

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

Pronounced on : 20.02.2026
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CRMC No. 592/2017

Ivan Prince Parihar

.....Petitioner

Through: Mr. Rajnish Singh Parihar, Advocate

Vs

Vikesh Kumar

.....Respondent

Through: None

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

ORDER

- 01.** The petitioner, through the medium of the present petition, has challenged the complaint filed by the respondent against him alleging commission of offences under Sections 420/406/409 and 506 RPC stated to be pending before the court of learned Judicial Magistrate, 1st Class (Munsiff), Reasi (hereinafter referred to as 'trial Magistrate').
- 02.** Challenge has also been thrown to order dated 11.04.2017 passed by the learned trial Magistrate whereby after recording satisfaction that offences under

Sections 420/409 RPC are made out against the petitioner, the process has been issued against him.

03. It appears that impugned complaint came to be filed by the respondent against the petitioner and co-accused before the learned trial Magistrate alleging therein that in the month of February, 2016, the petitioner along with co-accused with a dishonest intention persuaded the respondent-(complainant) to execute the work of laying optical fiber cable in GREF road from Reasi to Mahore. It was projected by the accused that the work has been allotted in the name of co-accused. The complainant was induced to pay an amount of Rs. 4,00,000/- (Four lakhs) in advance so as to fulfill certain prerequisite conditions for getting the clearance of the contract. It was represented by the accused that the aforesaid amount would be adjusted as commission and whatever profit would be generated from the execution of the work would be given to the complainant.

04. On the basis of the aforesaid representation, the complainant paid an amount of Rs. 4,00,000/- (Four lakhs) through bank transactions dated 25.02.2016 and 02.03.2016 and the amount was credited in the account of the accused/petitioner herein. According to the

complainant, he waited for four months to get the contract order from the accused persons but the contract was not awarded in his favour. The complainant is stated to have approached the accused persons through telephone but they extended threats to him. It has further been alleged in the complaint that the accused persons refunded an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) but misappropriated the balance amount of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand) dishonestly thereby committing criminal breach of trust.

- 05.** It appears that upon filing of the complaint by the respondent-complainant, the learned trial Magistrate recorded the preliminary evidence of the complainant and vide order dated 21.11.2016, SHO Police Station, Reasi was directed to conduct inquiry in terms of Section 202 Cr.P.C. After receiving the report of inquiry from the SHO Police Station concerned, the learned trial Magistrate analyzed material on record and recorded a satisfaction that offences under Sections 420/409 RPC are made out against the accused persons. Accordingly, the process was issued against them.

06. The petitioner has challenged the impugned complaint and the order whereby process has been issued against him by pleading that an agreement was executed between the respondent-complainant and M/s Modi Electric Company for laying of optical fiber from Reasi to Mahore. The total value of the contract was Rs. 1,05,00,000/- (Rupees One Crore Five Lakh Only). It has been submitted that total work for the link road was 74 kilometers out of which work for 20 kilometers was allotted to the respondent and for rest of the area the work was allotted to other contractors. A copy of the contract agreement has been placed on record along with the petition.

07. It has been submitted that while the process of obtaining of permission from different authorities was underway, the principle company M/s Ericsson India Private Limited who had allotted the work to M/s Modi Electric Company, cancelled the allotment of work whereafter a petition under Section 9 of Arbitration and Conciliation Act, 1996 was filed by the M/s Modi Electric Company against M/s Ericsson India Private Limited before the court of learned Principal District Judge, Reasi wherein an interim order came to be passed on 08.06.2016 whereby M/s Ericsson India Private Limited was

restrained from allotting the work to any other company or person. A copy of the said order has been placed on record.

08. According to the petitioner, the transaction between the parties is purely of commercial and civil nature and even if there is any breach of the said transaction, the petitioner cannot be fastened with criminal liability. It has been contended that the learned trial Magistrate without application of mind has proceeded to take cognizance of offences and summoned the petitioner.

09. The respondent despite service did not choose to appear.

10. I have heard learned counsel for the petitioner and perused record of the case including the trial court record.

11. Before dealing with the contentions of the petitioner on its merits, it is necessary to notice the settled legal principles governing the exercise of inherent powers under Section 561 of the J&K Cr.P.C., which is in *pari materia* to Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 and Section 482 of the Cr.P.C., 1973. It is a settled law that the High Court is vested with vast inherent jurisdiction to prevent abuse of process of law and to secure the ends of justice, however,

such power has to be exercised sparingly and only in appropriate cases.

12. In the celebrated case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors. Reported in 1992 Supp. (1) SCC 335***, the Supreme Court laid down illustrations of cases where power to quash the proceedings can be exercised by the High Court. The same are reproduced as under :-

“(1) Where the allegations made in the first information report or 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 a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the

commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or, where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is

maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

13. It has repeatedly been held by the Supreme Court that while exercising the power under Section 482 Cr.P.C, the High Court cannot hold a ‘mini-trial’ or weigh the sufficiency of evidence. The jurisdiction of the High Court under Section 482 of the Cr.P.C is only confined to whether the FIR/complaint and the accompanying material disclose the ingredients of the alleged offence. However, the High Court has a duty to intervene in a case where continuation of criminal proceedings would amount to an abuse of process of law or where the dispute is purely of a civil nature and it has been given a criminal colour with a view to wreak vengeance upon an accused or to pressurize him into a settlement favourable to the complainant.

14. With the aforesaid legal position in view, let us now proceed to analyze the undisputed facts emanating from the impugned complaint. It is alleged in the impugned complaint that complainant was allured by the petitioner and co-accused to advance an amount of Rs. 4,00,000/-

(Four lakhs) with a view to facilitate execution of sub-contract relating to work of laying optical fiber cable in GREF road from Reasi to Mahore. This allurement on the part of the petitioner/co-accused prompted the complainant to pay an amount of Rs. 4,00,000/- (Four lakhs) to the petitioner, out of which an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) is stated to have been refunded by the accused to the complainant.

- 15.** The petitioner has placed on record a copy of sub-contract executed by respondent-complainant with M/s Modi Electric Company with the respondent. The principal contractor to whom the work was allotted by M/s Ericsson India Private Limited is M/s Modi Electric Company. The petitioner has also placed on record the certified true copy of order dated 08.06.2016 passed by the learned Principal District Judge, Reasi in a petition under Section 9 of the Arbitration and Conciliation Act filed by M/s Modi Electric Company, the principal contractor against M/s Ericsson India Private Limited. In the said order, it is clearly indicated that a dispute has arisen between the parties on account of termination of contract/breach of terms of the contract.

- 16.** From the above, it is clear that due to the disputes arising between the principal contractor and the employer, the sub-contract relating to the work could not be allotted to the complainant. Thus, it is not a case where the petitioner had a dishonest intention from the very inception of the transaction between him and the complainant but it is a case where the subsequent development of disputes arising between the employer and the principal contractor has resulted in allotment of the work to the complainant being rendered impossible.
- 17.** It also appears that the petitioner has refunded an amount of Rs. 1,50,000/- (Rupees One Lakh Fifty Thousand) to the respondent-complainant and as per own case of the respondent, only an amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) remains to be paid which is liable to be recovered from the petitioner. This refund of part of money by the petitioner to the respondent shows that the petitioner did not harbour any dishonest intention against the respondent.
- 18.** From the foregoing analysis of the facts of the case, it appears that the petitioner did not have dishonest intention at the inception of entering into transaction with the respondent but because of the subsequent

developments he could not fulfill the promise of securing the contract for the respondent. An offence of cheating is made out only if the accused had dishonest intention from the very beginning. Such an offence is not constituted if due to subsequent developments, the accused is unable to keep the promise or is unable to refund the money.

19. Apart from the above, the allegation of the complainant that the petitioner has committed a criminal breach of trust and at the same time, he has also committed offence of cheating are mutually contradictory to each other. If it was a case of entrustment of money by the complainant to the petitioner then it cannot be a case of cheating. Similarly, if it was a case of accused inducing the complainant to part with money on the basis of his dishonest representation, then it cannot be a case of entrustment of money by the complainant to the accused. The learned trial Magistrate has recorded the satisfaction that both the aforesaid offences are made out in the present case. The said observation of the learned trial Magistrate is otherwise not sustainable in law.

20. From the perusal of the material on record, it appears that the transaction between the petitioner and the

complainant was purely of a civil and commercial nature and because of the subsequent developments that were beyond the control of the petitioner, he could not secure the allotment of the work in favour of the respondent. It appears that the complainant-respondent has resorted to filing of criminal complaint against the petitioner only with a view to seek fast recovery of balance amount of Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand) from him. The Supreme Court has, in a long line of decisions deprecated the tendency of litigants to convert civil disputes into criminal proceedings.

21. In **Indian Oil Corporation Vs. M/s NEPC India Limited reported in (2006) 6 SCC 736**, it was held that criminal law cannot be used as a tool to settle scores in commercial or contractual matters and that such misuse amounts to abuse of process of law. Again in **Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors., AIR 2008 SC 251**, the Supreme Court held that criminal prosecution cannot be permitted as an instrument of harassment. In **Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh & Ors., [Criminal Appeal No. 2963/2025, decided on 14.07.2025 : 2025 INSC 869]**, the Supreme Court has

deprecated the practice of using criminal proceedings as

a substitute for civil remedies and it has been observed that recovery of money cannot be enforced through criminal prosecution where the dispute is essentially civil in nature.

22. Applying the aforesaid principles to the facts of the present case, it is clear that the respondent has with a view to seek repayment of the amount from the petitioner lodged a criminal complaint against him in respect of a transaction which is purely civil in nature. Thus, this Court in view of the principles laid down by the Supreme Court in **Bhajan Lal's case** is duty bound to scuttle the impugned prosecution against the petitioner so as to secure the ends of justice.

23. Accordingly, the impugned complaint and the proceedings emanating therefrom as against the petitioner are **quashed**.

24. The petition is accordingly, **disposed of**.

(SANJAY DHAR)
JUDGE

JAMMU
20.02.2026
SUNIL

Whether the order is speaking ?	:	Yes
Whether the order is reportable ?	:	Yes