



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9TH DAY OF JUNE, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO. 792 OF 2021

BETWEEN:

RISHIKESH CHOUBISA
S/O NARMADA SHANKAR CHOUBISA
AGED ABOUT 28 YEARS,
R/AT NO.M195,
NARESHWAR APARTMENT
BEHIND ALKAPURI SOCIETY
GHATLODIA, AHMEDABAD CITY
GUJARAT - 380 061.

...PETITIONER

(BY SRI. SHARATH S GOWDA, ADVOCATE)

AND:

1. STATE OF KARNATAKA
BY GIRINAGAR PS
VISHVESHWARAPURAM
SUB DIVISION
BANGALORE-560 085
REP BY HCGP.
2. RAMESH V
S/O VAIKUMNTAIAH LATE
AGED 54 YEARS,
R/AT NO.4205, II B MAIN ROAD,
NEAR SEETHA CIRCLE
GIRINAGARA I STAGE
BENGLAURU CITY - 560 085.

...RESPONDENTS

(BY SMT. SOUMYA R., HCGP FOR R1;
SRI SOMASHEKAR ANGADI, ADVOCATE FOR R2)

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



THIS CRL.P IS FILED U/S.482 CR.P.C PRAYING TO QUASH IMPUGNED FIR IN CR.NO.212/2020 DATED 01.12.2020 REGISTERED WITH GIRINAGAR POLICE STATION, BENGALURU, VISHVESHWARAPURAM SUB-DIVISION FOR OFFENCES P/U/S 406, 420 AND 34 OF IPC ON THE FILE OF IV ADDL.C.M.M., NRUPATHUNGA ROAD, BENGALURU AND COMPLAINT DATED 01.12.2020 AT ANNEXURES - A AND B RESPECTIVELY QUA PETITIONER.

THIS PETITION IS COMING ON FOR *ADMISSION*, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging complaint/FIR in Crime no.212/2020 dated 01.12.2020 registered with Girinagar Police Station, Bengaluru, for offences punishable under Sections 406 & 420 read with Section 34 of Indian Penal Code, 1860 (**IPC**) on file of IV ACMM, Bengaluru, and for quashing complaint dated 01.12.2020 at Annexures-A and B respectively, this petition is filed.

2. Sri Sharath S Gowda, learned counsel for petitioner submitted, respondent no.2 was running business by name 'Trident Overseas Traders', Bengaluru and came in contact with petitioner through common friend Giridhar Prakash. During year 2020, a deal was struck for supply of 31,500 boxes of



Medical gloves total for Rs.1,20,50,000/- of which half amount was to be paid within one week and remaining half, after supply of material. A sum of Rs.5,00,000/- was deposited into account of petitioner and therefore, a sum of Rs.45,00,000/- was deposited into account of one Neelesh Kumar Ramanlal. Prajapathi (**Prajapathi**). It was stated, petitioner had acted as a commission agent in transaction between respondent no.2 (**complainant**) and Prajapathi. On ground that there was non supply of goods and respondent no.2 was betrayed by petitioner, Prajapathi and Kuldeep Singh, complaint at Annexure-B was filed. It was submitted, entire reading of complaint only indicated that grievance of petitioner was about non supply of goods as per agreement and there was no allegation of any dishonest intention in entering into contract or dishonest intention in retaining money or misappropriation. Therefore, necessary ingredients either for offences under Section 406 or Section 420 of IPC were existed. Despite same, police have registered FIR against petitioner as accused no.1, Prajapathi as accused no.2 and Kuldeep Singh as accused no.3. Aggrieved thereby, this petition is filed.



3. At outset, it was submitted, petitioner having received commission as Agent had since refunded commission amount and same was also noted by this Court in ordersheet. Relying upon decision of Hon'ble Supreme Court in case of ***Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr.*** reported in ***(2024) 10 SCC 690*** as well as ***Arshad Neyaz Khan v. State of Jharkhand & Anr.*** reported in ***2025 LiveLaw (SC) 950***, it was submitted that allegations of offences under Sections 406 and 420 could not co-exist. Therefore, complaint being registered for offences under Sections 406 and 420 against petitioner would be untenable and continuation of proceedings would amount to abuse of process of Court and sought for quashing.

4. Learned HCGP for respondent no.1-State, however opposed petition. It was submitted, reading of complaint would indicate that payment of Rs.40,00,000/- was made by complainant only after receipt of information by petitioner that goods were ready for delivery. Thus, there was inducement to make payment on basis of non-existent goods. In complaint, it was further stated that petitioner herein had sent videotape showing boxes with labels bearing name of complainant



company as if to indicate goods were ready and would be delivered next day. This would also substantiate dishonest intention. It was submitted, though Hon'ble Supreme Court had indeed held offences under Sections 406 and 420 of IPC could not co-exist against same person in respect of same incident, it was submitted, since complainant had not mentioned offences and even in case it were so, it would be for prosecution to investigate and identification of appropriate offence was to be at stage of filing charge sheet and drawing up of charges. Therefore, mere registration of complaint for offences both under Sections 406 and 420 of IPC could not be sought to taken advantage of and on said grounds, sought for dismissal.

5. There is no representation for respondent no.2. Heard learned counsel for petitioner, learned HCGP and perused impugned complaint, FIR and material on record.

6. From above, it is seen that challenge against FIR by petitioner-accused no.3 is on account of abuse of process of Court and due to allegation not bearing essential ingredients of offences alleged.



7. To appreciate contentions, it is found appropriate to extract contents of complaint, which are as follows:

"I living in the above mentioned address have an office named "Trident Overseas Traders" at No.61/B, 6th main road, 4th phase, 7th block, Banagirinagar, BSK 3rd stage. Bengaluru-560085 in which I am doing business. I met Rishikesh Choubisa who resides in Ahmedabad, Gujarat through my friend Giridhar Prakash. I made a deal with Rishikesh Choubisa to supply 31,500 boxes of Nitriel & Latex Medical gloves. The price for the above mentioned materials was Rs.1,20,50,000/-. For this I was asked to pay half of the amount at first and then the remaining to be paid after one week after the supply was made, To this, dated 01-07-2020 I have transferred Rs 5 lakhs through my federal bank, Banashankari branch Account No.178102400002775 to Rishikesh Choubisa's HDFC bank, Lapkaman Branch Account No.50100196257172 by RTGS.

After this Rishikesh Choubisa informed me that all the boxes were ready for delivery and further told me to transfer the remaining amount of Rs 40 lakhs to Neelesh Kumar Ramanlal Prajapathi's Indus Ind Bank, Ahmedabad, Ashram road branch. Account No.200999140361. Due to this, on 20-07-2020 I transferred Rs 3,50,000/- from the above mentioned Federal Bank through IMPS. On 27-07-2020 I, from my Standard Chartered Bank. Kormangala Branch Account No 45505414881 transferred Rs 20,00,000/- through RTGS to Neelesh Kumar Ramanlal Prajapathi's above mentioned bank account. On the same day I transferred Rs 16,50,000/- from my above mentioned Federal Bank account to Neelesh Kumar Ramanlal Prajapathi through RTGS to the same account. As per the deal, on 24-07-2020 the materials had to be supplied by Rishikesh Choubisa and Neelesh Kumar Ramanlal Prajapathi. But on this day no materials were supplied by them.

Due to this on 25-07-2020 I called Rishikesh Choubisa on his mobile phone and asked about the materials. To this he replied saying that all any materials were ready at Malaysia and must come from there. Disappointed and at rage told Rishikesh Choubisa that I



did not want the materials and told him to pay my amount of Rs.45,00,000/- back. At the same time I received a phone call from Prajapathi saying that all my materials were ready and would be supplied to me, he further said that he had informed Rishikesh on the matter and told me not be worried. I immediately called Rishikesh and asked about the materials, he then sent me a video tape showing boxes with my company name labelled on them saying that the delivery was ready and would be delivered tomorrow. Still no materials were delivered to me. To this I repeatedly called them, they replied saying that it was raining and gave many more unacceptable reasons, due to which the delivery was delayed further.

Because of their suspicious behaviour I had many doubts and I sent Giridhar Prakash to Gujarat on 02-08-2020. Giridhar Prakash on meeting Rishikesh informed me that he had seen all the materials were ready for dispatch and sent me a video tape confirming it and told me no to get worried. He also informed me that he would return to Benagluru after making preparations for dispatch of materials. On 03-08-2020, Rishikesh Choubisa and Prajapathi sent me a photo in which Giridhar was standing next to a truck which had all the materials in it and made Giridhar believe that the materials will reach JNPT port in Bombay and said that Giridhar to move back to Bengaluru the next day providing him with the receipt of the truck. On 05-08-2020 Giridhar met me and provided me all the details including the truck receipt. Taking the contact number of the truck driver from the receipt provided to me, I called the truck driver asking the whereabouts of the materials. Upon asking, the truck driver replied me that he had left Ahmedabad and was already on Bombay road. When I called him again, he informed me that he was caught in rain and would reach JNPT port, Bombay tomorrow. When I tried calling him again, his phone was switched off.

Worried about the situation, I contacted Rishikesh and Prajapathi who told me that they have spent all the money on my materials and have given 10,00,000/- commission to Kuldeep Singh. Upon this they threatened me to receive my materials in JNPT port, Bombay and later they blocked my contact number. Later I called Kuldeep Singh to ask about my materials. To this,



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Kuldeep Singh replied that he had received only the commission and could not speak at that time because his father passed away. Later Kuldeep Singh also blocked my contact number.

To this I conclude saying that Rishikesh Choubisa, Neelesh Kumar Ramanlal Prajapathi and Kuldeep Singh have betrayed me by taking 45,00,000/- without giving me the materials nor my money back which was preplanned. So, I request you to take necessary actions on the above mentioned people.

Details:

1) Rishikesh Choubisa S/O Narmada Shankar Choubisa, 27 Years, No-m1-95, Nareshwar Apartment, Behind Alkapuri Society, Ahmedabad City, Ghatlodia, Ahmedabad, Gujarat-380061. Mob: 8320589638, 8511481825.

2) Neelesh Kumar Ramanlal Prajapathi S/O Ramanlal Prajapathi, 47 Years, No-402, Aalin Complex, Opp Gujarat Vidyapit Income Tax, Ashram Road Ahmedabad, Gujarat-380009, Mob: 6352293238, 9157927387.

3) Kuldeep Singh."

8. Likewise Sections 406 and 420 of IPC read as follows:

"406. Punishment for criminal breach of trust.—Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

420. Cheating and dishonestly inducing delivery of property.—

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."

9. Essential ingredients to constitute offences under Sections 406 and 420 IPC are elaborately dealt with by Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd*** (supra) as follows:

"40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case."

10. Hon'ble Supreme Court in ***Arshad Neyaz Khan*** (supra) as held as follows:

"19. It is settled law that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale. We must hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on



the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No.2. Mere allegations by complainant/respondent No.2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No.2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No.2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No.2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust."

11. A careful reading of complaint does not indicate that complainant was induced to enter into agreement with dishonest intention, thereby negating offence under Section 420 of IPC. Even insofar as offence under Section 406 of IPC,



there is no specific allegation that inducement of property in this case money, there was no dishonest misappropriation of money or conversion for own use. Especially when petitioner herein has acted as an agent, received certain amount as commission and said amount in any case is stated to have returned.

12. Observations of Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd's** case (supra) would be relevant for breach of contract of sale of goods, aggrieved party cannot resort to criminal prosecution instead of filing suit for recovery, which reads as follows:

"49. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See: Lalit Chaturvedi v. State of U.P.¹⁹ and Mideast Intergrated Steels Ltd. v. State of Jharkhand²⁰.]

50.

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."

13. Ratio laid down by Hon'ble Supreme Court squarely apply to facts and circumstances in above case, insofar as petitioner-accused no.3. There is neither allegation of dishonest intention to induce complainant to enter into a contract nor there is specific allegation of dishonest misappropriation or conversion of property to own use.

14. In view of above, even non-filing of civil suit for recovery and resorting to criminal proceedings would substantiate abuse of process of Court. Therefore, continuation of proceedings against petitioners would not be justified. On ground of abuse of process of Court as well as in order to meet ends of justice, proceedings against petitioners required to be quashed. Hence, following:

ORDER

(i) Petition is ***allowed***; and



- (ii) Proceedings in complaint/FIR in Crime no.212/2020 dated 01.12.2020 registered with Girinagar Police Station, Bengaluru, for offences punishable under Sections 406 & 420 read with Section 34 of IPC on file of IV ACMM, Bengaluru, and for quashing complaint dated 01.12.2020 at Annexures-A and B respectively, are *quashed*.

**Sd/-
(RAVI V HOSMANI)
JUDGE**

AV
List No.: 1 Sl No.: 39