2026:AHC:142661-DB

A.F.R.
RESERVED

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 11615 of 2026

Amit Kumar Jaiswal and Anohter

…..Petitioner(s)

Versus

State of U.P. and 3 others

…..Respondent(s)

Counsel for Petitioner(s)	:	Anwar Hussain, Mohammad Alam
Counsel for Respondent(s)	:	Deepak Upadhyay, G.A., Paras Dubey, Rajesh Kumar Singh

Court No. - 47

HON'BLE RAJIV GUPTA, J.
HON'BLE DR. AJAY KUMAR-II, J.

(Per : DR. AJAY KUMAR-II, J.)

1. The instant writ petition filed on behalf of the petitioners seeks quashing of the first information report dated 17.04.2026, registered as Case Crime No.253 of 2026, under Sections 316(5), 318(4) of Bhartiya Nyaya Sanhita (B.N.S.), 2023, Police Station Kotwali, District Ghazipur.

2. As per the allegations made in the impugned first information

which has been authorized by the Reserved Bank of India to run / operate the ATM (Automated Teller Machine). The Company operates ATM / CRM (Cash Recycling Machines) machines across the Country for various Banks under the name and style of 'Hitachi Money Spot', through which banking facilities like cash deposit and cash withdrawal are provided to the general public and ATM cardholders. To fulfill this purpose, an agreement namely, 'Master Franchisee Service Agreement' was executed on 12.08.2024, 08.01.2025 and 31.12.2025 between the Company and M/s. Asha Enterprises having its Proprietor Amit Kumar Jaiswal (petitioner no.1), son of Shri Awadhesh Kumar Jaiswal, resident of 9, Ward Number 6, Holika Mahal, Dildarnagar, District Ghazipur, Uttar Pradesh - 232326 (Office: 36, Ward Number 6, DL Road, Dildarnagar, Ghazipur). In January, 2025, police verification of Amit Kumar Jaiswal has been requested by the Company and the verification report was found negative. On the basis of said negative report, the Company desired to end their relation with aforesaid Amit Kumar Jaiswal. Albeit, a special request has been made by Amit Kumar Jaiswal to transfer all the existing ATM sites in the name of his son Harsh Raj (petitioner no.2) and in support thereof, he presented an affidavit confirming the change in the name of master franchise and also requested for mapping of the on-boarding security deposit amount earlier deposited, in favour of Harsh Raj. After considering the aforesaid request and documents presented by Amit Kumar Singh, on 21.04.2025, the Company executed Master Franchise Agreement with Harsh Raj and thereafter on 22.04.2025, the Company terminated the Master Franchise Agreement with

Kumar Jaiswal to the Company that his subordinate employee Vishwajeet Raj son of Shri Santosh Kumar (Aadhar Number: 7729-7279-9793), be authorized by the Company to perform 'Axis Indent' withdrawals. Therefore, at the request of Amit Kumar Jaiswal, the Company authorized Vishwajeet Raj to withdraw funds via Axis Indent. The Company issued Indent to Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj to operate the aforesaid ATMs through Hitachi's Account number 910020009415214 via Axis Bank, Ghazipur Branch. In addition to this, payment was also made through Union Bank of India Account number 441501010250763, IFSC: UBIN0544159, held by account holder Asha Enterprises. After reviewing and examining the ATM switch data, it has come out that an amount of Rs. 43,37,600/- (Rupees Fourty Three Lakhs Thirty Seven Thousand Six Hundred) was less loaded into the aforesaid ATM by Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj. Despite repeated requests made by the Company, on 18.11.2025, only an amount of Rs.8,09,700/- and on 19.11.2025, an amount of Rs.4,32,200/- were deposited by Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj. In this way the remaining amount of Rs.30,95,700/- (Thirty Lakhs Ninety Five Thousand Seven Hundred) has not been returned to the Company despite repeated requests. Despite this, Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj kept providing wrong information and misleading the Company regarding the cash loading and they tried to show/convince that the entire amount was loaded into the ATM. This act has not only caused financial loss to the Company but has also caused inconvenience to the general public due to the agreed by and between the Parties hereto, the Master Franchise Agent **shall (i) act as the custodian of the ATM/CRM and other related assets installed in the said Premises; (ii) be the trustee of the physical cash amount lying at the ATM/CRM vault and will provide necessary security to the cash to prevent any kind of incidents like robbery or theft; (iii) keep and maintain the said Premises at all time in clean, hygienic and good condition (iv) withdraw the cash amount as per the requirement, which shall be determined by the Company from time to time, from the designated bank A/c (a Designated Bank A/c is an A/c opened up by the Master Franchise Agent in his individual name at a local branch exclusively used for the purpose of withdrawing cash to replenish into the ATM/CRM and this designated Bank A/c shall not be utilized for his/her other personal use including but not limited to deposit, transfer or withdrawn of amount for his personal use) (v) the amount withdrawn from the Designated bank A/c shall be replenished into the ATM/CRM machine installed in the said Premises to enable the cardholders to withdraw the cash; (vi) at no point of time remove the cash amount from the ATM/CRM and misappropriate the same for his/her personal use;** (vii) ensure that the camera installed in the said Premises is functioning properly and if the camera is found to be defective, then the Master Franchise Agent should immediately inform the Company; (viii) to assist the Company's representative to carry out required First Level Maintenance (FLM) or Second Level Maintenance (SLM) services in the said Premises; and (ix) such other activities as may be informed by the Company from time to time. According to Clause 1, Sub-clause (o) of the agreement, The for replenishing it into the ATM/CRM. The Master Franchise Agent hereby agrees and aware that if he / she utilizes the currency notes from sources other than the one withdrawn from the Designated Bank A/c, then it will be considered as a material breach of this Agreement and the Master Franchise Agent shall be solely liable and responsible for the consequences arising therefrom. In such case, the Company shall be entitled to forthwith terminate this Agreement and forfeit the security deposit amount maintained with the Company without any intimation to the Master Franchise Agent. **Clear instructions of the Company were that if for any reason the cash amount could not be loaded into the ATM, then it would be mandatory to return it to the Company.** However, Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj, deliberately did not return the remaining amount to the Company and misled the Company by giving false information. After the ATM switch data was updated, fraud was detected, and despite several requests for the return of the amount being made in writing and verbally, neither was the money returned, nor was any satisfactory clarification provided by them to the Company. In this way, Amit Kumar Jaiswal, Harsh Raj and Vishwajeet Raj, while acting in the capacity of a banking agent, have embezzled the Company's funds under a pre-planned conspiracy, which falls under the category of a punishable offence. The complainant (respondent no.4) had submitted an application regarding the above to the Police Station Kotwali on 24.01.2026, but the Kotwali Police have neither taken any action till date nor have they registered the complainant's case, due to which this application is being moved. Request has been made to register the

3. Heard learned counsel for the petitioners, learned AGA for the State, Shri Deepak Upadhyay alongwith Shri Rajesh Kumar Singh, learned counsel for the respondent no.4 and perused the record.

4. Learned counsel for the petitioners submitted that the present first information report was lodged on 17.04.2026, by the respondent no.4 giving rise to Case Crime No.253 of 2026, under Sections 316(5), 318(4) of B.N.S., 2023 for alleged misappropriation of Rs.30,95,700/-. A bare reading of the present first information report clearly demonstrates that the dispute / entire allegation arises out of ATM cash loading, withdrawal and reconciliation under commercial agreements dated 12.08.2024, 08.01.2025 and 31.12.2025 executed between the parties.

5. Learned counsel for the petitioners further submitted that the aforesaid agreements specifically contain a clause regarding arbitration. The said arbitration clause clearly establishes that any dispute that arises under the aforesaid agreements shall be attempted to settle through negotiation and mutual agreement and if it could not be settled through such negotiation and mutual agreement, then it shall be finally settled by sole Arbitrator, which shall be appointed by the informant Company. The award of the Arbitrator shall be final and binding between the parties. A bare perusal of the first information report reveals that the dispute is based upon internal reconciliation of ATM cash and alleged outstanding amount, which squarely falls within the scope of dispute contemplated under the aforesaid arbitration clause. Therefore, the dispute between the parties is purely contractual and arbitral in nature. However, the

had already moved an application under Section 173(4) B.N.S.S. against the respondent no.4 and other persons, which is still pending.

6. Learned counsel for the petitioners next submitted that on receipt of show cause notice cum demand notice dated 06.01.2026, the petitioner no.2 had given a legal notice on 13.01.2026 and had also replied on 21.01.2026 to the show cause notice cum demand notice specifically denying any breach of trust as alleged in the show cause notice cum demand notice dated 06.01.2026, but on 09.02.2026, the informant Company had terminated the aforesaid agreements executed between the parties and had also forfeited the security deposit.

7. Learned counsel for the petitioners next submitted that the entire allegations, even if taken at its face value, do not disclose the essential ingredients of offence under Sections 316(5), 318(4) of B.N.S., as the dispute is purely civil in nature arising out of contractual obligations and thus no criminal proceedings could have been instituted as a substitute for civil remedies. Even otherwise the responding no.4 has lodged multiple F.I.R.s on the same cause of action, which is impermissible in view of the law laid down by the Hon'ble Supreme Court in **T.T. Antony Vs. State of Kerala & Others, 2001 (6) SCC 181** and **Babubhai Vs. State of Gujarat & Others, 2010 (12) SCC 254**.

8. Learned counsel for the petitioners further submitted that the impugned first information report has been lodged with malafide

9. It was lastly argued that the present proceedings are liable to be quashed in view of the settled law that where a dispute is predominantly civil in nature with no element of criminality, the same cannot be allowed to continue as criminal case.

10. Per contra, learned A.G.A. as well as learned counsel for the respondent no.4 vehemently opposed the prayer for quashing of the F.I.R. as well as the submissions made by learned counsel for the petitioners and submitted that in the present case, the act of the petitioners has not only caused financial loss to the Company but has also caused inconvenience to the general public owing to the disruption of ATM services. They have embezzled the Company's funds by hatching conspiracy. Neither the embezzled money was returned nor any plausible explanation for the same was given by the petitioners. In this way, the petitioners have siphoned off the money meant for ATM cash replenishment by keeping the Company in dark. The petitioners were entrusted with collecting cash from the Bank and depositing it into ATM. However, instead of loading the cash, they pocketed the money.

11. Learned A.G.A. as well as learned counsel for the respondent no.4 next submitted that from the allegations made in the impugned first information report, involvement of the petitioners is writ large on the face of it and prima facie, offence is clearly disclosed against the petitioners and the matter requires deep probe and thorough investigation.

12. Lastly, they submitted that from the allegations made in the

Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others reported in (2021) SCC Online SC 315 and in a recent decision of the Hon'ble Apex Court reported in **(2024) 5 SCC 419, Directorate of Enforcement Vs. Niraj Tyagi and others.**

13. Having considered the rival submissions made by the learned counsel for the parties, we have carefully perused the allegations made in impugned first information report as well as the documents annexed with the petition in regard to the aforesaid agreements.

14. A bare perusal of the first information report clearly reveals that the petitioner no.1 firstly executed an agreement namely, 'Polaris Model Master Franchisee Service Agreement' with the Company. When police verification of petitioner no.1 was found negative, then on his request through an affidavit, fresh Master Franchise Service Agreement was executed by the Company with the son of petitioner no.1 i.e. petitioner no.2 on 21.04.2025, while terminating earlier agreement with petitioner no.1. The Company reserved their right of recovery, compensation, damages and losses against petitioner no.1. Thus, it is crystal clear that petitioner no.2 was working as an Agent of Hitachi Payment Services Pvt. Ltd. in view of agreement dated 21.04.2025. As per Clause 1 (n) of the agreement, petitioner no.1 was the custodian of the ATM/CRM and was also trustee of the physical cash amount lying at the ATM/CRM vault. There is a clear stipulation in the agreement that the cash amount withdrawn from the local Branch was to be replenished into the ATM/CRM. It was also clearly stipulated that the cash amount so withdrawn for this purpose shall not be utilized for his other

terms and conditions of the agreement. At no point of time, he was authorized to withdraw the cash amount from the concerned Branch for his own personal utilization instead of replenishing the whole such withdrawn cash into the designated ATM/CRM.

15. The roles of petitioners no.1 and 2 are also clearly specified in the first information report. Vishwajeet Raj was authorized to receive cash amount from the authorized Bank by issuing an indent on the instructions of petitioner no.2. There is a clear averment that an amount of Rs.43,37,600/- was less loaded in the designated ATM/CRM, causing a loss to the Company, and resultantly an unlawful gain to the petitioners. However, amounts of Rs.8,09,700/- and Rs.4,32,200/- were deposited by the petitioners on 18.11.2025 and 19.11.2025. Thus, an amount of Rs.30,95,700/- was not returned and was accordingly misappropriated. Deposit of aforesaid amounts are also prima facie indicative of temporary embezzlement. The misappropriation of money amounting to Rs.30,95,700/- was done by the petitioners while working as an Agent of Hitachi Payment Services Pvt. Ltd., violating the terms and conditions of the agreement. The aforesaid act is prima facie an offence, covered under Sections 316(5) of B.N.S., 2023.

16. From the facts stated in the first information report, it is apparent that the Company and ATM cardholders were deprived of an amount of Rs.30,95,700/-, which resulted into causing wrongful loss to the Company and was a wrongful gain to the petitioners. By committing wrongful fraudulent act and violating the terms and conditions of the agreement, the petitioners embezzled and

prosecution if the facts constitute a *mens rea*. If there is no *mens rea* or if the other essential ingredients of an offence are lacking in such facts, only then the same facts may not sustain a criminal prosecution, though a civil action may lie.

17. The Hon'ble Apex Court in **Kathyayini Vs. Sidharth P.S. Reddy & Ors., 2025 INSC 818**, has clearly held that there is no bar against prosecution during the pendency of a civil suit if the offences punishable under criminal law are made out against the parties. The Hon'ble Apex Court has clearly observed by relying on its previous judgment in **K. Jagadish Vs. Udaya Kumar G.S. and another, (2020) 14 SCC 552** that it is well settled that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is availed by a party, he is not precluded from setting in motion the proceedings in criminal law. The other relevant paragraphs 20 and 21 of the **Kathyayini (supra)** case are reproduced here-in-below.

> 20. In **Pratibha Rani v. Suraj Kumar and another, (1985) 2 SCC 370**, this Court summed up the distinction between the two remedies as under :
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> "*21. … There are a large number of cases where criminal law and civil law can run side by side. The two remedies are not mutually exclusive but clearly coextensive and essentially differ in their content and consequence. The object of the criminal law is to punish an offender who commits an offence against a person, property or the State for which the accused, on proof of the offence, is deprived of his liberty and in some cases even his life. This does not, however, affect the civil remedies at all for suing the wrongdoer in cases like arson, accidents, etc. It is an anathema to suppose that when a civil remedy is available, a criminal prosecution is completely barred. The two types of actions are quite different in content, scope and import. It is not at all intelligible to us to take the stand that if the husband dishonestly misappropriates the stridhan property of his wife, though kept in his custody, that would bar prosecution*

"*17. In view of the preponderance of authorities to the contrary, we are satisfied that the High Court was not justified in quashing the proceedings initiated by the appellant against the respondents. We are also not impressed by the argument that as the civil suit was pending in the High Court, the Magistrate was not justified to proceed with the criminal case either in law or on the basis of propriety. Criminal cases have to be proceeded with in accordance with the procedure as prescribed under the Code of Criminal Procedure and the pendency of a civil action in a different court even though higher in status and authority, cannot be made a basis for quashing of the proceedings.*"

18. The Apex Court in **Punit Beriwala V. The State of NCT of Delhi and Ors. 2025 SCC OnLine SC 983** reiterating the same in para 28 has held thus:

"28. It is trite law that mere institution of civil proceedings is not a ground for quashing the FIR or to hold that the dispute is merely a civil dispute. This Court in various judgments, has held that simply because there is a remedy provided for breach of contract, that does not by itself clothe the Court to conclude that civil remedy is the only remedy, and the initiation of criminal proceedings, in any manner, will be an abuse of the process of the court. This Court is of the view that because the offence was committed during a commercial transaction, it would not be sufficient to hold that the complaint did not warrant a further investigation and if necessary, a trial."

19. Thus, law has been well settled that pendency of civil proceedings or availability of civil remedies on the same subject matter involving the same parties is no justification to quash the criminal proceedings if a prima facie case exists against the accused persons.

20. It is no doubt true that an arbitration clause [clause 20 (e)] exists in the present case and binds parties to seek adjudication of their disputes, before an Arbitrator. The mere existence of an arbitration clause cannot prevent criminal prosecution against the petitioners, if an act constituting a criminal offence is made out even prima facie. As already held hereinbefore, a given set of facts may

adjudication of criminal consequences of an alleged breach of contract. The Arbitrator, would obviously adjudicate the civil consequences of the violation of the the contract and if this violation leads to the commission of a criminal offence, the Arbitrator would have no jurisdiction to investigate or launch prosecution, in respect thereof. The criminal prosecution and remedy by way of arbitration are two separate and distinct courses available to an aggrieved party. The mere existence of an arbitration clause or even the pendency of arbitration proceedings or availability of civil remedies would, in our considered opinion, not oust the jurisdiction of criminal Courts, to consider whether on the facts narrated in the FIR, a criminal offence has been committed.

21. The conclusion that the existence of an arbitration clause is not a bar to the initiation of criminal proceedings is fortified by a judgment of the Hon'ble Supreme Court in **Trisuns Chemical Industry v. Rajesh Aggarwal, 1994(4) RCR (Crl.) 223 (SC)(supra)**." In **Trisuns Chemical 's case (supra)**, it was held as under:-

" *We are unable to appreciate the reasoning that the provision incorporated in the agreement for referring the disputes to arbitration is an effective substitute for a criminal prosecution when the disputed act is an offence. Arbitration is a remedy for affording reliefs to the party affected by breach of the agreement but the arbitrator cannot conduct a trial of any act which amounted to an offence albeit the same act may be connected with the discharge of any function under the agreement. Hence, those are not good reasons for the High Court to axe down the complaint at the threshold itself. The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own. Pre-emption of such investigation would be justified only in very extreme cases as indicated in Bhajan Lal v. State of Haryana.*"

22. The Apex Court in **Digambar Pathak V. State of UP SLP (Cr.) No. 7341 of 2025** in para 8 has again observed as under:

between the parties where they can resolve their differences amicably. It is well-settled that mere existence of an arbitration clause in the contract between the parties is not a sufficient ground for quashing the criminal proceedings if the necessary ingredients of a criminal offence are made out from the allegations and the materials collected during the course of investigation or inquiry.[Trisuns Chemical Industry V. Rajesh Agarwal & Others (1999) 8 SCC 686]"

23. While reverting back to the facts of present case, it is clear that it is a case where the Company has suffered a wrongful loss of Rs.30,95,700/-, therefore, in this situation, the aforesaid Company has a right to institute civil proceedings for the recovery of aforesaid amount. However, the Company is also at liberty to invoke arbitration clause for recovering the aforesaid amount. The arbitration clause of the agreement cannot be read as a bar to institution of criminal proceedings, if an offence is prima facie made out against the petitioners. By invoking the arbitration clause, either the Company can initiate proceedings for recovery of its wrongful loss or even the petitioners can invoke the aforesaid arbitration clause to challenge the termination of their agreement, but by no stretch of imagination, the aforesaid arbitration clause can be read as a bar to initiation of criminal proceedings against the petitioners for their such acts, which prima facie constitute the commission of a cognizable offence.

24. We have also carefully gone through the F.I.R. No.46 dated 20.04.2026 and F.I.R. No.253 dated 17.04.2026. It was argued that for same cause of action, two different F.I.R.s have been registered, which is impermissible in law. However, perusal of both the F.I.R.s clearly reveals that these two F.I.R.s have been lodged for two

deposit of Rs.4,32,200/- on 19.11.2025, by the petitioners. Therefore, both these F.I.R.s have been registered for different set of facts for two different locations and even the F.I.R.s have been lodged in two different police stations, meaning thereby that the jurisdiction to lodge and investigate the offences alleged in those F.I.R.s vests in two different police stations. Therefore, in the totality of the circumstances, these two F.I.R.s are not lodged on the same cause of action. Thus, we find no force in the arguments so raised by the learned counsel for the petitioners.

25. In the light of aforesaid discussions and keeping in view the principles of law laid down by Hon'ble Apex Court in the decisions cited above, we are of the opinion that the impugned first information report cannot be quashed qua the petitioners at this nascent stage.

26. The prayer for quashing of the first information report is therefore, refused.

27. The instant writ petition lacks merit and is accordingly **dismissed**.

July 15, 2026
ss

(Dr. Ajay Kumar-II,J.) **(Rajiv Gupta,J.)**