

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26008 of 2022

Arising Out of PS. Case No.-3754 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

-
1. S. Sampath, son of P. Swaminathan, Director, M/s Triton Healthcare Pvt. Limited, Plot No.-75, Natarajan Street, Dhanalakshmi Colony, P.S.- Vadapalani, Chennai - 600026.
 2. Vishakh Sampath @ S. Vishaak, Son of S. Sampath, Director, M/s Triton Healthcare Pvt. Limited, Plot No.-75, Natarajan Street, Dhanalakshmi Colony, P.S.- Vadapalani, Chennai - 600026.
 3. Chitra Palanisamy @ Chitra Sampath, daughter of Palanisamy, Director, M/s Triton Healthcare Pvt. Limited, Plot No.-75, Natarajan Street, Dhanalakshmi Colony, P.S.- Vadapalani, Chennai - 600026.
 4. Gayathri Devi, Soundappan @ S. Gayathri, Daughter of Soundappan Director, M/s Triton Healthcare Pvt. Limited, Plot No.- 75, Natarajan Street, Dhanalakshmi Colony, P.S.- Vadapalani, Chennai - 600026.
 5. C. Manoranjan, son of Chitra Ranjan, Director, M/s Triton Healthcare Pvt. Limited, Plot No.-75, Natarajan Street, Dhanalakshmi Colony, P.S.- Vadapalani, Chennai - 600026.

... .. Petitioners

Versus

1. The State of Bihar
2. Mr. Anup Dalmia @ Anup Kumar, Proprietor, M/S B.S. Enterprises Office at 103-104, First Floor, Abhishek Plaza, Exhibition Road, P.S.- Gandhi Maidan, Patna - 800001.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. P.N. Shahi, Sr. Advocate Mr. Praveen Kumar, Advocate
For the State	:	Dr. Indivar Kumari, APP
For the Opp. Party No.2	:	Mr. Alok Kumar Jha, Advocate Mr. Atal Bihari Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL JUDGMENT

Date : 02-09-2025

Heard learned counsel for the petitioners, learned
APP for the State and learned counsel for the opposite party
no.2/complainant.



2. The present application has been filed under section 482 of the Criminal Procedure Code (for short Cr. P.C.) for quashing the order dated 25.05.2017 passed by the learned A.C.J.M.-VIII, Patna, in connection with Complaint Case No.3754 of 2013, by which the learned Magistrate has taken cognizance against the petitioners under section 406/34 of the Indian Penal Code.

3. As per the complaint petition, the complainant is an established healthcare distribution solution specialist and is engaged in the business of wholesale product distribution of medicines. It is alleged that the petitioners had contacted the complainant-company in October, 2007 for marketing and distribution of pharmaceutical drugs in the State of Bihar. It is stated that the complainant and the petitioners had entered into a Memorandum of Understanding (for short "MoU") on 1.11.2007 till 31.03.2008 for distribution of pharmaceutical drugs in the State of Bihar. As per the terms of the said MoU, the complainant had deposited Rs.2,00,000/- with the accused. Thereafter, the parties conducted their business cordially in terms of the said MoU. It is further alleged that on 01.04.2008, the MoU was renewed for a further period from 01.04.2008 to 31.03.2009 on the same terms and



conditions as were agreed in the first MoU.

3.1. It is next stated that the business relation was going well and both the parties were doing their business cordially. It is alleged that a claim of Rs 60,00,000/- of the complainant was overdue from the petitioners but the complainant, in good faith, continued to perform his part of obligations in view of tacit renewal of the MoU and the long term business relations with the petitioners.

3.2. It is alleged that the petitioners had sent a letter dated 13.06.2009 to the complainant for cessation of their business relations alleging frivolous pleas and allegations, which were raised for the first time and were completely false, baseless, frivolous and ill founded without following the terms of the MoU. It is stated by the complainant that clause 16 of the MoU provides one month prior notice before terminating the agreement but the petitioners without following the aforesaid clause had terminated the agreement arbitrarily and unreasonably in order to wrongfully misappropriate the money of the complainant, which has put the interest of the complainant in jeopardy as he had invested huge amount of money in the market as per the assurance of the petitioners.

3.3. It is stated that thereafter vide letter dated



16.06.2009, the petitioners informed the complainant that they will take over the market dues and requested him to provide updated outstanding statement, accordingly, the complainant sent a letter mentioning the details of outstanding amount lying with them but instead of replying to the said letter the petitioners sent an e-mail dated 03.08.2009 requesting the complainant to provide the details of outstanding dues along with complete statement of account. Pursuant to the said e-mail, the complainant sent a letter dated 04.08.2009 seeking clearance of all outstanding amounts. It is alleged that on 22.09.2009 the petitioners had threatened the complainant.

3.4. It is next alleged that the complainant sent a letter along with the details of outstanding claims with balance statement mentioning the balance recoverable as on September, 2011 to be Rs.72,44,083/- but again the petitioners failed to address the grievances of the complainant. The petitioners vide their letter dated 03.10.2011 have accepted certain part of the claim of the complainant and rejected the rest of the claim on false and frivolous grounds. It is stated that the petitioners had agreed to pay an amount of Rs. 2,46,396/- including Security deposit of Rs.2,00,000/-.

3.5. It is stated in the complaint petition that



subsequently correspondences were made between the complainant and the petitioners but all went in vain. Thereafter, the complainant had been waiting for long time for the purpose of settling the claim amicably and he even had visited Chennai on various occasions to reconcile and settle the outstanding dues, however, it is alleged that the petitioners failed to honour their commitments and caused wrongful loss to the complainant by deception.

3.6. It is next stated that the complainant sent a legal notice dated 08.08.2011 to the petitioners, but they did not respond to the same. Again, the complainant had sent another legal notice dated 31.05.2013 calling upon the petitioners to pay the legitimate dues and outstanding amount to the complainant to the tune of Rs.60,30,363.56/- along with the interest at the rate of 15% per annum but, in reply to the said legal notice, the petitioners refused to pay even a single penny to the complainant. Thereafter, the complainant filed the present complaint petition before the learned Magistrate. The learned Magistrate, after considering the complaint petition and supporting witnesses, vide the impugned order dated 25.05.2017 has taken cognizance against the petitioners.

4. At the outset, learned Senior Counsel for the



petitioners submits that the petitioner no. 1 is the Managing Director of M/s Triton Health Care Private Limited and the petitioner nos. 2 to 5 are the Directors and officials of the aforesaid company which deals with neuro-psychiatry medicines and its office is situated in Chennai.

5. Learned Senior Counsel for the petitioners has adverted to clause-18 of the MoU and has submitted that in the aforesaid clause it has clearly been mentioned that any dispute arising out of the aforesaid MoU shall be subject to the jurisdiction of the Chennai Courts, meaning thereby, the present complaint should not have been filed before the learned Magistrate at Patna, since the dispute is arising out of the aforesaid MoU. He has further submitted that for the same dispute the complainant had already filed Civil Suit No.739 of 2013 in the Madras High Court at Chennai, in which petitioners have already appeared and filed their written statement denying the liability as alleged in the complaint petition and acknowledged the liability only to the extent of Rs.2,45,674/-.

6. It is submitted by learned Senior Counsel that there were two MoUs executed between the parties but on and from 01.04.2009 there had been no contractual relationship between the parties. It is emphasized that the petitioners had



given the requisite 30 days notice to the complainant before terminating the agreement however, the present complaint has been filed on 03.10.2013 only with an intention to pressurize the petitioners. It is further submitted that even from a bare perusal of the complaint petition, there is not even a whisper with regard to entrustment of any money thus, no case is made out under section 406 of Indian Penal Code.

7. It is argued by learned Senior Counsel for the petitioners that since large number of complainants have been received against the complainant from the field staffs and the stockiest, the petitioners were constrained to terminate the MoU. Further, the petitioners never approached the complainant for entering into an MoU for consignee agent or super stockiest rather it is the complainant himself who approached the petitioners for the same and paid an amount of Rs.2,00,000/- as security deposit.

8. It is submitted by the learned Senior Counsel for the petitioners that the firm of the complainant was working as a super-stockiest and the petitioners used to dispatch pharmaceutical goods with credit of 70 days and thereafter the complainant was supposed to make the payment for the same, further according to the agreement, it was the duty of



complainant to get the payments from the respective stockiest to whom the goods were supplied. It is emphasised by the learned Senior Counsel that the petitioners or their company were not liable for any loss to the complainant being super-stockiest, yet as a gesture of goodwill, the petitioners had accepted to take over the outstanding stock, subject to the complainant getting individual letters from each stockiest confirming the amount of outstanding stock, however, the complainant never got the required letters.

9. It is further submitted that as per the business practice, the petitioners have to supply medicines through the complainant to the respective dealers and the commission was fixed as per clause-3 of the MoU. It is submitted that apart from the commission nothing was required to be paid which was automatically deducted by the complainant, therefore, in the facts of the present case, there was no entrustment, rather it is illustrative of a simple business transaction.

10. It is categorically pointed-out by the learned Senior Counsel that the complainant had filed a civil suit in the Madras High Court on same set of facts and therefore, the present criminal proceeding is nothing but a sheer misuse of



criminal law. It is further submitted that from bare reading of complaint petition, no case under section 406/34 of Indian Penal Code is made out against the petitioners.

11. It has been argued by learned Senior Counsel that as a super-stockiest, the complainant had to recover the market outstanding dues and the petitioners are in no way liable for the outstanding dues. Further, the petitioners or their company have rightly denied the claim of the complainant since the complainant was only entitled for Rs.2,46,397/-, however, as on today, the claim is hopelessly time bared. Moreover, the complainant himself denied to accept the final settlement offer of Rs.2,46,397/- which is also mentioned in paragraph no.10 of the present complaint petition and thus the petitioners or their company cannot be said to be liable for not paying the final settlement amount.

12. Learned Senior Counsel for the petitioners has adverted to section 202 (1) of the Cr.P.C. and has submitted that the learned Magistrate while issuing process has not complied with the aforesaid mandatory provision since the accused/ petitioners reside outside the territorial jurisdiction of the Court and as per the aforesaid provision, the Magistrate had to postpone the issue of process against the petitioners and



either inquire into the case himself or direct an investigation to be made by police officer or any other person as he thinks fit for the purpose of deciding whether or not there are sufficient grounds for proceeding against the petitioners, however, in the present case, the learned Magistrate has straightaway passed the impugned order taking cognizance and therefore, on this score alone, the cognizance order is not sustainable in the eye of law.

13. Lastly, it has been argued by learned Senior Counsel for the petitioners that the complainant has raised a stale claim which is hopelessly bared by law of limitation and the complainant has robed his claim under criminal law in order to pressurize the petitioners to squeeze money through criminal proceeding.

14. In support of this argument, learned Senior Counsel has placed reliance on a decision of the Hon'ble Supreme Court in the case of *S.N. Vijayalakshmi & Ors. vs. State of Karnataka & Anr.* reported as *2025 SCC OnLine SC 1575*.

15. The opposite party no.2/complainant has filed a counter affidavit, wherein he has reiterated the facts of the present case and has submitted that in the month of October, 2007, the petitioners had approached him for engagement as



consignee agent and the complainant had agreed to the same. Thereafter, MoU was executed between the parties and as per the terms of the MoU, the complainant deposited a sum of Rs.2,00,000/- in favour of the company of the petitioners as good-will deposit. Initially, the agreement was for a period commencing from 01.11.2007 till 31.03.2008 and thereafter, the same was renewed on 01.04.2008 for a period of 12 months till 31.03.2009. Initially, the business relations between the petitioners and the complainant went smoothly but suddenly the complainant was served with a letter dated 13.06.2009 issued by the petitioner no.1, whereby he was instructed to stop the billing and to remit the entire stock to the representative of the company in utter breach of the conditions stipulated in clause 16 of the MoU. Thereafter, the petitioner no.1 had again sent a letter dated 16.06.2009 seeking updated outstanding statement from the complainant and assured that the company would take over the outstanding dues of the complainant and advised him not to recall the stocks from the market.

16. It has also been submitted in the counter affidavit that in response to the letter dated 16.06.2009, the complainant vide his letter dated 04.08.2009 informed the company about handing over of lorry receipts of the parties to



the representative of the company. The complainant had also assured of handing over of the sales tax declaratory form D-XI to the parties after settlement of account with the company of the petitioners. In the aforesaid letter, the complainant had also mentioned several other contentions. However, there was no response of the petitioners to the said letter. It has also been stated in the counter affidavit that the petitioner no.1 had pressurized the complainant through e-mail to accept the offer of settlement. Thereafter, the complainant forwarded the complete account of his outstanding dues. In response, the representative of the petitioners vide letter dated 03.10.2011 informed the complainant about acceptance of claims. In the aforesaid letter, in the conclusion part, the petitioner had stated that as per the ledger balance (including deposit) the total amount which was accepted was Rs. 2,46,397/- and total market outstanding as acknowledged by individual parties in writing. The opposite party no.2 vide letter dated 08.10.2011 seriously disputed the illegal and arbitrary rejection of the claim of Rs.34,00,000/-, followed by e-mail dated 10.10.2011.

17. It has also been stated in the counter affidavit that since the petitioners did not redress the grievance of the complainant, he had sent a legal notice dated 08.08.2011



to the petitioners seeking settlement of pending issues but the same was not responded to by the petitioners. The complainant once again sent another legal notice dated 31.05.2013 to the petitioners and others seeking remittance of the legitimate dues along with interest. The aforesaid second legal notice was replied by the petitioners whereby they had denied all the claims of the complainant. Being aggrieved with the conduct of the petitioners and their company, the complainant filed the present complaint case before the learned Magistrate. He has also filed a civil suit in the Madras High Court viz. C.S. No.739 of 2013 against the petitioners and their company wherein the petitioners appeared and filed their written statement.

18. It has been submitted by learned counsel for the complainant that in this case the petitioners have assailed the order taking cognizance dated 25.05.2017 passed by the learned Magistrate in the year 2022 i.e. after lapse of about five years of passing of the impugned order, which reflects inordinate delay, laches and negligence on part of the petitioners. As such, the said application of the petitioners is not maintainable on grounds of unexplained delay itself in approaching this Court. It has further been submitted that the petitioners have not disputed the fact that the opposite party



no.2 was engaged as consignee agent for the company of the petitioners in the State of Bihar. It is emphasized that the opposite party no.2 was not served with any prior notice before termination of the relationship established on the basis of MoU between the parties as mandated under clause-16 of the MoU.

19. It is the submission of learned counsel for the opposite party no.2/complainant that suddenly the petitioners have instructed the complainant vide letters dated 13.06.2009 and 16.06.2009 to stop further billing of the pharmaceutical products in the market and the company of the petitioners had taken over the outstanding dues in the market, which actually belonged to the opposite party no.2 as it was the opposite party no.2, who had raised the bills against the supply of stocks made to the local customers of the company. Therefore, as per the procedure, the money lying outstanding with the customers was to be recovered by the complainant since the value of such stocks was already paid by the complainant well in advance.

20. It has been submitted by learned counsel for the opposite party no.2/complainant that inadvertently a letter dated 03.08.2009 issued by the representative of the petitioners to the opposite party no.2 could not be enclosed with the



complaint petition and therefore, the same is being brought on record before this Court. Adverting to the aforesaid letter dated 03.08.2009, learned counsel submits that the petitioners demanded the statement of outstanding dues of the opposite party no.2 in the market with assurance that the company would take over the outstanding dues in the market and the opposite party no.2 was only required to furnish the details of breakage/expiry goods so that the company would settle the claim with the party by way of either credit note or replacement. In response to the said letter, the opposite party no.2 vide letter dated 04.08.2009 furnished all the requisite details of outstanding dues in the market, despite all such efforts and acceptance by the petitioners about the entitlement of the opposite party no.2, not a single penny was given to him by the petitioners. Therefore, it is the submission of learned counsel for the opposite party no.2 that this conduct of the petitioners alone constitutes a case of criminal breach of trust under section 406/34 of the Indian Penal Code as the petitioners have already undertaken at not one but many places like letters dated 22.09.2009 and 03.10.2011 that the outstanding dues in the market would be taken over by them and the details of such outstanding dues were already provided to the petitioners but



they have failed to settle the outstanding dues.

21. It has been argued on behalf of the opposite party no.2 that the petitioners and their representatives have already collected the outstanding dues from the market, which amount actually belonged to the complainant/opposite party no.2 and despite having collected the same, the money has not been paid to the opposite party no.2, which is illegal and unlawful possession of the money belonging to the opposite party no.2 and conversion of the same for the use of the petitioners constitutes an offence of criminal breach of trust. Further, despite having followed all the instructions by the petitioners inasmuch as, having stopped recalling the stock from the market and having stopped collecting money from the market, which was actually belonging to the opposite party no.2, the petitioners have failed to discharge their obligations and therefore, it is a case of criminal breach of trust, in which the petitioners have recovered the money of the opposite party no.2 from the market and have failed to hand over the same to the opposite party no.2 with the sole intention to cause wrongful loss, which compelled the opposite party no.2 to lodge the complaint case before the learned Magistrate as well as the Civil Suit before the Madras High Court.



22. The next argument of learned counsel for the opposite party no.2 is that the conduct of the petitioners in accepting the claim of the opposite party no.2 as against outstanding dues in the market as well as other miscellaneous claims against breakage/expiry and other heads would show that the petitioners were well aware of the genuineness and validity of the claim of the opposite party no.2 and despite such acceptance, the petitioners did not come forward to make payment of even the claims admitted in terms of letter dated 03.10.2011, which would expose utmost *malafide* and dishonest intention on their part.

23. Lastly, it has been argued that the petitioners are not covered by the law settled by the Hon'ble Supreme Court that no prosecution would lie in cases involving civil and commercial disputes as in the present case, the petitioners have dishonestly and wrongfully withheld the admitted amount of the opposite party no.2 just to harass and arm twist the opposite party no.2. The petitioners have not come forward as gesture of good-will to pay the amount which was at least admitted by them and therefore they have committed the offence of criminal breach of trust under section 406/34 of the Indian Penal Code.

24. In this case, the opposite party no.2 has also



filed a supplementary counter affidavit wherein he has stated that clause 18 of the MoU dated 01.11.2007 provides that for any dispute, the jurisdiction lies in the Courts of Chennai, but it is emphasized that the jurisdiction does not lie only in Madras High Court because exclusive jurisdiction has not been conferred thereupon. Further, the complainant resides in Patna and having its office at Patna and the transaction took place between the company of the petitioner and the complainant at Patna within the State of Bihar and therefore, the Courts at Patna also have jurisdiction.

25. It has also been stated in the supplementary counter affidavit that although there are number of judgments of the Hon'ble Supreme Court as well as this Court condemning the use of criminal law for resolving civil disputes, however, it is stated that there are judgments of the Hon'ble Supreme Court in which it has been held that civil dispute and criminal case can go on simultaneously since there is no legal bar of both the civil and criminal cases going on simultaneously. In this regard, reliance is placed on the decision of the Hon'ble Supreme Court in the case of *Arun Bhandari vs. State of U.P. & Ors.* reported as (2013) 2 SCC 801; *R. Kalyani vs. Janak C. Mehta & Ors.* reported as (2009) 1 SCC



516 and ***Punit Beriwal v. State (NCT of Delhi)***, reported as **2025 SCC OnLine SC 983**. Therefore, it is the submission of opposite party no.2 that the Civil Suit filed by him before the Madras High Court and the present complaint case can go on simultaneously in view of the legal submissions made above.

26. It has also been stated in the supplementary counter affidavit that even assuming that there was no contractual relationship between the complainant and the petitioners as on 01.04.2009, however, clause 16 of the MoU clearly stipulates that “in case of disassociation the consignor shall have the privilege of appointing another party immediately to continue the business. However, the consignor shall settle all the genuine claims of the consignee. The consignee shall not disturb the operation of the consignor and should cooperate in appointment of another party by giving NOC immediately”. Adverting to the aforesaid clause 16, it is further stated that the consignor was supposed to give one month notice before terminating the agreement which was not given by him. Hence, there is complete breach of the agreement.

27. It is further submitted that the ingredients of section 406 of the I.P.C. which is a criminal breach of trust is



totally made out in the facts of the present case. The intention of breach of trust was there right from the beginning and it was not a simple breach of trust of the agreement but it was criminal breach of trust inasmuch as even the admitted money has not been paid to the complainant by the petitioner. It has further been submitted that admittedly the petitioners were to supply medicines through complainant to the respective dealers and commission was fixed as per paragraph 3 of the MoU dated 01.11.2007. It is further stated that there was no automatic deduction by the complainant but it was the genuine claim as per the MoU, which was supposed to be paid by the petitioner as per clause 16 of the MoU.

28. It is stated and submitted that the mandatory provision under section 202(1) of Cr.P.C has been followed by the learned Magistrate, inasmuch as, the complaint petition has been filed in the year 2013 and cognizance has been taken on 25.07.2017 and in these four years, the learned Magistrate has postponed the issue of process and has conducted an inquiry with regard to the accused persons who are residing outside the jurisdiction of the trial court and has then taken cognizance on 25.05.2017.

29. I have considered the submissions of the



parties and perused the complaint petition and the materials attached thereto.

30. The entire case revolves around the MoU executed between the parties. It appears that there was a business relation between the parties which even according to the complainant was cordial initially. The dispute arose when the petitioners sent a letter terminating the aforesaid MoU. Admittedly, the present complainant has preferred to file a Civil Suit before the Madras High Court, which is still pending adjudication. In the said suit, the petitioners have appeared and filed their written statement.

31. It is true that there is no bar preventing both civil and criminal proceedings to run simultaneously. However, the complainant must illustrate criminality on the part of the accused. The criminal law cannot be resorted to merely because it is more efficacious as compared to civil suit and the same cannot definitely be used as instrument for arm-twisting the other side.

32. The Hon'ble Supreme Court in the recent case of *S.N. Vijayalakshmi (supra)* had held as under -

“42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations qua the same



person(s), the answer stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, ipso facto, is not sufficient ground to quash an FIR, as pointed out, inter alia, in P Swaroopa Rani v. M Hari Narayana, (2008) 5 SCC 765 and Syed Aksari Hadi Ali Augustine Imam v. State (Delhi Admn.), (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must prima facie disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673 can be referred to:

'12....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.'

43. In *Usha Chakraborty v. State of West Bengal* (2023) 15 SCC 135, while quashing the FIR therein and further proceedings based thereon, it was observed '...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.' (emphasis supplied).

33. Further the Hon'ble Supreme Court in the case of *Indian Oil Corpn. v. NEPC India Ltd.* reported as **2006 (6) SCC 736** has held as under :-

"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few *Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre*, *State of Haryana v. Bhajan Lal*, *Rupan Deol Bajaj v. Kanwar Pal Singh Gill*, *Central Bureau of Investigation v. Duncans Agro Industries Ltd.*, *State of Bihar v. Rajendra*



Agrawalla, Rajesh Bajaj v. State NCT of Delhi, Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd., Hridaya Ranjan Prasad Verma v. State of Bihar, M. Krishnan v. Vijay Singh and Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque. The principles, relevant to our purpose are:

xxxx

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."

34. Upon careful consideration of complaint petition and the discussion made hereinabove on law and facts, I am of the considered opinion that the present complaint has been filed with oblique motive by giving criminal colour to a



civil dispute between the parties.

35. Recently, the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. and Ors. vs. State of Uttar Pradesh and Anr.***, reported as (2024) 10 SCC 690 while highlighting the difference between criminal breach of trust and cheating has culled out the essential ingredients of criminal breach of trust and has held as follows:-

“35. This Court in its decision in S.W. Palanikar v. State of Bihar [S.W. Palanikar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10)

“9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted: (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.



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 be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

In order to constitute a criminal breach of trust (Section 406 IPC)

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:



(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar (2002) 1 SCC 241).

xxxx

(emphasis supplied) ”

36. Considering the law laid down by the Hon'ble Supreme Court in the aforesaid decision and also considering the averments made in the complaint petition, I am of the view that the ingredients of the offence under section 406/34 of the Indian Penal Code are not made out against the petitioners.

37. It is evident from the perusal of the complaint petition that initially the business relations between the parties were cordial in nature and even the MoU between the parties was extended for a further period of one year. No criminality is established from the very inception of the business relation between the parties.

38. Since from the perusal of the complaint petition no criminality is established from the very inception of the business relation between the parties and it appears that the dispute is regarding settling of outstanding dues arising out of



the MoU, the judgments relied upon by the learned counsel for the opposite party no.2 do not apply to the facts of the present case.

39. Taking into account the fact that no criminal offence is made out against the petitioners and the dispute between the parties is essentially a civil dispute emanating out of the MoU executed between the parties and therefore, in my opinion, the present complaint has been filed with oblique motive by giving criminal colour to a civil dispute between the parties. I am of the considered view that the impugned order taking cognizance against the petitioners is not sustainable in the eyes of law.

40. Accordingly, this quashing application is allowed and the impugned order taking cognizance dated 25.05.2017 passed by the learned A.C.J.M.-VIII, Patna, in connection with Complaint Case No.3754 of 2013 is hereby quashed.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A.
Uploading Date	03.09.2025
Transmission Date	03.09.2025

