

5. The Hon'ble Supreme Court of India in the case of '*Delhi Race Club (1940) Ltd. And Ors. Vs. State of Uttar Pradesh and Anr.*)¹, has held thus:

“29. 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.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since

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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 misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”

6. The learned counsel for the applicant points out that he has made 1/3 payment to the investors, the learned APP has not disputed the said fact.

7. In view of the above referred fact, it is doubtful whether Section 420 of Indian Penal Code will attract in the present case. During the investigation, all the relevant documents have been seized and are in custody of the IO. Moreover, there is no progress in the trial.

8. In the circumstances, considering the above referred backdrop, I am of the opinion that further custody of the applicant is not necessary. Accordingly, I pass the following order:

ORDER

- i) Criminal application is allowed;
- ii) It is directed that both the applicants be released on bail in Crime No.0265 of 2022, registered with Narayangaon Police Station, Pune for the offences punishable under sections 420, 406 and 409 of the Indian Penal Code and under Section 3 and 4 of the Prevention of

Money Laundering Act;

iii) The applicant shall furnish cash security of Rupees Twenty Five Thousand (Rs. 25,000/-) before release on bail and one month time is granted to furnish one local surety;

iv) The applicant shall attend the said Police Station on 1st day of every month between 10.00a.m. to 11.00 a.m., till the conclusion of the trial except on the date of trial;

v) The applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case, as also not tamper with the evidence;

vi) Liberty is granted to the State to apply for cancellation of bail in case of any breach of condition if the applicant commenced similar offence;

vii) The applicant shall attend the trial before the trial Court regularly on every date unless exemption is granted by the trial Court.

9. The application is disposed of.

(ANIL S. KILOR, J)