent-Dinesh Kumar.
2. The learned counsel for the petitioner submits that the controversy arises out of a purely commercial and tenancy arrangement, which has been sought to be given a criminal colour by

the private respondent. The petitioner, Ashutosh Parashar, being the owner of the premises in question, was approached by the private respondent, Dinesh Kumar, on or about 27.05.2023 with a proposal to take the said premises on rent at a mutually settled monthly rent of Rs.1,00,000/-. It is submitted that, at the insistence and representation of the private respondent, the petitioner undertook substantial renovation of the premises so as to render it suitable for the respondent's requirements, on the clear understanding between the parties that a formal written lease agreement would be executed upon completion of such renovation work.

3. On or about 31.05.2023, upon completion of the renovation work, the private respondent took possession of the premises along with its keys. However, he failed and neglected to pay the agreed advance rent for a period of two months and resiled from his assurance to execute a formal rent agreement. It is further submitted that the private respondent, instead of regularizing his occupation, refused to vacate the premises and started creating nuisance, thereby continuing in unauthorized and illegal possession of the property.

4. Aggrieved by such conduct and breach of understanding, the petitioner was constrained to seek recourse in accordance with law. The petitioner initially approached the jurisdictional police authorities by way of a complaint dated 06.06.2023. Upon failure of the police to take any action, the petitioner addressed a formal representation on 12.06.2023 and subsequently preferred a complaint before the learned Magistrate on 21.06.2023. The learned Magistrate, upon consideration of the material placed on record, passed an order dated 03.07.2023

directing the police to register a First Information Report and to submit an investigation report in accordance with law.

5. Upon becoming aware of the initiation of legal proceedings against him, the private respondent, with a view to retaliate, proceeded to lodge a counter complaint. He approached the concerned police station on 27.06.2023 alleging, inter-alia, that the petitioner had received a sum of Rs.1,70,000/- from him and had thereafter refused to execute the rent agreement. Acting upon the said allegations, the impugned FIR bearing No. 557/2023 came to be registered at Police Station Shipra Path, Jaipur City (South), for the offences punishable under Sections 420 and 406 of the Indian Penal Code.

6. The learned counsel for the petitioner submits that the aforesaid FIR is nothing but a gross abuse of the process of law, having been instituted solely as a counterblast to the proceedings initiated by the petitioner, with the oblique motive of evading eviction and exerting undue pressure for settlement of what is essentially a civil dispute arising out of a tenancy transaction and hence the FIR dated 27.06.2023 registered against the petitioner is liable to be quashed and set aside. Petitioner filed a petition under Section 18 of Rent Control Act before the Rent Control Tribunal, Jaipur Metropolitan-1 for recovery of compensation of Rs.2,00,000/-.

7. Per contra, learned counsel appearing for the State as well as respondent No. 2 have opposed the petition and submitted that the allegations in the FIR disclose commission of alleged offences and, therefore, the matter ought to be investigated.

8. I have considered the submissions advanced by learned counsel for the parties and have perused the material available on record.

9. In the present case, the genesis of the dispute lies in a transaction relating to letting out of premises. The petitioner is stated to have renovated the premises on the assurance given by respondent No. 2, and thereafter possession was handed over upon receipt of a certain amount. The grievance of the petitioner is essentially with regard to non-execution of a formal rent agreement and non-vacation of the premises by respondent No. 2.

10. It is, at this stage, apposite to examine the ingredients of the offences alleged against the petitioner. Section 420 of the Indian Penal Code, which deals with the offence of cheating, read with Section 415 IPC, postulates that there must be a deception of a person coupled with a dishonest or fraudulent inducement at the very inception, thereby leading the person so deceived to deliver any property or to act in a manner which results in damage or harm. The sine qua non for constituting an offence under Section 420 IPC is the existence of a dishonest intention at the very commencement of the transaction. A mere failure to fulfil a promise or a subsequent breach of contract, in the absence of such initial fraudulent intent, does not attract the provisions of Section 420 IPC.

11. Similarly, Section 406 IPC, which provides punishment for criminal breach of trust as defined under Section 405 IPC, requires the existence of entrustment of property and a subsequent dishonest misappropriation or conversion of the same by the person to whom it was entrusted. The element of entrustment is a foundational

requirement, and in the absence thereof, the offence of criminal breach of trust cannot be said to be made out.

12. Upon a careful consideration of the material placed on record, this Court finds that the essential ingredients of neither Section 420 IPC nor Section 406 IPC are satisfied in the present case. There is no material to indicate that the petitioner had any dishonest or fraudulent intention at the inception of the transaction. On the contrary, the conduct of the petitioner reflects bona fide intent. It is borne out from the record that immediately upon being approached by the respondent, the petitioner undertook renovation of the premises in order to render it suitable for the respondent's requirements.

13. The petitioner has placed on record documentary evidence in the form of bills substantiating the said renovation work. The bills dated 28.05.2023 and 30.05.2023 issued by Samadhan Enterprises reflect purchase of electrical goods amounting to Rs.19,600/- and Rs.19,000/- respectively. Further, bills issued by Paras Paints dated 26.05.2023, 28.05.2023 and 30.05.2023 indicate purchase of paint materials amounting to Rs.16,750/-, Rs.19,810/- and Rs.14,900/- respectively. These documents lend credence to the submission that the petitioner had, in fact, commenced work immediately after the respondent approached him and incurred substantial expenditure, thereby negating any allegation of deceitful intent from the very inception.

14. Insofar as the allegation under Section 406 IPC is concerned, there is nothing on record to suggest that any property was entrusted to the petitioner in a manner contemplated under law, or that the

petitioner dishonestly misappropriated the same. The basic ingredient of entrustment being absent, the offence of criminal breach of trust is not made out.

15. It is also pertinent to note that the petitioner had independently initiated proceedings before the Rent Control Tribunal seeking recovery of an amount of Rs.2,00,000/- towards damages, as well as arrears of electricity and water charges allegedly unpaid by the respondent. The recourse taken by the petitioner to appropriate legal remedies further indicates that the dispute is essentially civil in nature arising out of a tenancy arrangement and does not disclose any criminality.

16. From the aforesaid facts, it is apparent that the dispute between the parties is predominantly of a civil nature arising out of a contractual arrangement. Insofar as the offence under Section 420 IPC is concerned, it is trite law that in order to constitute cheating, the intention to deceive must exist at the very inception of the transaction. A mere failure to keep a promise or a subsequent breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning. In the present case, there is no material on record to indicate that the petitioner had any such intention at the inception.

17. In the case of "**Naresh Kumar & Anr. V/s The State of Karnataka & Anr**" reported in **2024 INSC 196**, the Hon'ble Supreme Court held as under;

6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must

not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court." (emphasis supplied) Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P. (2021) 14 SCC 626*, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90*, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

7. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in *Sarabjit Kaur v. State of Punjab and Anr.(2023) 5 SCC 360*. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in *Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293*, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that

the accused had fraudulent or dishonest intention at the time of making the promise.

18. Also the charge for the offences punishable under Sections 420/406 of the IPC cannot go together on same facts, as they are "antithetical" to each other as held by the Hon'ble Supreme Court in the case of "**Arshad Neyaz Khan V/s State of Jharkhand & Anr**" reported in **2025 INSC 1151**.

"21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 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 in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making 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 misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other. simultaneously in the same set of facts as they are antithetical to each other."

19. This Court also cannot lose sight of the fact that the FIR in question appears to have been lodged subsequent to the initiation of proceedings by the petitioner against respondent No. 2, thereby lending credence to the contention that the same is a counterblast intended to exert pressure upon the petitioner.

20. The Hon'ble Supreme Court in the case of "**State of Haryana and Ors. V/s Ch. Bhajan Lal And Ors**" reported in **1992 SCC (CRI) 426** has illustratively laid down categories of cases where the inherent powers under Section 482 Cr.P.C. can be exercised, including cases where the allegations do not disclose the commission of any offence or where the proceedings are manifestly attended with mala fide and instituted with an ulterior motive.

21. Applying the aforesaid principles to the facts of the present case, this Court is of the considered opinion that the continuation of the criminal proceedings against the petitioner would amount to abuse of the process of law. Accordingly, the present petition deserves to be allowed.

22. The FIR No.557/2023 registered at police station Shipra Path, Jaipur City (South) against the petitioner for the offences punishable under Sections 420 and 406 of the Indian Penal Code and all consequential proceedings arising therefrom are hereby quashed.

23. The instant misc. petition is allowed.

24. All pending application(s), if any, also stands disposed of.

(CHANDRA PRAKASH SHRIMALI),J