



CNR: KAHC010325712021

NC: 2026:KHC:48462
WP No. 16305 of 2021

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 7TH DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE V SRISHANANDA

WRIT PETITION NO.16305 OF 2021 (GM-RES)

BETWEEN:

SRI. T. R. NAGARAJ
S/O LATE T R REVANNA
AGED ABOUT 71 YEARS
AGRICULTURIST AND BUSINESS
R/AT VIJAYANAGARA EXTENSION
KODI CAMP, TARIKERE TOWN,
CHIKKAMAGALURU DISTRICT - 577 228

...PETITIONER

(BY SRI ANIKETH FOR SRI SACHIN B S, ADVOCATES)

AND:

1. STATE OF KARNATAKA
THROUGH TARIKERE POLICE
REP. BY
STATE PUBLIC PROSECUTOR
HIGH COURT OF KARNATAKA
BANGALORE - 560 001

2. SMT. SHYLA M R
W/O V GANGOJI RAO,
AGED ABOUT 45 YEARS
OPP. ARADHANA CONVENT 1ST CROSS,
KODI CAMP, TARIKERE TALUK
CHIKMAGALURU DISTRICT - 577 228

...RESPONDENTS

(BY SRI SURYA MUKUNDARAJ, ADDITIONAL PUBLIC
PROSECUTOR FOR R1;

SRI ANANTHAPADMANABHA.G.N, ADVOCATE FOR R2)

Digitally
signed by R
MANJUNATHA
Location:
HIGH COURT
OF
KARNATAKA



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THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA R/W SECTION 482 CODE OF CRIMINAL PROCEDURE PRAYING TO QUASH THE IMPUGNED ORDER DATED 21.04.2021 PASSED IN CRIMINAL REVISION PETITION NO.215 OF 2019 ON THE FILE OF THE II ADDL. DISTRICT AND SESSIONS JUDGE, AT CHIKKAMANGALURU, THEREBY CONFIRMING ORDER DATED 05.10.2019 PASSED IN C.C.NO.93 OF 2016 ON THE FILE OF THE COURT OF SENIOR CIVIL JUDGE AND PRL. JMFC., TARIKERE ANNEXURES-A AND B CONSEQUENTLY, ALLOW CRIMINAL REVISION PETITION AS PRAYED FOR AND ETC.,

THIS PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE V SRISHANANDA

ORAL ORDER

Heard Sri Aniketh, learned counsel for the petitioner appearing on behalf of Sri B.S. Sachin, counsel for the petitioner and Sri Surya Mukundaraj, Additional State Public Prosecutor for respondent No.1. Counsel for respondent No.2 is absent.

2. Petitioner herein is the accused in C.C.No.93/2016, having been charged for the offences punishable under Section 406, 417, 418 and 420 of Indian Penal Code.



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3. Facts in the nutshell as per the column number 17 of the charge sheet is that the second respondent herein has executed a general power of attorney in favour of the petitioner to transact with the property.

4. The copy of the power of attorney is placed on record.

5. On entire reading of the contents of the general power of attorney there was no power vested with the petitioner under the said general power of attorney executed by respondent No.2 to gift the property in favour of third party.

6. The petitioner on the basis of the general power of attorney, which is also in dispute, said to have executed a registered gift deed in favour of Social Welfare Department.

7. Admittedly, the said action of the petitioner herein is outside the scope of the authority given by the respondent No.2 under the general power of attorney.

8. An immovable property measuring 12 guntas belonging to the respondent No.2 was gifted in favour of the Social Welfare Department is altogether a different issue inasmuch as there was no such power granted under the



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general power of attorney by the respondent No.2 in favour of the petitioner.

9. Therefore, it is a clear case of causing wrongful loss to the respondent No.2 and wrongful gain to the petitioner.

10. Reasons for gifting the property is a defence that is to be urged by the petitioner during the trial, if possible to save from the penal action.

11. Prima facie materials collected by the Investigation Agency at this stage would be sufficient enough to proceed against the petitioner.

12. Sri Aniket, learned d counsel for the petitioner in support of his contention seeking quashing of the pending proceedings placed reliance on the judgment of the Hon'ble Apex Court reported in the case of **Arshad Nayaz Khan vs. State of Jharkhand and another**, reported in **2025 SCC Online SC 2058**.

13. He invited the attention of this court to paragraphs 21 and 22 which are culled out hereunder for ready reference:

"21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the



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offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.

22. *At this point, we must hasten to add that the complaint was filed after a delay of nearly eight years. Learned counsel for the complainant/respondent No. 2 has failed to impress the Court about the reason for the delay and hence this fact further raises a suspicion about the bona fides of the complainant/respondent No.2. The delay in lodging of the complaint and FIR, coupled with the vague allegations do not inspire any confidence in the Court to*



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allow the criminal proceedings to continue against the appellant. Further, the complainant/respondent No. 2 had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights which has not been availed but a route through criminal proceedings, when no ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant therefore, in our view, could not be attributed any mens rea and therefore, the allegations levelled by the prosecution against the appellant are unsustainable."

14. On perusal of the above paragraphs, it is found that offence of cheating as is defined under Section 415 of Indian Penal Code and offence under Section 420 of Indian Penal Code cannot go hand in hand.

15. Whereas in the case on hand, learned Magistrate has taken cognizance for the offences punishable under Section 417, 406, 418 and 420 of Indian Penal Code.

16. While also taking the order of cognizance, learned Trial Magistrate has taken note of the facts mentioned in the column No.17, wherein there are specific allegations against the petitioner herein.



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17. For the ready reference, Section 406, 417, 418, 420 of Indian Penal Code are culled out hereunder.

417. Punishment for cheating.—

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

"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.

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect.—

Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, 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.—



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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."

18. On close reading of the order of the learned Trial Magistrate especially paragraph 8, there is a discussion by the learned Trial Magistrate and proper reasons are assigned while taking the cognizance itself.

19. For ready reference paragraph 8 of the said order is culled out hereunder.

"8. At the outset, it is pertinent to note that there is no dispute by the accused that, he was the GPA holder of the complainant and he had powers to mortgage the property, sell it for higher value and to improve the land by obtaining loan from the Banks and private persons. Now, the question before this court is the alleged misappropriation and cheating. It is pertinent to note that, the complainant has made specific allegation that she has not given any powers to the accused to execute Gift Deed in favour of anybody. But, the accused has executed a Gift Deed dated 20.12.1999 to Department of



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Social Welfare in its favour. In this regard, the police have produced the registered certified copy of sale deed dated 20.12.1999. The accused has contended that orally he has given account in respect of the sale proceeds and other transactions. But has placed any documents before this court along with objects to show that he has given proper accounts in respect of the transactions. He has not whispered anything about the execution of Gift deed against the conditions of GPA in his objections. Moreover, very version of the accused that he is the GPA holder and has given accounts orally clearly indicates that there is entrustment of the property by the complainant. In additional to that, the oral and documentary evidence collected by the Investigating Officer also establishes that there is entrustment of the property. Now it is for the accused to prove during the trial as to how he has dealt with the property of the complainant which was entrusted to him. When the entrustment of the property is admitted by the accused and there are documentary evidence regarding execution of Gift deed and when there are no documentary evidence placed by the accused regarding the accounts, it would not be proper on part of this court to discharge the accused. At this stage there are sufficient materials to frame charge against the accused."

20. On going through the charge sheet material as well as the impugned order, this Court at this stage cannot hold a



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mini trial to accept that no ingredients are attracted for the aforesaid offences as per the charge sheet materials.

21. Expressing any further opinion on the ground that has been urged on behalf of the petitioner would definitely hamper the rights of the petitioner as well as the respondent No.2 in the pending trial.

22. At the stage of considering the prayer of the petitioner in the present petition, Court is not also required to hold mini trial.

23. As such, following:

ORDER

Petition is meritless and hereby dismissed.

**Sd/-
(V SRISHANANDA)
JUDGE**

MR
List No.: 1 Sl No.: 60