

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

**Reserved on 24.03.2025
Pronounced on 07.04.2025**

CRM(M) No. 905/2023

Susheel Kumar Rana and others

.....Appellant(s)/Petitioner(s)

Through: Mr. Mayank Gupta, Adv.

vs

U. T. of J&K and others

..... Respondent(s)

Through: Mr. Suneel Malhotra, GA for Nos. 1 to 3
Mr. Jagmohan Singh, Adv. for No. 4

Coram: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1. The petitioners have, by invoking powers of this Court under Section 482 of the Cr.P.C. challenged FIR No. 431/2023 for offences under Sections 420, 406 and 109 IPC registered with Police Station Kathua.
2. It appears that respondent No. 4 filed an application under section 156(3) Cr.P.C. before the learned District Mobile Magistrate Kathua. In the said application, it was alleged by respondent No. 4-complainant that he as well as petitioner No. 1 are serving in the Police Department. It was further alleged that petitioner No. 1 entered into conspiracy with other petitioners with a view to cheat and extract money from the complainant respondent No. 4 herein by deceitful means. According to the respondent No. 4, in the year 2019, petitioner No. 1 along with petitioner Nos. 3 and 4 approached the complainant/respondent No. 4 at his residential village and offered him an investment scheme fetching

18% interest per annum. The complainant believing in the same, agreed to invest in the said scheme. According to the complainant, he transferred amount in account No. 0026040120000018 maintained with J&K Bank Pvt. Ltd. Kathua on different dates. He had arranged the amount from the salary, bank loans and GP fund. Thus, according to the complainant, he transferred the amount in the account of the accused persons from the year, 2019 to November, 2022.

3. It was further alleged in the complaint that the complainant had approached petitioner No. 1 to transfer some amount in his account and the said petitioner accordingly, transferred an amount of Rs. 37,50,700/- in his account. It was claimed by the complainant that he has transferred a total amount of Rs. 96,49,980/-, to the account of accused, out of which, he has received back an amount of Rs. 37,50,700/- leaving a balance of amount of Rs. 58,99,280/-. The complainant alleges that this amount is lying in trust with the petitioners/accused which has been misappropriated by them.
4. On the basis of the aforesaid complaint, the learned District Mobile Magistrate, Kathua vide his order dated 22.11.2022 issued a direction to SHO Police Station, Kathua to register an FIR and investigate the matter. It seems that the Police did not register the FIR immediately upon receiving the direction of District Mobile Magistrate, Kathua which compelled the complainant to file a contempt petition before the learned Magistrate. It was during the pendency of the said contempt petition that the impugned FIR came to be registered by the Police.

5. The petitioners have challenged the impugned FIR on the grounds that the allegations made in the same are absolutely false and frivolous. It has been further contended that even if contents of the impugned FIR are taken at their face value, still then no offence is made out against the petitioners as the transaction between the parties is purely of civil nature.
6. It has been further contended that the complainant has himself admitted that he has received an amount of Rs. 37,50,700/- which clearly indicates that the petitioners had no dishonest intention at the inception, which is gist of offence under section 420 IPC as also of offence under section 405 IPC. It has also been contended that during the contempt proceedings, a compromise was arrived at between petitioner No. 1 and the complainant/respondent No. 4, in pursuance whereof the said respondent had undertaken not to pursue civil/criminal proceedings against the petitioners. It is being claimed that in this regard even statement of respondent No. 4 was recorded by the Police.
7. The respondent-State has filed its objections to the petition in which the allegations made in the impugned FIR have been reiterated. It has been stated in the status report that because of the stay of the investigation directed by this Court, no progress in the investigation could take place.
8. Respondent No. 4 has also filed his reply in which he has reiterated the allegations made in the impugned FIR. Regarding the compromise agreement arrived at between him and petitioner No. 1, it has been submitted that the said compromise has been managed in a tactful

manner and that his signatures have been taken on blank papers. Respondent No. 4 has further submitted that the said compromise agreement has been challenged by him by way of a civil suit before the court of learned Munsiff Kathua and an interim order has been passed in the said suit on 27.04.2023, by virtue of which, operation of the compromise agreement dated 29.01.2023 has been kept in abeyance.

9. I have heard learned counsel for the parties and perused the record of the case.
10. Before dealing with the rival contentions of the parties, it would be apt to understand the scope and power of this Court under section 482 Cr.P.C.(now section 528 BNSS) to quash criminal proceedings. It is to be borne in mind that in the instant case, the investigation has been stayed at the initial stage itself. The legal position is well settled that when the prosecution at initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations *prima facie* establish the offence. The Court can also take into consideration any special feature which appears in a particular case so as to arrive at a conclusion as to whether it is expedient and in the interest of justice to permit a prosecution to continue. Thus if uncontroverted allegations made in the impugned FIR do not establish commission of any offence by the petitioners, then only this Court would be within its jurisdiction to quash the prosecution against the petitioners. In this regard, I am supported by the view expressed by the

Supreme Court in the case of **Madhavrao Jiwaji Rao Scindia and another v Sambhajirao Chandrojirao Angre, 1998(1) SCC 692.**

11. The contention of the petitioners is that the contents of the impugned FIR do not disclose commission of any offence against them inasmuch as the transaction between the petitioners and respondent No. 4 is purely of civil nature which has been given a criminal flavour by the respondent No. 4 by lodging the impugned FIR.
12. On the other hand, learned counsel for respondent No. 4 has vehemently contended that the conduct of the petitioners has remained deceitful and fraudulent right from the inception. Therefore, they are not only accountable under civil law but they are also criminally liable
13. In order to test the merits of the aforesaid contentions, the legal position on the subject needs to be noticed and appreciated. The petitioners are alleged to have committed offences under sections 420 and 406 IPC. In order to attract the ingredients of section 420 IPC, there has to be an element of cheating on the part of the accused. Cheating has been defined in section 415 IPC. To constitute offence under section 420 IPC, there must be fraudulent or dishonest inducement on the part of a person and thereby the other party must have parted with his property. To establish an offence under section 420 IPC, it must be shown that there was a fraudulent and dishonest intention at the time of commission of the offence and the person practising deceit had obtained property by fraudulent inducement and wilful representation. Mere breach of contract cannot give rise to a criminal prosecution for

cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction i.e. at the time when the offence is alleged to have been committed.

14. The Supreme Court in the case of **Hridaya Rangan Prasad Verma and others v State of Bihar and another, (2000) 4 SCC 168** has observed that it is the intention which is the gist of the offence and in order to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making of promise.
15. Again, in **Alpic Finance Ltd v P. Sadasivan and anr, (2001) 3 SCC 513**, the Supreme Court held that ‘an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception’. Thus, it is necessary to show that a person had fraudulent or dishonest intention at the time of making of promise, to say that he committed an act of cheating.
16. “Dishonestly” has been defined in Section 24 of IPC to mean deliberate intention to cause wrongful gain or wrongful loss and when, with such intention, deception is practised and delivery of property is induced, then the offence under Section 420 IPC can be said to have been committed.
17. So far as offence under Section 406 IPC is concerned, it provides punishment for criminal breach of trust. Criminal breach of trust has been defined in Section 405 of IPC, which reads as under:

“405. Criminal breach of trust.—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 of 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 willfully suffers any other person so to do, commits “criminal breach of trust”.

18. From a perusal of the aforesaid provision, it is clear that it entails misappropriation or conversion of another’s property for one’s own use with a dishonest intention. Cheating, as defined under Section 415 of the IPC, also involves the ingredient of having dishonest and fraudulent intention which is aimed at inducing the other party to deliver a property to a specific person. Thus, both the Sections postulate ‘dishonest intention’ as a pre-condition for even prima facie establishing the commission of said offences. It is only if ingredients postulated in Sections 405 and 415 of the IPC are made out from the contents of the impugned FIR that offences under Section 420 and 406 IPC can be said to have been disclosed.
19. The Supreme Court in the case of **M/S Indian Oil Corporation vs. M/S NEPC India Ltd. & Ors (2006) 6 SCC 736**, has laid down the principles which guide the Courts in ascertaining as to whether allegations regarding a commercial dispute would give rise to a criminal action apart from the civil remedy. These principles are reproduced as under:

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with malafides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out : (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceedings are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.

20 From the foregoing enunciation of law on the subject, it is clear that the mere fact that complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available, is not by itself a ground to quash the criminal proceedings. It is only if it is shown that the complaint even if taken at its face value does not disclose commission of any offence or if it is found that criminal proceedings have been initiated with *mala fides*/malice for wreaking vengeance that the same can be quashed.

21. In light of aforesaid legal position, let us now analyze the contents of the impugned FIR. The grievance of respondent No. 4 is that the

petitioners represented to him that they have a scheme which fetches 18% interest and he was lured into making investment of Rs. 96,49,980/-. His further case is that petitioner No. 1 paid an amount of Rs. 37,50,700/- but the balance amount of Rs. 58,99,280 /- was not paid by the petitioners to him. It is also clear from the pleadings of the parties that a compromise was arrived at between the parties when the contempt petition was pending before the learned Magistrate. As per compromise agreement dated 29.01.2023, respondent No. 4 had agreed to withdraw the complaint and had further undertaken not to file any civil/criminal cases against the petitioners. He had also stated in the compromise deed that there is no claim pending against petitioner No. 1 and that there is no dispute between the parties. Respondent No. 4 does not deny his signatures on the said document which is duly notarized. There is also on record statement of respondent No. 4 recorded by the Police during preliminary verification wherein respondent No. 4 has clearly stated that he has entered into a compromise with the petitioners and that he does not want to register any FIR against them. In the said statement, he has confirmed that the petitioners do not owe him any money, though respondent No. 4 claims that his signatures on the compromise deed and the statement recorded by the Police were taken on blank papers and that he has challenged the compromise deed in a civil court.

22. In light of the aforesaid facts it has to be seen whether the petitioners have committed any act of deception or fraud against respondent No. 4.

In order to commit an act of deception or fraud which is gist of both the offences i.e. offence under section 420 and 406 IPC, the complainant must have been dishonestly induced to deliver the property. To deceive is to induce a man to believe that a thing is true, which is false and which the person practising the deceit knows are believes to be false. This intention of deception or fraud must be existent at the time of commission of offence. According to the complainant, petitioner No. 1 made payment of Rs. 37,50,700/- whereafter, the petitioners defaulted. This clearly shows that the petitioners at the inception were having the intention of honouring their commitments to respondent No. 4. If a person fails to liquidate his liability, it does not necessary mean that he has committed the offence of cheating or criminal breach of trust.

23. The Supreme Court in the case of **Alpic Finance Ltd. (supra)** as well as in the case of **Anil Mahajan v Bore Industries Ltd, and anr, (2005) 10 SCC 228** has held that from a mere denial of a person to keep up promise subsequently, a culpable intention right at the beginning i.e. when he made the promise cannot be presumed. The Supreme Court has observed that a distinction has to be kept in mind between mere breach of contract and the offence of cheating and that it depends upon the intention of the accused at the time of inception. The subsequent conduct is not the sole test. The Supreme Court further observed that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent dishonest intention is shown

at the beginning of the transaction. Mere use of expression cheating in the complaint is of no consequence.

24. In the face of aforesaid legal position and keeping in view the peculiar facts and circumstances of this case as narrated hereinbefore, it cannot be stated that the petitioners had fraudulent intention at the inception of the transaction. The material on record goes on to show that the parties had tried to settle the matter amicably without resorting to criminal prosecution and in this regard compromise deed was executed by the parties and the statements were also made by the parties before the Police during the preliminary verification. Though respondent No. 4 has disputed the validity of the compromise deed, yet the fact of the matter remains that the dispute between the parties was with regard to the recovery of outstanding amount, which is purely of civil nature. The fact that the respondent No. 4 has challenged the compromise deed in a civil proceeding goes on to support the contention of the petitioners that the transaction between the parties was purely of civil nature which respondent No. 4 has rightly taken for adjudication before the civil court.

25. From the circumstances relating to compromise between the parties, it can be safely inferred that the purpose of lodging the impugned FIR was to ensure recovery of outstanding amount from the petitioners, which it appears did not fructify, perhaps due to inability of the petitioners to repay the whole of the outstanding amount. Thus, it

appears to be more a case of recovery of money than a case of cheating or criminal breach of trust.

26. The Supreme Court in the case of **M/s India Oil Corporation (supra)** has deprecated the tendency of business circles to convert civil disputes in criminal cases. Again in the case of **Mitesh Kumar J. Sha v State of Karnataka and others, 2021 SCC Online SC 936**, the Supreme Court has expressed its disapproval for imparting criminal colour to a civil dispute merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. The Court further went on to observe that such an exercise is nothing but an abuse of process of law which must be discouraged in its entirety.
27. In view of the above discussion, it is clear that the present case is a fit one in which this Court should exercise its power under section 482 Cr.P.C. to prevent the abuse of process of law and to secure the ends of justice.
28. For the foregoing reasons, the present petition is allowed. The FIR impugned bearing No. 431/2023 of Police Station Kathua is quashed.

(SANJAY DHAR)
JUDGE

Jammu:
07.04.2025
Rakesh PS

Whether the order is speaking:	Yes/Nb
Whether the order is reportable:	Yes/Nb