



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 1470 OF 2026

(Arising out of SLP Criminal No. 10478 of 2023)

V. GANESAN

...APPELLANT

VERSUS

**STATE REP BY THE SUB INSPECTOR
OF POLICE & ANR.**

...RESPONDENT(S)

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.

2. This appeal impugns the judgment and order of the High Court at Madras¹ dated 06.04.2023 in CrI. O.P. No. 847 of 2021 and CrI. M.P. No. 518 of 2021, whereby the prayer of the appellant to quash final report and consequential proceedings in C.C. No. 3569 of 2020 on the file of the Metropolitan

¹ The High Court

Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai-600008, under Section 406 and 420 of the Indian Penal Code, 1860², was partly allowed to the extent of indictment under Section 406 IPC; however, the prayer to quash indictment under Section 420 IPC was declined.

3. In brief, the prosecution case, as could be evinced from the final report (i.e., police report) submitted under Section 173 of the Code of Criminal Procedure, 1973³, is that the accused (the appellant herein) was producing a 'movie'. In the course of its production, he ran short of funds. He, therefore, requested the de-facto complainant (i.e., the second-respondent herein) to lend him money on assurance that it would be returned by a share in profits to the extent of 30%. Later, further money was lent on promise of an additional 17% share in profits. Ultimately, two post-dated cheques of Rs.24 lacs each were issued by the

² IPC

³ CrPC

accused to the *de facto* complainant towards return of the principal amount which returned unpaid for insufficient funds in the account. Based on above, it was alleged that the accused had cheated the complainant and had also committed offence of criminal breach of trust.

4. Aggrieved by the police report and the consequential proceedings, the appellant invoked the jurisdiction of the High Court under Section 482 of CrPC, *inter alia*, to quash the report and the consequential proceedings on the ground that a pure civil cause of action was given colour of a criminal offence.

5. By the impugned order, the High Court quashed the indictment of an offence punishable under Section 406 IPC but declined to quash the proceedings *qua* the offence of cheating punishable under Section 420 IPC.

6. We have heard the learned counsel for the parties.

7. On behalf of the appellant it is submitted that admittedly the second-respondent had invested money in a movie project on expectation of good returns. There is no dispute that the movie project was completed. However, it could not generate profits. In such circumstances, the appellant could not fulfil its commitment of providing good returns on the investment. Therefore, there was no dishonest intention and the dispute between the parties is purely civil in nature. Hence, institution and continuation of criminal proceedings is nothing but abuse of the process of Law.

8. *Per contra*, on behalf of the respondent(s) it is submitted that dishonest intention of the appellant was there from the very beginning which is evident from the fact that the two cheques got dishonoured for want of funds. Besides, on appellant's false

assurance of profits, money was lent. In these circumstances, offence of cheating is made out.

9. We have accorded due consideration to the rival submissions and have perused the record.

10. The police report indicted the appellant for offences of criminal breach of trust and cheating punishable under Sections 406 and 420 IPC respectively. The High Court came to the conclusion, and rightly so, that no offence punishable under Section 406 of IPC is made out as there was no entrustment. Regarding the offence of cheating, the High Court concluded that *prima facie* it is made out. The reasoning of the High Court in support of its conclusions can be found in paragraph 6 of its judgment, which is extracted below:

“This Court on perusal of the impugned final report finds that the offence under Section 406 IPC is not made out. There is no entrustment made to the petitioner, in order to attract the offence of criminal breach of trust. However, this Court finds that there was an Agreement between the petitioner and the de-facto complainant on 30.12.2013. The Agreement

shows that the petitioner promised 30% interest on the initial invested amount on Rs. 19,60,000/-. Thereafter, the de-facto complainant paid Rs. 27,00,000/- on 03.04.2014; and the petitioner had promised 47% profit on the invested amount. The petitioner had not made any payment to the de-facto complainant/second-respondent as promised. While so, the de-facto complainant/second-respondent objected to the petitioner releasing the movie. The petitioner had given one more undertaking letter, wherein, he had promised to pay the principal sum in two instalments, profit on a subsequent date; and that if the project did not yield any profit, he would pay an interest on the said sum of Rs. 48,00,000/-. All the above facts, disclose that at every stage, the representation has been made to the de-facto complainant to induce him to part with money. The allegations prima facie disclose the offence under Section 420 IPC. In the facts of the instant case, the question whether it was only a breach of promise or cheating has to be adjudicated only during trial. Therefore, this Court is not inclined to quash the impugned final report in so far as the offence under Section 420 IPC. Hence, the impugned final report is quashed only in respect of offence under Section 406 IPC. However, the learned Metropolitan Magistrate may try the case on the basis of evidence adduced before him without being influenced by any of the observations made in this order. The learned Metropolitan Magistrate (CCB and CBCID, Metro Cases), Egmore, Chennai – 600 008 may conduct the trial as expeditiously as possible⁴.

11. The above extract makes it clear that the High Court was of the view that as the money was advanced on a promise of good returns and, subsequently, an

⁴ Extracted from typed copy of the judgment placed on record. May contain typographical mistakes.

undertaking was also given to return the principal amount if the project did not yield any profit, it could be taken that the complainant parted with his money on the inducement of the appellant and therefore, *prima facie*, an offence punishable under Section 420 IPC is made out.

12. In Iridium India Telecom Ltd. v. Motorola Inc.⁵, this Court laid down the ingredients of an offence of cheating as defined in Section 415⁶ of IPC. It was observed that Section 415 of IPC has two parts. The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person to either: (a) deliver property to any person; or (b) consent that any person shall retain any property. The second part also requires that the accused must by deception

⁵ (2011) 1 SCC 74, paragraph 68

⁶ **Section 415. Cheating.** -- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to 'cheat'.

Explanation. --- A dishonest concealment of facts is a deception within the meaning of this section.

intentionally induce the person deceived either to do or omit to do anything which he would not do or omit, if he was not so deceived. Besides, such act or omission must cause or must be likely to cause damage or harm to that person in body, mind, reputation or property. Thus, deception is a necessary ingredient for the offence of cheating under both parts of this section. Besides, the complainant must allege/ prove that the inducement had been caused by the deception exercised by the accused. In other words, such deception must produce the inducement to part with or deliver property, which the complainant would not have parted with or delivered, but for the inducement resulting from such deception. The explanation to the section clarifies that non-disclosure of relevant information would also be treated as a misrepresentation of facts leading to deception.

- 13.** In order to constitute an offence of cheating the intention to deceive should be in existence when the

inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.

14. In *Vesa Holdings Private Limited and Another v. State of Kerala and others*⁷, this court held that every breach of contract would not give rise to an offence of cheating. Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating. In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are

⁷ (2015) 8 SCC 293, paragraph 12

made about failure on part of the accused to keep his promise, in absence of a dishonest intention at the time of making the initial promise, no offence under Section 420 of IPC is made out.

- 15.** Whether non-fulfilment of promise/ commitment by the accused is a reflection of his or her dishonest intention at the time of making the promise is ordinarily a matter of trial. However, in our view, where the transaction between the parties is such that fulfilment of the promise is not entirely in the control of the promisor, or there is an inherent risk in fulfilment of the promise, the High Court may, in exercise of its inherent powers under the Code, or under Article 226 of the Constitution, as the case may be, upon consideration of the attending circumstances, take a decision whether the dishonest intention existed or not at the time of making the promise. And, if it comes to the conclusion that the alleged conduct of the parties does not reflect a dishonest intention of the accused

from the very beginning, it may quash the criminal complaint/ proceedings and relegate the aggrieved party to civil remedies.

16. In the present case, what the High Court overlooked is that money was advanced for movie making and initially the agreement was to share the profits. Importantly, when the first tranche of money was transferred by the de-facto complainant to the accused, the alleged promise was a share in profits. Second tranche of money was transferred when the project could not be completed for want of funds. It also appears from paragraph 2 of the impugned order that before the movie could be released, de facto complainant took objection to its release. However, when the appellant gave two post-dated cheques, the movie could be released.

17. The aforesaid facts would indicate that the initial payment of money by the de-facto complainant to the appellant was for a movie project on promise of a share

in profits. Additional money was paid later for its completion under a promise of an enhanced share in the profits. Thereafter, post-dated cheques were issued to return the principal amount because of an objection taken by the de facto complainant to the release of the movie. Since there is no denial about the completion of the movie and its ultimate release, what is clear is that the promise to make a movie was not false. Therefore, it cannot be said the appellant made a false promise that he would make a movie with the aid of funds received by him. Insofar as promise *qua* sharing of profits is concerned, there are no allegations that the movie earned profits. Therefore, from the allegations made in the complaint it cannot be said that there was any dishonest intention of the appellant in making the promise which remained unfulfilled. In our view, the High Court overlooked that movie making is a high risk business. No one can be sure whether a movie would earn profits or would be a flop. If one agrees to share profits in lieu of his investment in a movie, he takes the

risk of a possible zero return. Thus, the nature of transaction between the parties was a crucial factor in determining whether the investor party should be allowed to bring in a criminal action or pursue civil remedies. Unfortunately, the High Court overlooked this vital aspect.

- 18.** Insofar as dishonour of those two cheques are concerned, it is clear that those were post-dated cheques issued not as an inducement to obtain delivery of money from the de facto complainant but to discharge an existing obligation at a future date. Thus, in essence, those cheques were not by way inducement to lend money or invest money in the proposed movie. Therefore, dishonour of those cheques, though may give right to initiate proceeding under Section 138 of the Negotiable Instruments Act, 1881, would not *ipso facto* amount to an offence of cheating, inasmuch as for an offence of cheating dishonest intention must exist from the very beginning. Ordinarily, post-dated cheques are

issued either by way of security to discharge an existing or future liability or to discharge the liability at some point of time in future. It is quite possible that at the time of issuance of a post-dated cheque, the drawer may have reason to believe that he would have sufficient balance in his account by the date of the cheque. Therefore, in our view, dishonour of a post-dated cheque by itself is not sufficient to presume existence of a dishonest intention on part of its drawer.

- 19.** In the instant case, there is nothing to indicate that the appellant had a dishonest intention from the very beginning. Had it been a case where the appellant had not made the movie despite borrowing funds to make one, an inference about existence of a dishonest intention was permissible. However, here there is no allegation that movie was not made. Rather, it was made and released. The prosecution case itself is to the effect that further advance was taken to complete and release the movie. However, when complainant took

objection to its release, the appellant issued post-dated cheques to repay the principal amount. Thus, those cheques were to discharge an existing liability and not by way of an inducement to take more money.

20. Assuming that by issuance of those cheques, the de facto complainant was led to vacate his objection to movie's release, even then an offence of cheating would not be made out for two reasons. First, those cheques were post-dated therefore, did not carry a representation of sufficient funds in the bank account at the time of its issuance. Second, initial agreement, as per the allegations, was to share profit on release of the movie. Thus, in absence of allegations that movie made profits, in our view, the complaint and the supporting materials failed to indicate that the appellant harboured a dishonest intention from inception. In conclusion, the allegations only disclosed a civil cause of action and the High Court fell in error in not quashing the criminal proceedings.

21. For the foregoing reasons, the appeal is allowed.

The impugned judgment and order of the High Court is set aside to the extent it declined quashing of the proceedings under Section 420 IPC. The impugned criminal proceedings under Section 420 IPC are also quashed. Pending applications if any stands disposed of.

.....**J.**
(PAMIDIGHANTAM SRI NARASIMHA)

.....**J.**
(MANOJ MISRA)

New Delhi;
March 19, 2026