



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION (APL) No.633 OF 2024

1. Gopal Krishna Banka
Son of Late Sukhdeo Lal Banka,
Aged about 62 years.
2. Raghav Banka,
Son of Raj Kishore Banka,
Aged about 36 years,
Occupation : Business, R/o.
3. Raj Kishore Banka,
Son of Late Sukhdeo Lal Banka,
Aged about 65 years,
Occupation : Business.
4. Anil Kumar Banka
Son of Late Sukhdeo Lal Banka,
Aged about 60 years,
Occupation : Business.
5. Yogesh Kumar Banka,
Son of Gopal Krishna Banka,
Aged about 30 years,
Occupation : Business.

All above are resident of :-
16/2-C, Armenian Street,
Ground Floor, Kolkata,
West Bengal-700 001.

: APPLICANTS

...VERSUS...

1. State of Maharashtra,
Through Police Station Bajaj Nagar,
Nagpur/ Economic Offence Wing,
Civil Lines, Nagpur.

2. Ashutosh s/o. Natwar Mundra,
Aged about 39 years,
Occ. Business, Resident of 158,
Om Mansion, third Floor, behind General
Manager, Ramdaspath, Nagpur. : RESPONDENTS

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Mr. Sunil V. Manohar, Senior Advocate along with Mr.M. Shareef,
Advocate for Applicants.
Mr. Nikhil Joshi, Additional Public Prosecutor for Respondent No.1.
Mr. Amit Prasad, Advocate for Respondent No.2.

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CORAM : URMILA JOSHI-PHALKE AND
NANDESH S. DESHPANDE, JJ.
RESERVED ON : 08th OCTOBER, 2025.
PRONOUNCED ON : 17th OCTOBER, 2025.

JUDGMENT : (Per : Nandesh S. Deshpande, J.)

1. Heard. Admit. Heard finally by consent of learned
counsel appearing for the parties.

2. This is an application seeking to quash the First
Information Report in connection with Crime No.0016/2023, dated
9.2.2023, registered by Police Station Bajaj Nagar, Nagpur, for the
offences punishable under Sections 420, 403, 406, 409, 417, 120-B
read with Section 34 of the Indian Penal Code and the
consequential proceeding arising out of Charge-sheet No.78/2023,
dated 23.12.2023, for the offences punishable under Sections 420,
403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal
Code, filed by Police Station Bajaj Nagar, Nagpur which is

registered as R.C.C. No.4586/2023, which is pending for trial before the 8th Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Nagpur.

3. The applicants are the directors of “Banka Bullions” and “G.K. Trexim” which is carrying business of Gold from Kolkata. As per the contentions of the applicants on 1.7.2020 the applicant No.1 herein received a summons dated 25.6.2020 from respondent No.1 inter alia informing him that that on 24.6.2020 a complaint has been lodged by one Ashutosh s/o. Natwar Mundada (complainant/respondent No.2) alleging that from 12.11.2016 to 5.12.2016 a total sum of Rs.4,31,50,000/- has been disbursed to the applicant Nos.1 and 2 herein for purchasing gold but no gold has been received by him. In the said summons, the applicant No.1 was directed to personally remain present at Bajaj Nagar Police Station. The said summons was duly replied to by the applicant No.1 thereby informing that due to severity of the COVID-19 he was unable to physically travel to Nagpur. However, applicant No.1 informed that payment has been made to the companies of applicant Nos.1 and 2 and physical delivery of the gold has been made to the proprietorship concern of the respondent No.2.

4. It is further stated in the present application that again a summons was received by the applicant No.1 from the respondent

No.1 directing him to remain present on 21.7.2020 which was also replied to by the applicant No.1 on the above mentioned lines. Thereafter, again a third summons was issued asking applicant No.1 to remain personally present on 17.8.2020 before the Deputy Commissioner of Police.

5. It is further stated in the application that the respondent No.2 on 2.6.2022 filed a complaint under Section 190 read with Section 200 of the Criminal Procedure Code before the Judicial Magistrate, First Class, Nagpur alleging commission of offences by the applicants punishable under various sections mentioned above. The complaint also prayed for a direction in terms of the provision of Section 156(3) of the Code of Criminal Procedure to the respondent No.1 to take cognizance of the complaint and register a First Information Report. The Judicial Magistrate, First Class upon receiving of the said complaint vide order dated 27.1.2023 was pleased to direct to treat the said application of respondent No.2 as a First Information Report. Pursuant to the said directions of the Judicial Magistrate, First Class, the respondent No.1 registered a First Information Report bearing Crime No.0016/2023, dated 9.2.2023 against the applicants for the offences punishable under Sections 420, 403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal

Code.

6. In the said First Information Report it is alleged that the applicants are gold merchants and Directors of the Companies M/s. G.K. Trexim Private Limited and M/s. Banka Bullions Private Limited at Kolkata. The applicant No.1/Gopal impressed upon the respondent No.2/Ashutosh Natwar Mundada, who is also engaged in jewellery at Nagpur that by paying advance amount to the Company of the applicants they will deliver gold to them at reasonable rates. Being impressed by the words and assurances of the applicants, the respondent No.2 from 12.11.2016 to 2.12.2016 by R.T.G.S. and N.E.F.T transferred an amount of Rs.4,31,50,000/-, but the complainant received only 1 Kg. Gold worth Rs.30,00,000/- on 16.11.2016. It is, therefore, alleged in the First Information Report that the complainant/respondent No.2 has not received gold to the tune of remaining amount. Thus, the allegations of criminal breach of trust, misappropriation of amount, cheating by hatching criminal conspiracy in furtherance of common intention have been levelled against the applicants. It is this First Information Report and the consequent charge-sheet filed by the prosecution which is assailed in the present application on various grounds mentioned in the application.

7. We have heard Mr. Sunil V. Manohar, learned Senior

Advocate along with Mr.M. Shareef, learned counsel for Applicants, Mr. Nikhil Joshi, learned Additional Public Prosecutor for Respondent No.1 and Mr. Amit Prasad, learned counsel for Respondent No.2.

8. Learned Senior Counsel for the applicants submit that the First Information Report is a glaring example of abuse of process of law and the allegations made in it do not prima facie constitute any offence or make out a case under which it is lodged. He further submits that the grievance of the complainant is with regard to alleged breach of contract inasmuch as the said grievance is purely of civil nature for which the complainant is at liberty to pursue the remedies under the civil law. Thus, it is his submission that a civil dispute has been given a colour of criminality and the First Information Report is, therefore, liable to be quashed. He further submits that even assuming that there is some dispute, the payment to the respondent No.2 was made way back in the year 2016 and he had filed a complaint in the year 2020. The delay in lodging the First Information Report or filing complaint before the Magistrate is unexplained and does not apply to logic. It is, therefore, his submission that the proceedings under the applicants smacks malafides and, therefore, the charge-sheet is liable to be

quashed. He relied the judgment in the case of **Delhi Race Club (1940) Limited and others Vs. State of Uttar Pradesh and another, (2024) 10 SCC 690, Sharif Ahmed and Another Vs. State of Uttar Pradesh and another 2020 SCC Online SC 726 and the Judgment of the Hon'ble Apex Court in the matter of Rikhab Birani and another Vs. State of Uttar Pradesh and another, arising out of SLP (Cri.) No.8592/2024.**

9. Learned Additional Public Prosecutor, on the other hand, opposed the submissions of the learned Senior Counsel and says that only because there is some civil dispute between the parties cannot be a reason to quash the charge-sheet if prima facie offence complained of can be made out.

10. Learned counsel for respondent No.2 by pointing to his affidavit-in-reply states that payment made by the respondent No.2 is admitted by the applicants and the gold which was supposed to be delivered was not delivered, as promised. He therefore submits that its a clear case of breach of trust. It is his further submission that perusal of the invoices filed with the complaint would revealed that they do not bear the seal of respondent No.2 and it bears the signature and stamp of the applicant company. He, therefore, submits that a triable case exists in the matter. It is also his

submission that the gold quantity mentioned in the invoices are in decimal quantity and it is a general practice that the gold bars cannot be delivered in decimal quantity which is a pointer to the fact that the gold as promised was never delivered. He relies on a judgment in the case of **Rajesh Bajaj Vs. State NCT of Delhi and others, (1999) 3 SCC 259**, and **C.P. Subhash Vs. Inspector of Police, Chennai and others (2013) 11 SCC 559** and **K. Jagadish Udaya Kumar G.S. and another (2020) 14 SCC 552**.

11. We have heard learned counsels at length as also perused the charge-sheet which is filed by the Investigating Agency after completion of the investigation. After perusal of the charge-sheet certain admitted facts emerge from record. Firstly, the payment made by the applicants is from 12.11.2016 to 2.12.2016 by R.T.G.S. and N.E.F.T. It is further an admitted fact on record that first summons in the matter was received by the applicants on 1.7.2020. Thus, the respondent No.2 has chosen to set machinery of Police in motion after about four years. Secondly, there is no explanation in the affidavit-in-reply or any other documents filed by the respondent No.2 regarding this huge delay. Thirdly, it is also matter of record and as pointed out by the learned Senior Advocate that in pursuance to the complaint lodged by the respondent No.2 an inquiry was conducted by the Senior Police Inspector of the

respondent No.1 and the said Officer vide his report dated 26.8.2020 addressed to the Deputy Commissioner of Police, Zone-1, stated that the complaint against the applicants has been filed after a lapse of three years and six months and the dispute between the parties seems to be arising out of commercial transaction and is of civil nature. It can further be seen from record that while filing a criminal complaint before the Judicial Magistrate, First Class, which is filed on 31.5.2022, the fact that an inquiry was conducted by the Senior Police Inspector and the finding thereon as mentioned above was suppressed and an order of lodging of First Information Report was obtained by the respondent No.2.

12. In this background, the delay in setting the criminal machinery in motion and the omission to explain it satisfactorily is a pointer to the fact that the complaint made by the respondent No.2 lacks truthfulness. We, therefore, find considerable force in the submission of learned Senior Counsel for the applicants that firstly there is no offence made out and even if there is some dispute, the same is purely contractual and is of civil nature. As rightly relied upon by the learned Senior Advocate for the applicants the Hon'ble Apex Court in the case of *Delhi Race Club (1940) Limited and others* (supra) while explaining the distinction between mere breach of contract and the offence of criminal breach of trust

and cheating has stated as under :

41. *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.*

42. *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.*

43. *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 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.*

44. *At the most, the Court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the*

IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.”

13. It is thus clear that there is difference between simple breach of trust and the offence of criminal breach of trust and cheating as contemplated under Indian Penal Code. As stated by the Supreme Court in the judgment referred above only when there is entrustment of any property and the same being dishonestly misappropriated, offence of criminal breach of trust under Section 406 of the Indian Penal Code goes out of picture. Thus, for cheating criminal intention is necessary at the time of making a false representation i.e. since inception while in criminal breach of trust mere proof of entrustment is sufficient. In other words, in case of criminal breach of trust the offender i.e. the accused is lawfully entrusted with the property and he dishonestly misappropriate the same. While in cheating the offender fraudulently induces a person by deceiving him to deliver any

property. Thus, in such a situation the offences cannot co-exist simultaneously.

14. In the case of *Rikhab Birani and another Vs. State of Uttar Pradesh* (supra) the Hon'ble Supreme Court, by relying upon its earlier judgment in *Sharif Ahmed and Another Vs. State of Uttar Pradesh and another* (supra) has held that an offence under Section 406 of the Indian Penal Code requires entrustment which carries the implication that a person handing over any property continues to be the owner of the said property. Such a person who hands over a property must have confidence in the person thereby creating a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Furthermore, in the case of **A.M. Mohan Vs. State Represented by SHO and another (2024) 12 SCC 181**, the Hon'ble Apex Court has held that it is necessary to take notice of a growing tendency in business circle to convert purely civil dispute into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interest of lenders/creditors. Such a tendency is seen in several family disputes also leading to irretrievable break down of marriages/families. There is also an impression that if a person could somehow be entangled in a

criminal prosecution, there is likelihood of eminent settlement. Any effort to settle civil disputes and claims which do not involve any criminal offence by applying pressure to criminal prosecution should be deprecated and discouraged. In another judgment of **G Sagar Suri Vs. State of U.P.** reported in **2000 (2) SCC 636**, the Hon'ble Apex Court observed in para (8) as under :

“8.It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

15. The dispute in the present matter is regarding alleged non-delivery of the gold bars in spite of making payment. Learned counsel for the respondent No.2 relied on the judgment mentioned supra. However, said judgments lay down that if the averments in the complaint prima facie make out a case for investigation, the High Court cannot quash the complaint, merely because one or two ingredients of the offence would have not been stated in detail. The same view is reiterated in *C.P. Subhash Vs. Inspector of Police, Chennai and others* and *K. Jagadish Vs. Uday Kumar G.S. and*

another (supra). There cannot be any dispute with the proposition of law, however, what is a condition precedent would be some prima facie material to show that the case requires a full fledged evidence and trial. There cannot be any dispute with the proposition that if civil remedy is availed by a party he is not precluded from setting in motion the criminal law. However, we cannot loose site of the fact that in the present matter the respondent No.2 has chosen to initiate criminal proceeding (admittedly) after a lapse of more than three and half years which speaks otherwise. We also are not oblivious of the fact that by suppressing the earlier findings of the Police Authorities, an order of lodging an F.I.R. was obtained from the Judicial Magistrate, First Class. A businessman like the respondent No.2 cannot and will not sit quite or keep quite for a long period of three and half years if he has not been delivered the gold bars as promised, more particularly when he has paid a huge amount. There is nothing on record to show that respondent No.2/complainant was pursuing the matter with applicants for delivery of gold bars as promised. It is, therefore, clear that even if there is some dispute between the parties it cannot be given a colour of criminality and is purely of civil nature/contractual dispute.

16. It would, therefore, be a fit case to quash the First

Information Report and the consequent charge-sheet as proceedings against the applicants would amount to abuse of process of law, since the allegations made in 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. As stated by the Hon'ble Apex Court in the judgment of State of Haryana and others Vs. Bhajan Lal and others, reported in MANU/SC/0115/1992 a case would squarely fall in parameter 1,3 and 5, as in our view criminal proceedings is manifestly attended with malafide and instituted with an ulterior motive for breaking a vengeance on the accused, which are reproduced as under :

“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.

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.

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.”

17. We, therefore, quash and set aside the First Information Report in connection with Crime No.0016/2023, dated

9.2.2023, registered by Police Station Bajaj Nagar, Nagpur, for the offences punishable under Sections 420, 403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal Code and the consequential proceeding arising out of Charge-sheet No.78/2023, dated 23.12.2023, for the offences punishable under Sections 420, 403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal Code, filed by Police Station Bajaj Nagar, Nagpur which is registered as R.C.C. No.4586/2023, which is pending for trial before the 8th Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Nagpur. Hence, we proceed to pass following order :

ORDER

- (i) The application is allowed.
- (ii) First Information Report in connection with Crime No.0016/2023, dated 9.2.2023, registered by Police Station Bajaj Nagar, Nagpur, for the offences punishable under Sections 420, 403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal Code and the consequential proceeding arising out of Charge-sheet No.78/2023, dated 23.12.2023, for the offences punishable under Sections 420, 403, 406, 409, 417, 120-B read with Section 34 of the Indian Penal Code, filed by Police Station Bajaj Nagar, Nagpur which is registered as R.C.C. No.4586/2023, which is

pending for trial before the 8th Joint Civil Judge, Junior Division and Judicial Magistrate, First Class, Nagpur is quashed and set aside.

(iii) The application is disposed of.

(Nandesh S. Deshpande, J.)

(Urmila Joshi-Phalke, J.)

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