

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**Cr. MMO No. 1012 of 2026****Reserved on: 17.9.2026****Date of Decision: 28.9.2026.**

Hardeep Singh @ Happy & anr. Petitioners**Versus****State of H.P. & ors. Respondents**

Coram***Hon'ble Mr Justice Rakesh Kainthla, Judge.******Whether approved for reporting?¹ No.*****For the Petitioners : Mr Vinod Kumar Sharma,
Advocate.****For the Respondent/State : Mr Jitender Sharma, Additional
Advocate General.**

Rakesh Kainthla, Judge

The petitioners have filed the present petition for quashing of FIR No. 27 of 2020, dated 06.07.2020, registered at Police Station, CID, Bharari, Shimla, H.P. for the commission of offences punishable under Sections 406, 420 and 506 of the Indian Penal Code (IPC).

2. It has been asserted that the dispute between the parties is commercial in nature, arising out of contractual

¹ Whether reporters of Local Papers may be allowed to see the judgment? Yes.

obligations. The petitioner had handed over the post-dated cheques to the complainant and other fruit growers. The subsequent conduct of the petitioner shows that there was no *mens rea* or dishonest intention to cheat the victims from the beginning. The apple consignments had been sold at the petitioner's shop by the private respondents to their satisfaction. However, the private respondents made a complaint that the petitioners took their apples fraudulently and did not pay the amount. The petitioners had approached the Court for grant of pre-arrest bail, which was allowed. Private respondents No. 4, 5 and 6 came forward to receive the balance amount, and all other growers have been satisfied. The petitioner has paid the post-dated cheques to the growers and the cause of action does not survive. Therefore, it was prayed that the present petition be allowed and FIR No. 27 of 2020, dated 06.07.2020, registered at Police Station, CID, Shimla, and consequential proceedings arising out of it, be quashed.

3. I have heard Mr Vinod Kumar Sharma, learned counsel for the petitioners, and Mr Jitender Sharma, learned Additional Advocate General, for the respondent-State.

4. Mr Vinod Kumar Sharma, learned counsel for the petitioners, submitted that the petitioners were wrongly arrayed as accused in the FIR. The dispute between the parties pertained to the purchase of the apple. The petitioners have made the payment to the private growers, and no money remains payable. A private dispute is being given the colour of criminal proceedings, which is not permissible. Therefore, it was prayed that the present petition be allowed and the FIR and consequential proceedings arising out of it be quashed. He relied upon the judgments of the Hon'ble Supreme Court titled *Sarabjit Kaur Vs. State of Punjab & anr 2023 LiveLaw (SC) 157* and *Mukesh Kumar J. Sha Vs. State of Karnataka LL 2021 SC 592* in support of his submissions.

5. Mr Jitender Sharma, learned Additional Advocate General for the respondent-State, submitted that the allegations in the FIR show that the petitioners had made a false representation to the apple growers that they would purchase the apples and pay the money to the growers. The petitioners failed to pay the money, and the police registered the FIR. The subsequent payment of the money will not take away the effect of

the commission of the crime. Therefore, he prayed that the present petition be dismissed.

6. I have given considerable thought to the submissions made at the Bar and have gone through the records carefully.

7. The law relating to quashing of criminal cases was explained by the Hon'ble Supreme Court in *B.N. John v. State of U.P.*, 2025 SCC OnLine SC 7 as under: -

“7. As far as the quashing of criminal cases is concerned, it is now more or less well settled as regards the principles to be applied by the court. In this regard, one may refer to the decision of this Court in *State of Haryana v. Ch. Bhajan Lal*, 1992 Supp (1) SCC 335, wherein this Court has summarised some of the principles under which FIR/complaints/criminal cases could be quashed in the following words:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 based on 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 concerned Act (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 concerned Act, 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 a private and personal grudge.” (*emphasis added*)

8. Of the aforesaid criteria, clause no. (1), (4) and (6) would be of relevance to us in this case.

In clause (1), it has been mentioned that 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, then the FIR or the complaint can be quashed.

As per clause (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 dated by the Magistrate as contemplated under Section 155 (2) of the CrPC, and in such a situation, the FIR can be quashed.

Similarly, as provided under clause (6), if there is an express legal bar engrafted in any of the provisions of the CrPC or the concerned Act under which the criminal proceedings are instituted, such proceedings can be quashed.”

8. This position was reiterated in *Ajay Malik v. State of Uttarakhand*, 2025 SCC OnLine SC 185, wherein it was observed:

“8. It is well established that a High Court, in exercising its extraordinary powers under Section 482 of the CrPC, may issue orders to prevent the abuse of court processes or to secure the ends of justice. These inherent powers are neither controlled nor limited by any other statutory provision. However, given the broad and profound nature of this authority, the High Court must exercise it sparingly. The conditions for invoking such powers are

embedded within Section 482 of the CrPC itself, allowing the High Court to act only in cases of clear abuse of process or where intervention is essential to uphold the ends of justice.

9. It is in this backdrop that this Court, over the course of several decades, has laid down the principles and guidelines that High Courts must follow before quashing criminal proceedings at the threshold, thereby preempting the Prosecution from building its case before the Trial Court. The grounds for quashing, *inter alia*, contemplate the following situations : (i) the criminal complaint has been filed with *mala fides*; (ii) the FIR represents an abuse of the legal process; (iii) no *prima facie* offence is made out; (iv) the dispute is civil in nature; (v) the complaint contains vague and omnibus allegations; and (vi) the parties are willing to settle and compound the dispute amicably (*State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335).

9. A similar view was taken in *Rajendra Bihari Lal v. State of U.P.*, 2025 SCC OnLine SC 2265, wherein it was observed:

“70. The aforesaid decisions of this Court make it clear that where the High Court is satisfied that the process of any court is being abused or likely to be abused or that the ends of justice would not be secured, it is not only empowered but also obligated under the law to exercise its inherent powers. The provision does not confer any new power on the High Court but rather saves the power which the High Court already possesses, from before the enactment of the legislation, by reason of its very existence. In exercise of its power, it would be legitimate for the High Court to quash any criminal proceedings if the High Court finds that the initiation or continuation of it may lead to abuse of the process of court, and quashing of the proceedings would serve the ends of justice.”

10. The present petition is to be decided as per the parameters laid down by the Hon'ble Supreme Court.

11. The FIR reads that the informant is a horticulturist. The owner of Apple Fruit Company, Sonu, visited Anni to purchase the apples. Sonu purchased the apples and handed over the sale documents showing the sale of ₹2,46,930/-. However, no payment was made to the informant. The informant tried to contact the owner on the telephone, but the owner abused the informant. Hence, the police registered the FIR.

12. The ingredients of cheating were explained by the Hon'ble Supreme Court in *S.W. Palanitkar v. State of Bihar*, (2002) 1 SCC 241 as under:

“10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should cause or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

11. One of us (D.P. Mohapatra, J.), speaking for the Bench, in *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168: 2000 SCC (Cri) 786] on the facts of that case, has expressed thus: (SCC p. 177, para 15)

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore, it is the intention that is the gist of the offence. *To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.*”(emphasis supplied)

12. Finding that the ingredients of the offence of cheating and its allied offences had not been made out, this Court interfered with the order of the High Court and quashed the criminal proceedings.

13. In *G.V. Rao v. L.H.V. Prasad* [(2000) 3 SCC 693: 2000 SCC (Cri) 733], this Court in para 7 has stated thus: (SCC pp. 696-97)

“7. As mentioned above, Section 415 has two parts. In the first part, the person must ‘dishonestly’ or ‘fraudulently’ induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantraai Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575: 1956 Cri LJ 1116], a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to

secure the conviction of a person for the offence of cheating, ‘*mens rea*’ on the part of that person must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* [AIR 1954 SC 724: 1954 Cri LJ 1806] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.”(emphasis supplied)

14. In *Trisuns Chemical Industry v. Rajesh Agarwal* [(1999) 8 SCC 686: 2000 SCC (Cri) 47] dealing with the effect of existence of arbitration clause in the agreement on criminal prosecution on the ground that civil proceedings are also maintainable, this Court has held that quashing of FIR or a complaint exercising power under Section 482 CrPC should be limited to a very extreme exception; merely because an act has a civil profile is not enough to stop action on the criminal side. It is further held that a provision made in the agreement for referring the disputes to arbitration is not an effective substitute for a criminal prosecution when the disputed act constitutes a criminal offence.

13. A similar view was taken in *G.V. Rao v. L.H.V. Prasad*, (2000) 3 SCC 693 wherein it was observed as under:

“7. As mentioned above, Section 415 has two parts. While in the first part, the person must “dishonestly” or “fraudulently” induce the complainant to deliver any property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part, inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in *Jaswantrai Manilal Akhaney v. State of Bombay* [AIR 1956 SC 575: 1956 Cri LJ 1116: 1956 SCR 483], a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure the conviction of a

person for the offence of cheating, “*mens rea*” on the part of that person must be established. It was also observed in *Mahadeo Prasad v. State of W.B.* [AIR 1954 SC 724: 1954 Cri LJ 1806] that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was offered.

8. Thus, so far as the second part of Section 415 is concerned, “property”, at no stage, is involved. Here it is the doing of an act or omission to do an act by the complainant, as a result of intentional inducement by the accused, which is material. Such inducement should result in the doing of an act or omission to do an act as a result of which the person concerned should have suffered or was likely to suffer damage or harm to body, mind, reputation or property. In an old decision of the Allahabad High Court in *Empress v. Sheoram* [(1882) 2 AWN 237], it was held by Mahmood, J.:

“That to palm off a young woman as belonging to a caste different to the one to which she really belongs, with the object of obtaining money, amounts to the offence of cheating by personation as defined in Section 416 of the Penal Code, 1860, which must be read in the light of the preceding Section 415.”

14. It was laid down by the Hon’ble Supreme Court in *Ram Jas v. State of U.P.*, (1970) 2 SCC 740 that there should be a fraudulent or dishonest inducement before a person can be held guilty of cheating. It was observed:

“3. In recording this finding and conviction, the High Court lost sight of the fact that no such charge was framed against the appellant in the trial court. As we have indicated above, the persons who were cheated or attempted to be cheated, referred to in the charges framed

against the appellant, were Madan Lal, Chunni Lal, or the office of the Relief and Rehabilitation-cum-Settlement Officer, Saharanpur. There was no charge at all relating to any cheating or attempting to cheat the Oath Commissioner. In fact, the case was never brought to Court with the intention of obtaining conviction of the appellant for any offence of cheating in respect of the Oath Commissioner. Not only was there no charge in this respect, but, in addition, the appellant, when questioned under Section 342 of the Code of Criminal Procedure after the prosecution evidence had been recorded, was not asked to explain evidence relating to such a charge of cheating the Oath Commissioner. No doubt, there was mention of the commission of forgery of affidavits; but the mention of the commission of that offence could not possibly lead the appellant to infer that he was liable to be convicted for abetting the offence of cheating the Oath Commissioner. Further, in recording this conviction, the High Court did not even take the case to examine in detail whether all the ingredients of the offence had been established by the prosecution evidence. The only finding of fact was that the appellant, who was known to the Oath Commissioner, wrongly identified some other person as Govind Ram and got the affidavit attested by the Oath Commissioner as if it was being sworn by Govind Ram. This act of wrong identification committed by the appellant cannot amount to the offence of cheating by personation. Cheating is defined in Section 415 IPC, which is as follows:

“Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived 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 anything 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 in body, mind, reputation or property, is said to ‘cheat’.”

The ingredients required to constitute the offence of cheating are—

(i) there should be fraudulent or dishonest inducement of a person by deceiving him;

(ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or

(b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) in cases covered by (ii)(b), the act or omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

4. In the present case, the finding of fact recorded only shows that the Oath Commissioner was induced to attest the affidavit by the deception practised by the appellant in wrongly identifying a person as Govind Ram when he was in fact not Govind Ram. That act done by the Oath Commissioner of attesting the affidavit could not, however, possibly cause any damage or harm to the Oath Commissioner in body, mind, reputation or property. The Oath Commissioner was obviously not induced to deliver any property to anybody by this wrong identification, nor was he induced to consent that any person should retain any property. Thus, the facts found did not constitute the offence of cheating at all. The conviction for an offence under Section 419, substantively or with the aid of Section 109 IPC, could only have been justified if the facts proved constituted all the ingredients of the offence of cheating. In recording the conviction, the High Court neglected to see whether all those ingredients were proved. On the face of it, though the Oath Commissioner was induced to attest the affidavit by wrong identification made by the appellant, there was no likelihood of any damage or harm to him in body, mind, reputation or property, so that the Oath Commissioner was never cheated. Clearly, therefore,

the High Court fell into an error in recording the conviction of the appellant for the offence under Section 419, read with Section 109 IPC and substituting that conviction in place of the conviction for offences for which he had been punished by the trial court.

15. Similar is the judgment in *V.Y. Jose v. State of Gujarat*, (2009) 3 SCC 78 wherein it was observed:-

“14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property, or to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intentions at the time of making a promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making the initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out.”

16. This position was reiterated in *Raju Krishna Shedbalkar v. State of Karnataka*, 2024 SCC OnLine SC 200 wherein it was observed:

“7. A perusal of the aforesaid provision shows that the offence of cheating is in two parts. The first is where a person fraudulently or dishonestly deceives another in inducing that person to deliver any property to any person

etc. The second part of the offence would be made out if somebody is deceived to do an act which causes damage or harm to that person “in body, mind, reputation or property is said to have cheated”. Time and again, this Court has reiterated that in order to make out an offence under cheating, the intention to cheat or deceive should be right from the beginning. By no stretch of the imagination is this even reflected from the complaint made by the informant.

8. In the case of *Hridaya Ranjan Prasad Verma v. State of Bihar* (2000) 4 SCC 168, this Court held as under:

“15. In determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement, which may be judged by his subsequent conduct, but this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. *To hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise.* From his mere failure to keep up promise subsequently, such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.” (*Emphasis supplied*)

9. Further, in the case of *Indian Oil Corporation v. NEPC India Ltd.* (2006) 6 SCC 736 this position was reiterated in the following manner:

33. The High Court has held that a mere breach of contractual terms would not amount to cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction and in the absence of an allegation that the accused had a fraudulent or

dishonest intention while making a promise, there is no “cheating”. *The High Court has relied on several decisions of this Court wherein this Court has held that dishonest intent at the time of making the promise/inducement is necessary, in addition to the subsequent failure to fulfil the promise. Illustrations (f) and (g) to Section 415 make this position clear:*

“(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.”
(emphasis supplied)

17. The allegations in the FIR show that Sonu had visited the informant's village. He had taken the apple crop from the informant and handed over the sale documents showing that the value of the apple crop was ₹2,46,930/-.

18. Therefore, the apples were taken on the representation that ₹2,46,930/- would be paid as their cost. However, this promise was not honoured. The informant would not have delivered the apples to Sonu but for the representation made by him. Therefore, *prima facie*, it can be concluded that

Sonu had made a representation to the informant, who acted on the representation, and he failed to honour the promise made by him.

19. It was submitted that the payment of the apple crop has been made subsequently. However, the subsequent payment, that too, after registration of the FIR, will not take away the effect of the crime.

20. In *Mukesh Kumar* (supra), the dispute was regarding the sale of the property, and it was held that a civil dispute was being given a criminal colour. In the present case, a representation was made by Sonu to the informant that the apples worth ₹2,46,930/- were being taken and their price would be paid. However, the price was not paid, and it cannot be said that there was a civil dispute which was being given the colour of criminal proceedings.

21. In *Sarabjit Kaur* (supra), the Hon'ble Supreme Court held that a breach of contract does not give rise to criminal prosecution for cheating unless the fraudulent or dishonest intention is shown right at the beginning of the transaction. In the present case, the fraudulent intention is apparent from the

handing over of the sale document showing the price and thereafter not picking up the phone.

22. It was submitted that the offences punishable under Section 406 and 420 of the IPC cannot be committed in the same transaction. This submission will not help the petitioners. *Prima facie*, a case for the commission of an offence punishable under Section 420 of the IPC is made out, and even if the submission on behalf of the petitioners is accepted, it will not result in the quashing of the FIR.

23. It is undisputed that the police have filed the charge sheet before the Court, and the learned Trial Court is seized of the matter. It was laid down by the Hon'ble Supreme Court in *Iqbal v. State of U.P.*, (2023) 8 SCC 734: 2023 SCC OnLine SC 949 that when the charge sheet has been filed, the learned Trial Court should be left to appreciate the same. It was observed:

“At the same time, we also take notice of the fact that the investigation has been completed and the charge sheet is ready to be filed. Although the allegations levelled in the FIR do not inspire any confidence, particularly in the absence of any specific date, time, etc. of the alleged offences, we are of the view that the appellants should prefer a discharge application before the trial court under Section 227 of the Code of Criminal Procedure (CrPC). We say so because even according to the State, the

investigation is over and the charge sheet is ready to be filed before the competent court. In such circumstances, the trial court should be allowed to look into the materials which the investigating officer might have collected forming part of the charge sheet. If any such discharge application is filed, the trial court shall look into the materials and take a call whether any discharge case is made out or not.”

24. No other point was urged.

25. In view of the above, the present petition fails, and the same is dismissed.

26. The observations made hereinbefore shall remain confined to the disposal of the petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge

28th September, 2026
(Chander)