



NC: 2026:KHC:48392
CRL.P No. 5766 of 2019

CNR: KAHC010235942019

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE RAVI V HOSMANI

CRIMINAL PETITION NO.5766 OF 2019

BETWEEN:

1 . SRI SOMASHEKAR J.R.
S/O RANGEGOWDA,
AGED ABOUT 43 YEARS,
R/O JAKKARAVALLI,
KOPPALU VILLAGE,
SINGAPURA POST,
HOLENARASIPURA TALUK,
HASSAN DISTRICT - 573 201.

2 . SMT.RENUKA LAKSHMI
W/O JAYANNA H,
R/O DODDAKUNCHEVU VILLAGE,
HOLEKOTE HOBLI,
HOLENARASIPURA TALUK,
HASSAN DISTRICT - 573 201.

...PETITIONERS

[BY SMT.AKSHATHA SHETTY K., ADVOCATE (PH)]

AND:

1. STATE BY GORUR POLICE
REP BY STATE PUBLIC PROSECUTOR
HIGH COURT BUILDING,
BANGALORE - 560 001.

2. SUBRAMANYA A.R.
AGED ABOUT 49 YEARS
THE MANAGER
CORPORATION BANK

Digitally signed
by ANUSHA V
Location: High
Court of
Karnataka



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GORUR BRANCH
HASSAN TALUK,
HASSAN DISTRICT - 573 201.

...RESPONDENTS

[BY SRI MAHESHA P., HCGP FOR R1 (PH);
SMT.H.S.POORNIMA, ADVOCATE FOR R2 (PH)]

THIS CRL.P IS FILED U/S.482 CR.P.C., PRAYING TO QUASH THE FIR SUBMITTED IN CR.NO.1624/2016 ON THE FILE OF III ADDITIONAL CIVIL JUDGE, AND DROP THE ENTIRE PROCEEDINGS INITIATED AGAINST RP IN CR.NO.1624/2016 ON THE FILE OF THE III ADDITIONAL CIVIL JUDGE.

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

CORAM: HON'BLE MR. JUSTICE RAVI V HOSMANI

ORAL ORDER

Challenging charge sheet in CC no.3118/2018 on file of III Additional Civil Judge and JMFC Court, Hassan arising out of Crime no.1624/2016 registered by Goruru Police Station, Bengaluru for offences punishable under Sections 406 and 420 read with Section 34 of Indian Penal Code, 1860 (**IPC**), this petition is filed.

2. Smt.Akshata Shetty K., learned counsel for petitioners submitted that petitioners were accused no.1 and 2 (**petitioners**) in complaint filed by respondent no.2



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(**complainant**) on 21.12.2016 stating that accused no.1 was PWD Contractor had approached complainant-Bank for financial assistance for purchase of machinery/equipment required for his work. Same was sanctioned under loan account no.CCVL/01/160001, accused no.2 was guarantor and M/s.Kesar Road Equipments India Pvt. Ltd., Gujarat (accused no.3) was supplier of machinery/equipment. That for purposes of loan accused no.1 had obtained Invoices, Quotations dated 14.01.2016 from accused no.3 showing value of proposed machinery, equipment as Rs.50,95,000/-. On 17.03.2016, petitioners executed requisite loan documents. Based on same, Rs.50,95,000/- i.e., including margin money of Rs.10,95,000/- was transferred to accused no.3.

3. Later, when Bank contacted accused no.1 to bring vehicles/machineries for inspection, accused no.1 failed. On suspicion, it contacted accused no.3, who informed that after accused no.1 cancelled purchase order, it had remitted Rs.39 Lakhs to account of accused no.1 in trances of Rs.3,50,000/-, and Rs.31,50,000/- on 18.03.2016 and Rs.4,00,000/- on 13.04.2016. Immediately, complainant demanded petitioners to



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repay loan amount as they did not purchase machineries. But they failed to respond. It was alleged, having received consideration, accused no.3 ought to have supplied vehicles/machineries and refund of amount to accused no.1 was with *malafide* intention. But, after issuance of notice, accused no.3 remitted Rs.11,95,000/- to Bank. It was alleged that accused no.1 to 3 had conspired together with fraudulent and *malafide* intention obtained refund of purchase money and by diverting same for some other purpose misappropriated it causing wrongful loss to Bank. Complaint was registered as Crime no.179/2016 by Goruru Police Station and after investigation, police filed charge sheet in CC no.3118/2018 for offences punishable under Sections 406, 420 read with Section 34 of IPC. Aggrieved, this petition was filed.

4. It was submitted that as per complaint, accused no.2 was only a guarantor and unaware of transactions between other accused. It was alleged, Bank had failed to follow procedure for disbursal of hypothecation loan. It was required to issue demand draft (DD) in favour of seller only after due verification of supply of machinery. That in present



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case without verification, Bank transferred Rs.39 Lakhs directly to account of CW.6 (who was earlier accused no.3 but dropped from Charge Sheet and cited only as CW.6).

5. It was next contended that present case was purely of civil nature and Bank had filed OA no.318/2018 before Debt Recovery Tribunal, Bangalore (**DRT**) for recovery of loan amount. Even essential ingredients for offences were wanting in complaint and it was filed to cover up it's negligence and even when civil remedy was available and resorted to.

6. It was further submitted that Rs.20,25,000/- was repaid between 30.04.2017 and 31.11.2017, indicating lack of criminal intent and therefore, impugned proceedings were liable for quashed. On above grounds, prayed for allowing petition.

7. Sri Mahesha P., learned HCGP for respondent no.1- State and Smt.HS Poornima, learned counsel for complainant opposed petition. Claiming that after proper verification, loan amount was disbursed and OA no.318/2018 filed by it before DRT was decreed. And under Section 128 of Indian Contract Act, 1872, liability of guarantor was equal to that of borrower.



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It was submitted, relying on decision in ***SBI v. Rajesh Agarwal*** reported in **(2023) 6 SCC 1**, Hon'ble Supreme Court in ***CBI v. Surendra Patwa*** reported in **2025 SCC OnLine SC 934**, clarified that on failure of borrower, guarantor was liable to repay loan and High Court was not justified in quashing CBI FIRs without explicit challenge and without impleading or hearing CBI. It was submitted allegation was mainly about dishonest misappropriation and not cheating, therefore, offence under Section 406 of IPC was attracted. On above grounds prayed for dismissal.

8. Heard learned counsel, perused material on record.

9. This petition is for quashing of Charge Sheet for offences punishable under Section 406, 420 read with Section 34 of IPC mainly on ground that essential ingredients for offences were absent, dispute was purely civil in nature and portion of amount of Rs.20,25,000/- was repaid and accused no.2 as guarantor was not part transaction between CW.6 and accused no.1.



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10. Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh and Anr.**, reported in **(2024) 10 SCC 690** and **Arshad Neyaz Khan v. State Jharkhand [2025 INSC 1151]** has held allegation of offences under Sections 406 and 420 of IPC cannot co-exist and continuation of proceedings under both would be untenable. However, respondents have contended that allegations attract offence under Section 406 of IPC. Essential ingredients for offence under Section 406 of IPC are:

- "(a) accused was entrusted with property or dominion over it;*
- (b) accused dishonestly misappropriated or converted to his own use that property or dishonestly used or disposed of that property or willfully allowed another person to do so;*
- (c) such misappropriation, conversion, use or disposal was in violation of any direction of law or contract prescribing mode for discharge of trust."*

11. In instant case, allegation against accused no.1 is about obtaining loan for purchase of equipment for his contract work, in terms of which complainant transferred purchase money to vendor identified by him. And thereafter failing to make purchase, cancelling purchase order, causing CW.6 to refund of purchase money to himself without informing complainant. *Prima facie*, failure to make purchase for which



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loan was obtained and retaining purchase money refunded by vendor in violation of loan agreement would tick above ingredients on several counts. More so, when money lent was for purchase of vehicle/equipment and not for anything else.

12. Insofar as challenge by accused no.2 as guarantor, there is no overt act other than stating that he was guarantor to loan availed by accused no.1. There is no allegation that he was aware of act on part of accused no.1 in cancelling purchase order, obtaining refund of purchase money and misappropriating it. Though under civil law, liability of guarantor is coextensive as debtor, same cannot be applied in criminal law where liability without any specific act constituting offence, other than execution of deed of guarantee and decision relied by them would apply in case of civil liability. Thus, petition would succeed insofar as accused no.2.

13. Insofar as contention about dispute being purely civil in nature, Hon'ble Supreme Court in case of **Paramjeet Batra v. State of Uttarakhand** reported in **(2013) 11 SCC 673**, held:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious.



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This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

14. Thus, there is no bar against invoking criminal liability even where civil remedy is resorted to and quashing petition cannot be entertained if essential ingredients for criminal offence are in existence, which has already been held against petitioners, above.

15. Last contention about partial repayment would not have traction for quashing. It may at best serve as a mitigating factor while adjudicating on quantum of sentence and therefore, liable for rejection.

16. Consequently, petition **succeeds in part**, proceedings in CC no.3118/2018 on file of III Additional Civil



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Judge and JMFC Court, Hassan arising out of Crime
no.1624/2016 stand *quashed* only insofar as accused no.2.
Petition by accused no.1 is ***dismissed***.

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

YKL
List No.: 1 SI No.: 53