



payments. On June 10, 2014, when the complainant visited the company's office, he found it locked and discovered that the accused had absconded.

4. Learned counsel for the petitioners *inter alia* contends that the petitioners have been falsely implicated in the instant case. Respondent No.2-complainant has been repaid the entire amount as the matter stood compromised by the parties vide compromise deed dated 05.09.2018 (Annexure P-2). The petitioners had made numerous requests to respondent No.2-complainant to withdraw the cases filed by him as per the terms of the compromise deed (*supra*), however, it was later learnt that respondent No.2-complainant passed away in April 2020. Further, a perusal of the FIR clearly reveals that the offences alleged of are private in nature and it is well settled that once a party accepts the amount as per the terms of the settlement but later backs out it, the continuation of criminal proceedings would be an abuse of process of law. Reliance in this regard is placed on the judgment of the Hon'ble Apex Court rendered in ***Mohd. Shamin vs. Smt. Nahid Begum 2005(1) R.C.R. (Crl.) 697***. Lastly, learned counsel avers that the petitioner has been charged under Section 406 and 420 of IPC which are antithetical to each other. Reliance is placed upon the judgment of the Delhi High Court in ***Wolfgang Reim and Ors. vs. State and Anr. 2012(12) R.C.R. (Crl.) 938***.

5. *Per contra*, learned State counsel submits that as far as the compromise deed is concerned, the same was not produced before the investigating agency. Moreover, the alleged compromise was partial in nature since it only involves respondent No.2 and not the other complainants. As such, the impugned judgment has been passed by the learned trial Court after correct appreciation of the evidence on record in accordance with the law and therefore, no interference is warranted by this Court.



6. Having heard the learned counsel for the parties and after perusing the record of the case with their able assistance, it transpires that the matter was compromised by the parties vide compromise deed dated 05.09.2018 (Annexure P-2). However, since this is a revision petition against the order whereby charge under Sections 406, 420, 120-B of IPC was framed against the petitioners and not a quashing petition, this Court deems it appropriate to confine itself to the charge framed against the petitioners.

7. The contention advanced by the counsel for the petitioner i.e. a person cannot be charged with the offences punishable under Section 420 and 406 simultaneously for the same transaction, merits acceptance. The present case is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. & Ors v. State of Uttar Pradesh & Anr., AIR 2024 SC 4531***, wherein the difference between Criminal breach of Trust, which is punishable under Section 406 of IPC and Cheating, which is punishable under Section 420 of IPC has been highlighted. The relevant paragraphs are reproduced herein below:

*“24. This Court in its decision in **S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241** expounded the difference in the ingredients required for constituting an offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*

"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."

25. 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 willfully 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.P. Palanitkar (supra).*

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

- 1) deception of any person, either by making a false or misleading representation or by other action or by omission;*
- 2) fraudulently or dishonestly inducing any person to deliver any property, or*
- 3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: **Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC)**)*

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence



of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in **Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823** as under:

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

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 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.

8. While dealing with similar controversy, a Co-ordinate Bench of the Delhi High Court in **Wolfgang Reim and Ors. vs. State and Anr. (supra)**, speaking through Justice V.K. Shali, has held as under:-

“34. Further, a person cannot be charged with the offence of cheating and criminal breach of trust simultaneously for the same transaction because for the offence of cheating, it is a prerequisite that dishonest intention must exist at the inception of any transaction whereas in case of criminal breach of trust, there must exist a relationship between the parties whereby one party entrusts another with property as per law, therefore, for commission of criminal breach of trust, the dishonest intention comes later, i.e, after obtaining dominion over the property by the accused person whereas for commission of cheating, dishonest intention of the accused has to be present at the inception of the transaction.”

9. Merely because the prosecution has presented its version couched in verisimilitude, the trial Court is not supposed to act like a postmaster. The trial Court must apply its judicial mind and ascertain the existence of factual ingredients breaching the threshold of the alleged offence for the purpose of framing charges. The assessment of the trial Court, in such a scenario, must



satisfy the objective standard of reason and prudence. Reliance in this regard can be placed on the judgment rendered by this Court in *Krishan @ Tiwari vs. State of Haryana 2024(1) PLR 406*.

10. In view of the discussion above, the matter is remanded back to the learned trial Court with the direction to examine the contents of the Final Report and pass fresh order accordingly.

11. Pending miscellaneous application(s), if any, shall also stand disposed of.

12. Disposed of in the aforesaid terms.

13. Nothing observed hereinabove shall be construed as expression of opinion of this Court on merits of the case and the trial Court shall proceed without being prejudiced by observations of this Court.

January 21, 2025
manisha

(HARPREET SINGH BRAR)
JUDGE

(i)	Whether speaking/reasoned	Yes/No
(ii)	Whether reportable	Yes/No