



2026 INSC 1079

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. _____ OF 2026
(@ SPECIAL LEAVE PETITION (CRIMINAL) NO.6908/2026)

YOGESH PREMJBHAI SUVARIYA & ANR.

APPELLANT(S)

VERSUS

STATE OF GUJARAT & ANR.

RESPONDENT(S)

ORDER

1. Leave granted.

2. We have heard Mr. Nikhil Goel, learned senior counsel for the appellants and Mr. Prashant Bhagwati, learned counsel for Respondent No.1-State of Gujarat. None has appeared for Respondent No.2- *de facto* complainant, though served.

3. Appellants are aggrieved by order dated 17.03.2026 passed by the High Court of Gujarat at Ahmedabad (briefly the 'High Court' hereinafter), partly allowing the revision application of the appellants. By the impugned judgment and order, while the appellants have been discharged from the offence punishable under Section 406 of the Indian Penal Code, 1860 (for short, 'IPC'), the charge under Section 420 read with Section 114 of the IPC against the appellants has been sustained.

4. Appellants are the Directors of Shivamy Enterprises Pvt. Ltd. (for short, 'Shivamy'), a private limited company, which is engaged in the steel business. Informant

(Respondent No.2) is an employee of one Hans Ispat Ltd. Since the year 2006, Shivamy has been purchasing steel bars from Hans Ispat Ltd., whereafter Shivamy sold it to third parties. It is the case of the appellants that it had paid about Rs.3,50,00,000/- approximately to Hans Ispat Ltd. for such business transactions.

5. Respondent No.2 lodged First Information before the Police Station- Anjar, District- Kutch East, Gujarat, alleging that appellants had approached him for purchase of TMT bars and as a matter of fact, had purchased 293 metric tonnes of TMT bars worth Rs.1,19,00,000/-, vide purchase orders dated 14.11.2011 and 21.11.2011. It is the allegation of Respondent No.2 that after supplying the TMT bars, bills were raised by Hans Ispat Ltd., pursuant to which appellants had issued 10 post-dated cheques. While the cheques were dishonoured, the bills remained unpaid by the appellants.

6. Based on the aforesaid First Information, FIR No. I-8/2012 was registered at Police Station- Anjar, District- Kutch East, Gujarat under Sections 406, 420 and 114 of IPC.

7. On completion of investigation, police filed charge-sheet against the appellants, charging them of having committed offences under Sections 406, 420 and 114 of IPC leading to registration of Criminal Case No. 584 of 2012 which was assigned to the Court of Additional Chief Judicial Magistrate, Anjar, Kutch.

8. Appellants preferred application for discharge before the Court of Additional Chief Judicial Magistrate, Anjar, Kutch in Criminal Case No.584 of 2012. Vide order dated 08.02.2016, the Additional Chief Judicial Magistrate, Anjar rejected the application seeking discharge.

9. Aggrieved thereby, a criminal revision application was filed before the High Court, being Criminal Revision Application No. 213 of 2016. The said revision application was dismissed by the High Court *vide* the order dated 24.03.2021 on the ground that it was not maintainable.

10. This decision of the High Court was assailed by the appellants before this Court in Criminal Appeal No.5430 of 2024. Vide order dated 18.12.2024, this Court held that the revision application was maintainable and accordingly, set aside the order of the High Court rejecting the revision application, further directing the High Court to consider the revision application on merit.

11. Thereafter, the revision application was heard by the High Court and as noted *supra*, vide the judgment and order dated 17.03.2026, the same was partly allowed. While the appellants have been discharged from the offence punishable under Section 406 of IPC, the order rejecting the discharge application, qua the offences under Section 420 read with Section 114 of IPC, has been confirmed. The Additional Chief Judicial Magistrate has been directed to alter the charges and frame a modified charge against the appellants under Section 420 read with Section 114 of IPC.

12. This order came to be challenged in the related Special Leave Petition, in which this Court had issued notice *vide* the order dated 24.04.2026 and also directed that further proceedings in Criminal Case No.584 of 2012, pending before the Court of Additional Chief Judicial Magistrate, Anjar shall remain stayed.

13. Mr. Goel, learned Senior counsel for the appellants submits that the dispute between the parties is entirely civil in nature. Instead of instituting a civil suit for recovery, Respondent No.2 has abused the criminal process by lodging First Information and getting a criminal case registered against the appellants. The object of the criminal case is to recover the amount allegedly not paid by the appellants. That cannot be the purport of the criminal process. In this connection, learned Senior counsel has referred to the First Information as well as to the statement of Respondent No.2 made before the police under Section 161 of the Code of Civil Procedure, 1973 (for short, 'CrPC') and submits therefrom that a deposit of Rs.2,00,00,000/- made by Shivamy was lying with Hans Ispat Ltd. Despite repeated requests, the said amount was not being returned back, neither to Shivamy nor to the appellants. Therefore, to set off the outstanding dues, the related payments amounting to Rs.1,19,00,000/- were withheld by the appellants. This has been sought to be given a criminal colour by Respondent No.2. He further submits that this Court may exercise its jurisdiction to

quash the criminal proceedings. In support of such submissions, learned Senior counsel has placed reliance on the following decisions:

(a) *Delhi Race Club versus State of Uttar Pradesh*, [(2024) 10 Supreme Court Cases 690];

(b) *Lalit Chaturvedi versus State of Uttar Pradesh*, [(2024) 12 Supreme Court Cases 483];

(c) *Shailesh Kumar Singh alias Shailesh R. Singh versus State of Uttar Pradesh*, [2025 SCC OnLine SC 1462]; and,

(d) *G. Saminathan versus The State, Represented by the Sub-Inspector of Police*, [2026 INSC 772].

14. *Per contra*, learned counsel for the respondent-State of Gujarat strenuously argued that though the dispute between the appellant and Respondent No.2 may have its genesis in business transaction having a civil flavour but the subsequent conduct of the appellants in withholding payments certainly has got criminal overtones. Police has investigated the case and *prima facie* has found it to be fit for trial. In such circumstances, it would be too far fetched to contend that the dispute between the parties is entirely of civil nature and, therefore, the criminal proceedings should be quashed.

15. Submissions made by learned counsel for the parties have received the due consideration of the Court.

16. While Section 406 of IPC provides for punishment for criminal breach of trust, Section 405 of IPC is the substantive provision dealing with 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 wilfully suffers any other person so to do, in such a case, he is said to have committed the offence of 'criminal breach of trust'.

17. Section 420 of IPC deals with cheating and dishonestly inducing delivery of property. It says that whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

18. Cheating is defined in Section 415 of IPC which says that 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'.

19. Under Section 114 of IPC, a person would be liable to be punished as an abettor, if he is present when the act or offence for which he would be punishable in consequence of the abetment is committed, he shall be deemed to have committed such act or offence.

20. In *G. Saminathan (supra)*, this Court elaborated on the ingredients constituting a fraudulent act dealt with in Section 415 of IPC and held thus:

"7.2 For the invocation of Section 420 of IPC, which provides for cheating and dishonestly inducing the delivery of property, the ingredients of Section 415 of IPC have to be established. To constitute the offence under Section 415 of IPC, it is essential that, by way of certain acts, a fraudulent or dishonest inducement is made and the person so deceived was made to deliver any property on account of such inducement. The said provision lays down two separate classes of acts which the person deceived may be induced to do, as follows:

i) In the first class of acts he may be induced fraudulently or dishonestly to deliver the property to any person or consent that any person shall retain any property.

ii) The second class of acts set forth in the Section is the intentional inducement of doing or omitting to do anything which the person

deceived would not do or omit to do if he were not so deceived."

20.1. The *sine qua non* for attracting Section 415 IPC is 'fraudulence', 'dishonesty' or 'intentional inducement'. Absence of the aforesaid elements would debase the offence of cheating.

21. Adverting to the facts of the present case, we may refer to the statement of Respondent No.2 made under Section 161 of the CrPC. In his aforesaid statement, he stated that the ownership of Hans Ispat Ltd. was earlier with the Barnala Group with its Head Office at Muzaffarnagar, Uttar Pradesh. From the Barnala Group, Electrotherm India Pvt. Ltd. had purchased the company with effect from 01.06.2010. From the aforesaid company, Hans Ispat Ltd. took over the ownership. In his aforesaid statement, he admitted that an amount of Rs.2,00,00,000/- was paid by the appellants to the aforesaid company during the period from 01.12.2006 to 15.02.2007 when the Barnala group owned the company. He went on to explain that such amount deposited by the appellants were required to be taken care of by Barnala Group and not by the new owners of the company.

22. From the above, it is evident that the money was paid by the appellants to the company when the Barnala group owned the company. Appellants are insisting on repayment, failing which they have adjusted the dues of Respondent No. 2. According to respondent No. 2 this amount should be

repaid by the Barnala group and not by the present owners. Therefore, the amount due to him should be paid by the appellants. Thus, the dispute raised by Respondent No.2 is pre-eminently a civil one. However, no civil suit has been instituted by Respondent No.2 against the appellants.

23. A Two-Judge Bench of this Court in *Delhi Race Club (supra)* held that if it is the case of the complainant that a particular amount is due and payable to him, then he should have filed a civil suit for recovery of the amount. He could not have gone to the Court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust. This Court held as follows:

"51. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the Court of the Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

52. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law."

23.1. While concluding, this Court explained that the offences of cheating and criminal breach of trust are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. This Court declared as under:

"55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-à-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other."

24. In *Lalit Chaturvedi (supra)*, a Two-Judge Bench of this Court under similar circumstances, has held that even if the assertions made in the complaint are correct, even then, a criminal offence under Section 420 read with Section 415 of IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission. This Court held as follows:

"5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a

criminal offence under Sections 420 and 406 IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 CrPC on the ground of delay/laches and also the factum that the charge-sheet had been filed on 12-12-2019. This ground and reason is also not valid."

24.1. In the facts and circumstances of the case and referring to several judgments, this Court held thus:

"9. We will assume that the assertions made in the complaint are correct, but even then, a criminal offence under Section 420 read with Section 415 IPC is not established in the absence of deception by making false and misleading representation, dishonest concealment or any other act or omission, or inducement of the complainant to deliver any property at the time of the contract(s) being entered. The ingredients to allege the offence are neither stated nor can be inferred from the averments. A prayer is made to the police for recovery of money from the appellants. The police is to investigate the allegations which discloses a criminal act. Police does not have the power and authority to recover money or act as a civil court for recovery of money."

25. In the case of *Shailesh Kumar Singh alias Shailesh R. Singh (supra)*, a Two-Judge Bench of this Court noticed that it was a case of civil nature and wondered why the High Court was not able to understand the civil nature of the dispute. The Bench also enquired as to whether any civil suit was filed for recovery of money by the

informant. But no such civil suit was filed. In such circumstances, this Court held as under:

"13. We also enquired with the learned counsel appearing for the Respondent No. 4 whether his client has filed any civil suit or has initiated any other proceedings for recovery of the money. It appears that no civil suit has been filed for recovery of money till this date. Money cannot be recovered, more particularly, in a civil dispute between the parties by filing a First Information Report and seeking the help of the Police. This amounts to abuse of process of law.

14. We could have said many things but we refrain from observing anything further. If the Respondent No. 4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings."

25.1. In the facts of that case, the FIR registered under Sections 60(b), 316(2) and 318(2) of the Bharatiya Nyaya Sanhita, 2023 was quashed.

26. Reverting back to *G. Saminathan* (supra), this Court referred to the judgments analysed to above and held that when the dispute between the parties is essentially civil in nature, a case of cheating or criminal breach of trust *per se* would not arise.

27. Having given our anxious consideration to the submissions made at the Bar, relevant materials on record and the decided cases, we have no hesitation in coming to

the conclusion that the grievance raised by Respondent No.2 is essentially civil in nature. Instead of availing his civil remedy, Respondent No.2 has resorted to criminal proceedings to recover the amounts stated to have been withheld by the appellants. This certainly cannot be the object of a criminal proceeding.

28. In the circumstances, we are of the view that allowing the criminal proceedings to continue would be nothing but an abuse of the process of the Court.

29. That being the position, we set aside the impugned judgment and order dated 17.03.2026 passed by the High Court as well as the order dated 08.02.2016 of the learned Additional Chief Judicial Magistrate, Anjar, Kutch.

30. Consequently, Criminal Case No.584 of 2012, pending on the file of Additional Chief Judicial Magistrate, Anjar, Kutch, is hereby quashed.

31. Accordingly, the Criminal Appeal is allowed.

32. Pending application(s), if any, shall stand disposed of.

.....J.
[UJJAL BHUYAN]

.....J.
[ATUL S. CHANDURKAR]

NEW DELHI;
23rd SEPTEMBER, 2026.
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