

S. No. 27
Regular List

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

(Through Virtual Mode)

CRM(M) No.724/2024
CrIM No.(1482/2024)

ROMESH KUMAR AND OTHERS

.....Petitioner(s)

Through: Mr. Rakesh Chargetra, Sr. Advocate with
Mr. Abhishek Verma, Advocate

V/s

**UT OF J&K THROUGH S.H.O POLICE STATION BAKSHI
NAGAR AND ANOTHER**

... ..Respondent(s)

Through : Mr. P.D.Singh, Dy.AG for 1.
Mr. Rajat Jamwal, Advocate for 2.

CORAM:

HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
09.09.2026

1. The petitioners through the medium of present petition have challenged FIR No.0120/2024 for offences under section 318(4) and 316(5) BNS registered with Police Station Bakshi Nagar, Jammu.
2. As per the allegations made in the impugned FIR, respondent No.2/Complainant lodged a report with the Police alleging therein that petitioner Romesh Kumar and his wife petitioner Rekha Devi induced him to pay a sum of Rs.15,00,000/- for purchase of a building at Exchange Road Jammu with a shop located in the said building. They promised the complainant that he would be paid a sum of Rs.20,000/- per month out of the rent that would accrue from the said building and that a tower would be installed on the floor of the said building. It was further alleged that the

petitioners continued to pay a sum of Rs.20,000/- per month to the complainant up to November, 2016, whereafter they stopped to pay the amount and failed to fulfill the promise which they had made by way of a written affidavit. Thus, according to the complainant, the petitioners have committed breach of trust. It has been further alleged in the complaint that the petitioners are threatening son of the complainant.

3. After the filing of the petition, this Court vide interim order dated 20.09.2024 stayed the investigation of the case.

4. Respondent No.1 Investigating Agency has filed its response in which besides narrating allegations made in the impugned FIR, it has been submitted that statements of the witnesses under Section 180 BNSS have been recorded but because of the stay order passed by this Court further investigation could not be carried out.

5. Respondent No.2 who is represented by counsel has not filed any reply. Learned counsel appearing for respondent No.2 has submitted that the said respondent does not have any objection if the impugned FIR is quashed.

6. I have heard learned counsel for the parties and perused record of the case.

7. As is clear from the allegations made in the impugned FIR, transaction between the petitioners No.1 and 2 and the complainant appears to be purely of civil nature, inasmuch as the petitioners had taken a sum of Rs.15,00,000/- from respondent No.2 and they had agreed to pay a sum of Rs.20,000/- per month to the said respondent on account of rent that was to be earned by the petitioners from the said building by erecting a tower. It

is clearly stated in the impugned FIR that this promise of paying rent @Rs.20,000/- per month was adhered to by the petitioners until November, 2016, whereafter they are alleged to have stopped paying any rental income to respondent No.2.

8. The petitioners are alleged to have committed the offence of cheating as defined in Section 318(1) of BNS. As per the said provision a person is stated to have committed an offence of cheating if he fraudulently or dishonestly induces the other person 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 any thing 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's body, mind, reputation or property. Thus, it is only if an accused fraudulently or dishonestly induces another person to deliver a property that offence of cheating is made out. It is also a settled law that offence of cheating is made out if the fraudulent or dishonest intention of the accused is prevalent at the inception of the transaction. An offence of cheating would not be made out if at the inception of the transaction the accused did not have dishonest intention but later on due to certain circumstances he was not able to keep his promise.

9. In the present case it has been admitted by the complainant in the impugned FIR that the petitioners kept their promise of paying Rs.20,000/- per month as rent uptill November 2016. This means that the petitioners did not have any dishonest intention at the time of entering into transaction with respondent No.2. It is only after November, 2016 that they failed to

keep their promise. Therefore, it cannot be stated that the petitioners had any dishonest or fraudulent intention at the time of entering into transaction with the petitioner.

10. For what has been discussed hereinbefore, no offence of cheating is made out against the petitioners in the facts and circumstances of the case and it appears that the present FIR has been lodged by respondent No. 2 only to give criminal texture to a purely commercial dispute between the petitioners and the said respondent. The Supreme Court and this Court has time and again deprecated the tendency of certain litigants to convert purely civil disputes into criminal prosecution. The present case falls in the same category.

11. In view of the above, continuance of impugned proceedings against the petitioners would amount to abuse of process of law. Accordingly, the petition is allowed and the impugned FIR and the proceedings emanating therefrom are quashed.

(SANJAY DHAR)
JUDGE

SRINAGAR

09.09.2026

Sarveeda Nissar

Whether the order is speaking: Yes/No

Whether the order is reportable: Yes/No