HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 4258/2018
CNR: RJHC020659872018 | URN: CRLMP / 6489U / 2018

1. Pramod Kumar Joshi S/o Late Shri Roop Narayan Joshi, R/o House No. 260 Scheme No. 2, Alwar (Raj.)
2. Ved Prakash Joshi S/o Late Shri Babu Ram Joshi, R/o House No. 131, Kush Marg, Scheme No. 12, Alwar (Raj.)

----Petitioners

Versus

1. State Of Rajasthan, Through P.p.
2. Niranjan Lal Joshi S/o Late Shri Babu Ram Joshi, R/o A-18, Kalwar Scheme, Gopalbari, Jaipur At Present Residing At 26A Sharma Colony, 22, Godown, Jaipur (Raj.) (since dead).

----Respondents

Connected With

S.B. Criminal Miscellaneous (Petition) No. 3895/2018
CNR: RJHC020635132018 | URN: CRLMP / 5967U / 2018

K. R. Jatav, Assistant General Manager Bank Of India, Zonal Office, Jeevan Bharti Level 5, Tower No.1, 124, Connaughat Palace, New Delhi 110001.
At present K.R. Jatav son of Late Shri Sohan Ram Jatav, resident of 1553, Sector 46, Gurgaon, 122003, Haryana.

----Petitioner

Versus

1. State Of Rajasthan Through PP, Jaipur
2. Niranjan Lal Joshi S/o Late Shri Babu Ramjoshi, R/o A-18, Kalwar Scheme, Gopalbari, Jaipur, At Present R/o 26A, Sharma Colony, 22 Godown, Jaipur, Raj. (since dead).

----Respondents

For Petitioner(s)	:	Mr. Ajay Shukla with Ms. Jyoti Sharma Mr. Jai Prakash Gupta with Mr. Yashowardhan Agarwal
For Respondent(s)	:	Mr. Pankaj Kumar for Mr. Manoj Bharadwaj

Mr. Vijay Singh Yadav, PP
Mr. Onkar Singh Rajpurohit, PP

HON'BLE MR. JUSTICE ASHOK KUMAR JAIN

Order

13/08/2026

1. These two miscellaneous petitions were filed by the petitioners, aggrieved by order dated 23.04.2018 in Criminal Revision Nos. 202/2014 and 1/2015, passed by learned Additional Sessions Judge No. 1, Alwar, whereby he upheld order dated 25.06.2014 in Criminal Case No. 23/669/2014 (arising out of FIR No. 271/2009, registered at Police Station Kotwali, District Alwar), whereby cognizance under Sections 420 and 406 of IPC was taken against the petitioners on the protest petition filed by the complainant.

2. It has been brought to the notice that non-petitioner No. 2, complainant Niranjanlal Joshi, has expired and no application has been filed for substitution by or for his legal heirs. The fact was taken on record on 18.09.2025, but despite opportunities, no efforts were made to substitute the legal heirs and also to file amended cause title. Taking note of the above, we are marking since dead after the name of non-petitioner No. 2.

3. Learned counsel for non-petitioner No. 2 is ready to argue the matter as amicus to protect the interest of complainant, hence, we are considering these two petitions.

4. Learned counsel for the petitioners, while placing reliance upon the judgment in the case of **Arshad Neyaz Khan vs. State of Jharkhand and Anr.** reported in **2025 INSC 1151**, has

submitted that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulative act or fraudulent misrepresentation of property. He further referred to the judgment in the case of **Delhi Race Club (1940) Limited vs. State of U.P., reported in (2024) 10 SCC 690**, and submitted that offence under Sections 420 and 406 IPC cannot exist together, and the order of cognizance on this count is itself bad in the eye of law. He further submitted that after forming the partnership firm, the complainant exited from the partnership firm on 20.09.1997, after full and final settlement, which has been acknowledged by complainant himself during investigation conducted by the police. He also submitted that even after the complainant had invoked jurisdiction for rendition of accounts, and despite being unsuccessful in extracting anything from the petitioners, the complainant adopted the process of criminal law, and the trial Court took cognizance, without considering the facts of the instant case.

5. Learned counsel has further submitted that on two occasions, the police submitted closure report in the instant case, and the material on record clearly indicates that there was a family dispute regarding the properties, but there is no dispute between the partnership firm and the complainant. He also submitted that the bank manager or the bank had no role in any of the affairs between the firm and its partners. He also referred the order of the State Consumer Disputes Redressal Commission and submitted that no case of cheating had been made out. He also submitted that though the trial court and the Revisional Court have failed to consider the dispute of civil nature,

and at the most, proceedings for rendition of accounts were maintainable in a Civil Court, and there was no occasion to invoke the jurisdiction of the Criminal Court. At last, he submitted that continuance of criminal proceedings is an abuse of the process of law, which is harassment to the petitioners.

6. Aforesaid contentions were opposed by learned counsel appearing on behalf of the complainant, and he submitted that after filing of the complaint, the matter was investigated by the police, and the police had filed a closure report, but on the protest petition, the matter was sent for reconsideration, and again, reiterating the same facts, a closure report was filed to the Court. He further referred to the reasons assigned by the trial court and submitted that the trial Court had found that the 1/3 share of the complainant was not paid to the complainant, though he was a partner in the firm, in year 1997. He further submitted that the said transaction was before retirement of the complainant from the firm, and if the transaction in the said firm came to the notice of the complainant later on, then the complainant had a right to agitate and file a criminal complaint. He also referred to paragraph No. 11 of the order passed by the Revisional Court and submitted that the justification of cognizance has been considered by the Revision Court and the same is sufficient to dismiss these miscellaneous petitions.

7. Heard learned counsel for the parties and learned Public Prosecutor, and perused the material placed on record.

8. Brief facts of the case are that on 01.09.1971, a firm in the name of ''Unnati Beej Bhandar'' was constituted in partnership of Pramod Kumar Joshi (petitioner No. 1), Ved Prakash Joshi

(petitioner No. 2), and Niranjanlal Joshi (non-petitioner No. 2-complainant, since dead). The firm has obtained cash credit facility from the Bank of India, Alwar Branch. On 20th September 1997, complainant Niranjanlal Joshi retired from the firm and, as per the petitioners, he received full and final payment from the firm as per the books of account.

9. On 19.01.2007, the complainant has filed a complaint before the District Consumer Forum against the bank, alleging that since the bank had permitted other partners to open separate current accounts, therefore, he sustained loss and hence may be compensated. The complaint was rejected by the District Consumer Forum. The complainant has preferred an appeal before the State Commission, and the same was decided by the State Commission, observing that no financial loss was caused to the complainant, but it was a case of deficiency in service, hence, compensation of Rs.20,000/- was allowed and paid to the complainant.

10. The complainant filed a criminal complaint against the petitioners in the Court of Chief Judicial Magistrate, Alwar, alleging incidents of 1997, and pleaded that an offence under Sections 420, 120-B and 406 IPC has been committed by them. The Chief Judicial Magistrate directed registration of FIR under Section 156(3) of Cr.P.C., and FIR dated 26.04.2009 was registered at Police Station Kotwali, Alwar. After investigation, the police filed a closure report in the form of FR, as the matter pertains to a dispute about the division of properties. The complainant filed a protest petition and the trial court directed re-investigation, which was conducted by the Assistant Superintendent of Police. In its

report, it was specifically mentioned that the complainant had voluntarily retired on 20.09.1997 and received full and final payment after settlement of accounts. In this report, the police found that no offence of cheating was committed.

11. The Chief Judicial Magistrate, Alwar, after considering the entire material has found that offence under Sections 420 and 406 IPC were made out and issued the process to call petitioners, after taking cognizance. The petitioners have filed criminal revisions, and Revisions No. 202/2014 and 1/2015 were decided by learned Additional Sessions Judge No. 1, Alwar, and after considering the material, these were dismissed. The petitioners are before this Court, and further proceedings before the trial court have been stayed by this Court, while entertaining these petitions.

12. In the case of **Arshad Neyaz Khan vs. State of Jharkhand and Anr. (supra)**, Hon'ble Supreme Court has considered the judgments in the cases of **State of Haryana vs. Bhajan Lal, 1992 Supp. (1) SCC 335, Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1, Vinod Noble Singh vs. State of U.P., 2024 SCC OnLine SC 1680,** and **Delhi Race Club (1940) Limited vs. State of U.P., (2024) 10 SCC 690.**

13. In the case of **Arshad vs. State of Jharkhand (supra)** Hon'ble Supreme Court has observed as under:-

> *17. In Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC_1 ("Inder Mohan Goswami"), while dealing with Section 420 IPC, this Court observed thus:*

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

23. Furthermore, in Inder Mohan Goswami, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down any inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant

herein would cause undue harassment to him because as observed hereinabove, no prima facie case for the offence under Sections 406 or 420 IPC is made out.

24. In this regard, it would be apposite to rely on the judgment in the case of State of Haryana vs. Bhajan Lal, 1992 Suppl. (1) SCC 335 ("Bhajan Lal") with particular reference to paragraph 102 therein, where this Court observed:

> *"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 on the basis of 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 provisions 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 private and personal grudge."

26. At this juncture, we find it apposite to mention the observations of this Court in Vishal Noble Singh vs. State of Uttar Pradesh, 2024 SCC OnLine SC 1680 wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No.2 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.

14. The issue pertains to a partnership firm, and admittedly, on 20.09.1997, the complainant retired from the firm after full and final settlement. Section 36 of the Indian Partnership Act prescribes rights of outgoing partners, and Section 37 of the Act protects rights of an outgoing partner when final payment is delayed. An outgoing partner means a person who ceases to be a

partner in a firm while the remaining partners continue to operate the business. A partner may leave a firm on retirement, expulsion, insolvency or death.

15. The police report dated 22.02.2012 (Annexure-8 in Misc. Petition No.3895/2018) has drawn a conclusion after considering the entire record, material collected during investigation and also the points raised by the Trial Court while directing the further investigation. The report clearly indicate that the complainant has made a statement that he voluntarily retired on 20.09.1997 after perusal of books of accounts. The statement of complainant clearly indicate that he has voluntarily retired from the firm, but the Trial Court has neither considered the report nor has considered the fact that there is no charge of conspiracy and the Trial Court has even not taken cognizance under Section 120-B of IPC, therefore, the Trial Court was duty bound to justify individual acts of the petitioners while taking cognizance and same is missing in order dated 25.06.2014.

16. A Revisional Court is duty bound to consider illegality and perversity under Sections 397 and 401 of Cr.P.C. when a legal issue is raised before it. It is apparent from the order that the petitioners have filed 18 judgments in their favour but the Revisional Court has not considered even a single judgment submitted by the petitioners which is sufficient to draw a conclusion that the Revisional Court has swayed by facts narrated in protest petition and not dealt the legal issues raised before it.

17. There is no doubt about a fact that the criminal proceedings and civil proceedings can continue provided their exist ingredients of any criminal offence, but in the instant case, the Trial Court and

the Revisional Court both have failed to notice that partnership firm is governed by the Indian Partnership Act, 1932 and rights and liabilities are provided therein. The complainant has got retired on 20.09.1997. The statement of complainant is loud and clear that he has voluntarily retired from the partnership firm and he is not having any concern with partnership firm after 20.09.1997. Ignoring this statement if any, criminal complaint is filed in the month of April, 2009 then certainly it is a misuse of process of law, a criminal case is filed after 12 years of retirement from the firm. The rights of the complainant has to be crystallized in accordance with law as provided under the Indian Partnership Act and he cannot target the partners or the bank officer to settle his scores.

18. As regard to consumer complaint is concerned same is dismissed by the District Forum but on ground of deficiency of service, the State Commission has awarded compensation for mental harassment, but not a transactional compensation and same has to be considered by the Trial Court and the Revisional Court as both have settled before filing of the complaints. Thus, the Trial Court and the Revisional Court both have committed serious and grave error in taking cognizance without understanding the legal provisions and the process adopted in the instant case.

19. These type of cognizance is a classic example of misuse of process of law and justification in para No.11 of the Revisional Court order is not sufficient as there is no enquiry after protest petition so as to find out the truth form the additional evidence, if any submitted by the complainant, therefore, while drawing a

conclusion, a Revisional Court cannot travel beyond the parameters set under the legal provisions. Thus, the order passed by the Revisional Court is not only absurd, illegal, but not sustainable in the eye of law. The continuance of said proceedings are abuse of process of law, hence, misc. petitions are liable to be allowed.

20. In view of discussion made herein above, misc. petitions No. 4258/2018 and 3895/2018 are hereby allowed and the order dated 25.06.2014 passed by learned Chief Judicial Magistrate and order dated 23.04.2018 in Criminal Petition No.202/2014 and 01/2015 passed by learned Additional Sessions Judge No.1, Alwar, are hereby quashed and set aside. The closure report is accepted and protest petition is dismissed. The petitioners are discharged from offence under Sections 420 and 406 of IPC.

21. Misc. application(s), if any, stands disposed of and stay applications are also disposed.

(ASHOK KUMAR JAIN),J

9-10/GAURAV