



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SANJEEV S KALGAONKAR

ON THE 27th OF OCTOBER, 2025

MISC. CRIMINAL CASE No. 49157 of 2024

RAJU AND OTHERS

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Zenith Chhablani – Advocate for the petitioners.

Shri Apoorv Joshi- GA for the State.

ORDER

This petition under Section 528 of the BNSS, 2023 is filed for quashing the FIR registered at Crime No. 151 /2024 at P.S. Khilchipur, District - Rajgarh for offence punishable under Sections 420 and 406 of IPC alongwith subsequent proceedings.

2. The exposition of facts, in brief, giving rise to the present petition is as under:

A. Kailashchand and other farmers submitted a written complaint to the SHO of Police Station – Khilchipur, District – Rajgarh, alleging fraud and cheating against Raju Soni S/o Mohanbabu Soni and Ravi Soni S/o Mohanbabu Soni, resident of Village – Chhapiheda. It is alleged in the complaint that in the year 2023, Raju Soni and Ravi Soni purchased crops of wheat, Soyabeen, Musturd, Lentil (*masoor*) and Corn (*makka*) on credit



and promised to pay the amount towards purchase of crops within a month. Raju Soni and Ravi Soni paid the amounts as promised and earned their trust. Raju Soni and Ravi Soni purchased other crops also and paid the amounts. Raju Soni and Ravi Soni had purchased crops of Soyabean, Musturd and Lentil from farmers between October, 2023 to February 2024, but did not pay the amounts. Raju Soni and Ravi Soni have absconded.

B. On such allegations, the Police Station – Khilchipur, District – Rajgarh registered FIR at Crime no. 151 of 2024 for offences punishable under Sections 420 and 406 of the IPC against Raju Soni and Ravi Soni. The statements of witnesses have been recorded. Handwritten purchase slips were seized on production by farmers. The prosecution for offences punishable under Sections 409, 467, 468 and 471 of IPC was added. The investigation is under way.”

3. Learned counsel for the petitioners, in addition to the grounds mentioned in the petition, submitted that the alleged offence is not committed by the petitioners. The dispute between the parties is predominantly civil in nature, which is given color of criminal prosecution to pressurize the petitioners. Learned counsel further contended that the dispute relates to commercial transactions of sale of goods, therefore, the offence punishable under sections 420 and 406 of the IPC is not made out against the petitioners. The continuation of investigation would cause serious prejudice to the petitioners., learned counsel for the petitioners relied upon the order dated 16.05.2025 passed in MCRC no. 35544 of 2019 [**Sushree Shehal and Others Vs. State of Madhya Pradesh and Others**] and the order dated 05.05.2025 passed in MCRC no. 19202 of 2024 [**Gauri Rahul Takalkar and Others Vs. Rahul Dilip Takalkar**] to buttress his contentions.



4. *Per-contra*, learned counsel for the State ably assisted by learned Counsel for objector opposed the petition and submitted that the petitioners had defrauded various farmers. They have forged the purchase slips showing the purchase of crops from 161 farmers and fled away with amounts to the tune of Rs. 2,32,10,000/-, therefore, the offences punishable under sections 409 and 468 of IPC are *prima-facie* made out against the petitioners. The investigation is under way. The petition is meritless.

5. Heard, learned counsel for the parties and perused the record.

6. The section 420 IPC deals with the cheating by dishonestly inducing delivery of property. The petitioners' failure to pay the outstanding money towards purchase of crops has led to charges of cheating. Mere non-performance of the contract or inaction or deferment in payment in compliance with the promise may provide cause of action for specific performance of the contract or recovery of money but dishonest intention to cheat or fraudulent intention to misappropriate from inception cannot be inferred from these actions in case of continuing transaction. Mere non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. (*Vir Prakash Sharma v. Anil Kumar Agarwal*, (2007) 7 SCC 373; *Ashok Kumar Jain v. State of Gujarat*, 2025 SCC OnLine SC 998 relied)

7. In the case of **International Advance Research Centre for P.M. & N.M. Vs. Nimra Cerglass Technics (P)Ltd. & Anr. reported in (2016) 1 SCC 348**, the Supreme Court held as under:

15. The essential ingredients to attract Section 420 IPC are : (i) cheating; (ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security; and (iii) mens rea of the accused at the time of making the inducement. The making of a false representation is one of the essential ingredients to constitute the offence of cheating under Section 420 IPC. In order to bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but, it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complainant.



16. The distinction between mere breach of contract and the cheating would depend upon the intention of the accused at the time of alleged inducement. If it is established that the intention of the accused was dishonest at the very time when he made a promise and entered into a transaction with the complainant to part with his property or money, then the liability is criminal and the accused is guilty of the offence of cheating. On the other hand, if all that is established is that a representation made by the accused has subsequently not been kept, criminal liability cannot be foisted on the accused and the only right which the complainant acquires is the remedy for breach of contract in a civil court. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the beginning of the transaction. In *S.W. Palanitkar v. State of Bihar* [(2002) 1 SCC 241 : 2002 SCC (Cri) 129] , this Court held as under : (SCC p. 250, para 21

“21. ... In order to constitute an offence of cheating, the intention to deceive should be in existence at the time 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, to say that he committed an act of cheating. A mere failure to keep up promise subsequently cannot be presumed as an act leading to cheating.”

The above view in *Palanitkar* case (2002) 1 SCC 241 was referred to and followed in *Rashmi Jain v. State of U.P.* (2014) 13 SCC 553.

8. In case of *Hridaya Ranjan Prasad Verma v. State of Bihar* (2000) 4 SCC 168, it was held that-

“14. On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

9. Recently, in the case of **Radheyshyam & Ors. Vs. State of Rajasthan & Anr.** reported in 2024 SCC OnLine SC 2311, the Supreme Court has held as under:



8. Thus, cheating forms an essential ingredient to constitute an offence under Section 420, IPC. Further, to constitute cheating as defined under Section 415, IPC, it is necessary that a fraudulent or dishonest inducement is done and the deceived person is made to deliver any property owing to the fraud. Section 415, IPC, defines “cheating”, as:

“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”.”

9. From the bare perusal of the FIR, it is evident that there was no act of cheating, that is, the complainant was nowhere fraudulently induced or dishonestly deceived by the petitioners. A commercial transaction took place between the parties, during which, the parties consensually agreed for the sale of the property of the appellants and respondent no. 2 paid the part consideration. The default in payment of their loan dues on part of the appellants is not reflective of their deceitful intention towards the complainant. Mere non-registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sale and it is not the case of the respondent that he was in anyway deceived or duped to make such payments to the appellants. It is a civil dispute and gives rise to the complainant’s right to resort to the remedies provided under civil law by filing a suit for specific performance.

10. Additionally, the appellants have also been accused of committing the offence of criminal breach of trust under Section 406, IPC. This offence is defined under Section 405, IPC as follows: “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 off 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, commits “criminal breach of trust”.”

11. For an offence punishable under Section 406, IPC, the following ingredients must exist:

- i. The accused was entrusted with property, or entrusted with dominion over property;
- ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and
- iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

12. In the present case, the appellants were not entrusted with any property by respondent no. 2 – complainant. The only delivery made was of part payment towards an Agreement to Sale between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to



register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.

10. Apparently, both the parties consensually agreed for the sale and purchase of crops on credit. They continued in transaction. The subsequent failure of petitioners / accused to pay the amount towards purchase of crops cannot lead to inference that they had fraudulent or dishonest intention at the beginning of the transaction. Therefore, in view of aforesaid dictum of law the offence punishable u/S 420 and 406 of IPC is *prima-facie* not made out against the petitioner from the contents of impugned FIR and the material on record.

11. The Supreme Court in *Mohd. Ibrahim v. State of Bihar* reported in **(2009) 8 SCC 751**, observed that:

13. The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

15. The sale deeds executed by the first appellant, clearly and obviously do not fall under the second and third categories of “false documents”. It therefore



remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of the complainant's land (and that Accused 2 to 5 as the purchaser, witness, scribe and stamp vendor, colluded with the first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. ... There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

12. In *Mir Nagvi Askari v. CBI*, reported in (2009) 15 SCC 643, the Supreme Court observed as follows:

"164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."

(Sheila Sebastian v. R. Jawaharaj, (2018) 7 SCC 581 also relied)



13. The prosecution for the offences punishable under sections 467, 468 471 of IPC is added on the basis of purchase receipts allegedly executed by the accused/petitioners. Clearly, the purchase receipts in question, in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. There is no allegation of alteration of the purchase receipts. Thus, in view of the law laid down in cases of *Mohd. Ibrahim* and *Mir Nagvi Askari (supra)*, ingredients of “making false document” or “forgery” are not *prima facie* made out. The investigation agency was apparently swayed by the magnitude of the outstanding amount and the plight of farmers but the prosecution has to show *prima facie* existence of the necessary ingredients constituting the alleged offence. The impugned FIR, based on written complaint, is an attempt to cloak the civil dispute of specific performance of contract and recovery of money for sale of goods with criminal prosecution for cheating, criminal breach of trust and forgery. Hence, the exercise of inherent jurisdiction u/Sec. 528 of the BNSS, 2023 is needed to prevent abuse of the process of Court.

12. Consequently, this petition u/S 528 of the BNSS, 2023 is allowed. The impugned FIR registered at Crime No. 151 of 2024 dated 09/05/2024 at P.S. Khilchipur, Distt. Rajgarh for offence punishable under Sections 420 and 406 (subsequently added Sections 409, 467, 468 and 471) of the IPC, with all subsequent proceedings, is quashed. The Petitioners stands discharged.

CC as per rules.

(SANJEEV S KALGAONKAR)
JUDGE

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