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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 8th August, 2025.***

\+ CRL.M.C. 4562/2023

MANISH KUMAR MUNDA .....Petitioner
Through: Mr. Mrityunjay Kumar Singh, Mr. Saikt Khatun and Mr.Udai Chaudhary, Advocates

versus

STATE OF NCT DELHI & ANR.- .....Respondents
Through: Mr.Sanjeev Sabharwal, APP with SI Umesh Yadav, PS IGI Airport.
Mr.Devinder Singh and Satvinder Singh, Advocates for R-2

CORAM:
HON'BLE MR. JUSTICE ARUN MONGA

ARUN MONGA, J. (ORAL)

1. The present petition under Section 482 of the Cr.P.C. has been filed seeking quashing of the FIR No. 167/2022 dated 09.05.2022 under Sections 406/420 of the IPC registered at Police Station IGI Airport.

2. Shorn of unnecessary details, succinctly speaking the facts leading to registration of the impugned FIR as pleaded in the petition are that the petitioner is engaged in the business of manufacturing and

marketing alcoholic beverages. Respondent No. 2 (hereinafter referred to as the "promoter") is an investor engaged in business promotion, marketing, accounting, and inventory/stock management services.

2.1 The present dispute arises from a Business Promotion Agreement dated 08.10.2021, executed between the petitioner and the promoter within the territorial jurisdiction of Chhattisgarh. The said agreement, executed on non-judicial stamp paper purchased in Chhattisgarh, was entered into for business promotion and development, whereby the promoter agreed to provide services to the petitioner for the State of Jharkhand. The agreement was to remain effective from 08.10.2021 until 30.10.2024.

2.2 As per Clause 2 of the Agreement, the promoter undertook to provide services to the petitioner company, NSPL, including but not limited to investing funds in the business as an investment partner for operations in Jharkhand, promotion and distribution management, and other ancillary services. Clause 5 of the Agreement further stipulates that both parties were to invest ₹2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) each for business operations in Jharkhand. The petitioner, NSPL, received ₹75,51,000/- (Rupees Seventy-Five Lakhs Fifty-One Thousand only) from the promoter at the time of entering into the Agreement, which was duly acknowledged.

2.3 Pursuant to the agreement, and with the intention of commencing business operations in Jharkhand, NSPL obtained a manufacturing license vide Letter No. 2418 dated 31.12.2021 bearing License No. RNC/99/59/2021-22. To fulfil its obligations, NSPL entered into production and warehousing arrangements with Shreelub

Breweries Pvt. Ltd.

2.4 Subsequently, NSPL placed orders for ancillary products required for bottling and manufacturing. The promoter was repeatedly reminded to release the balance investment of ₹1,00,00,000/- (Rupees One Crore only) as per the Agreement. In total, NSPL received ₹1.5 Crores in instalments from the promoter, which is not disputed. Despite repeated requests, the promoter failed to release the remaining payment, citing delays until the Excise Department finalized the MRP of the products. However, even after the MRP was approved by the Joint Deputy Commissioner, Excise Department, vide Letter No. 04/MRP-11-01/2021-418 dated 04.03.2022, the promoter did not release the payment.

2.5 The promoter continued to default, even though NSPL had already invested approximately ₹3 Crores into the project. Since January 2022, the promoter and his associates began threatening the petitioner when he sought the due payment. Instead of honouring their obligations, the promoter sought to recover the payments already made under the Agreement.

2.6 In March 2022, one associate of the promoter, namely Sukant Bhattacharjee, asked the petitioner to come to Delhi for further business discussions. On 08.03.2022, relying on such assurances, the petitioner travelled to Delhi. However, on 10.03.2022, the petitioner was confronted by Mr. Tilak Ghosh and Mr. Saiyad Raza, who persuaded him to step out of his hotel. The petitioner was then forcibly pushed into a Kia Sonet car and taken to the IGI Airport Police Station area, where he was verbally abused and forced by one

Mr. Sanjiv Chaudhary to sign a blank sheet of paper. Upon resisting, the petitioner was threatened with dire consequences. Around midnight on 10.03.2022, the petitioner was abandoned outside Delhi Airport. On 11.03.2022, he filed a complaint with the Commissioner of Police, New Delhi, regarding his abduction, assault, and abuse under relevant provisions of the IPC and the SC/ST (Prevention of Atrocities) Act, 1989.

2.7 Fearing for his safety, the petitioner returned to Ranchi on 11.03.2022 and lodged an online FIR. When no progress was made, he filed Complaint No. 112363 before the Civil Court, Ranchi. Pursuant to the Magistrate's order under Section 156(3) Cr.P.C., Ranchi Police registered FIR No. 167/2022.

2.8 Despite these complaints, no effective action has been taken by the authorities. On the contrary, it has come to the petitioner's knowledge that, as a counterblast, the promoter Tilak Ghosh registered FIR No. 167/2022 at IGI Airport, Delhi, on 09.05.2022 under Sections 406 and 420 IPC alleging breach of trust and fraud.

3. In the aforesaid factual background, I have heard the learned counsel for the petitioner and complainant as well as learned APP for State and also perused the case file, particularly, the impugned FIR herein.

4. First and foremost, before adverting to the rival arguments it will be appropriate that contents of the FIR be seen. It's translated copy has been appended with petition which in verbatim is as below:

> *" To, the SHO,*
> *IGI Airport,*

Delhi,
Complaint against the director of Niloy Syndicate Private Limited Shri Manish Kumar Munda and Sanjay Kumar Munda along with the associates fraudulently forging fake documents by criminal conspiracy with the intention of extorting money,
Sir,
I Tilak Kumar Ghosh Age 54 Years Father Late Shri B.S. Ghosh Authorized Representative Informatic Securities Solutions Private Limited Address 23/1 Maitri Nagar Bhilai District Durg (Chhattisgarh). I am submitting application by complaint against the companies above by conspiracy in brief stated that I am the authorized representative of the company Informatic Securities Solution Private Limited Address-23/1 Maitri Nagar 5 Bhilai District Durg (Chhattisgarh). I have been authorized on behalf of the above company, to present this complaint application before you. Some time before Manish Kumar Munda Director of Syndicate Pvt Ltd Company Address A 6 Amlidih Raipur (Chhattisgarh) was made a phone call was contacted to me wanted to discussion regarding business with Niloy company Informatic Securities \) Solution Pvt Ltd, by phone, told that our company does the business of manufacturing and buying and selling liquor all over India. His company has been getting profits of crores of rupees from the said business. I was also told by Manish Kumar Munda that our company needs a promoter and investor in the state of Jharkhand. If your company invests money in . business of our company, then we will make your company get huge profits in a very short time. On which I established a relationship to extend business with Manish Kumar on behalf of my company and asked for a meeting. On which it was said by Manish Kumar Munda that I often stay in Delhi due to on1y company's work, that's you should come to Delhi to meet me. On which, believing the words of Manish Kumar Munda, I went to the meeting in Delhi to talk to him. After this, I had a

meeting with him on September 19, 2021 at Nobetal Hotel Aerocity. During the above meeting I was told by Manish Kumar Munda that his company Niloy Syndicate Pvt Ltd is doing liquor business all over India. In connection with the above, I was told by Manish Kumar Munda about the example of his company's party Soleil Capital FZC Mumbai and it was said that liquor is supplied to the said party by his company. The bill was also shown to me by Manish Kumar Munda in regard of above on which I believe my After faith in the words of the above persons. this, in the above mentioned meeting at Novatel Hotel Aerocity, Delhi, all business related talks were decided between our company Informatic Security Solution Private Limited and Niloy Syndicate Private Limited Company. In the above relation business, on behalf of Niloy Syndicate Private Limited Company, our company has been told to get 50 percent profit on investing the amount as a promoter / investor in the state of Jharkhand. In. this regard, an agreement was also signed and executed between our company and Nillai Syndicate Private Limited. Whose preparation was made on behalf of Niloy Syndicate Private Limited Company by them. Thereafter, on behalf of our company, and on behalf of Niloy Syndicate Private Limited Company, trusted on each of them then there in

the bank of that company in branch I.C.I.C. Bank Bhilai District - Durg (Chhattisgarh) we kept. transferring money time to time to a partnership firm named Niloy Syndicate as per the statement of Niloy Syndicate Private Limited Company's director Mranish Kumar Munda. In this way, we had transferred a total of Rs. 1,50,00,000/- rupees (in words one crore fifty lakh rupees) to them Niloy Syndicate Private Limited Company. In relation to the above, Manish Kumar Mundha, Director of Niloy Syndicate Private Limited Company, will assure that the amount of profit will be given to you on time. On which our company believed the words of the above mentioned person Manish Kumar Munda. After some time, when our *company did not receive the amount of profit from Niloy Syndicate Pvt Ltd Company despite the assurance, then I urged Manish Kumar Munda on behalf of my company and said that our company was assured by you to get the profit amount and told me as per the contract you will get the profit, then why we were not received our dividend amount on which Manish Kumar Mundha started procrastinating and it was said by him that your company will get the amount of dividend in time but keep patience, so be sure and work to deposit certainty. In relation to the above, Manish Kumar Munda asked our company to invest more money. On which I started doubting the intentions of Manish Kumar Munda. On which I tried to find out the reality. Then I came to know that in fact there is no manufacturing unit of Manish Kumar Munda's liquor in the name of Niloy Syndicate Private Limited Company, nor has any brand been registered by him in the state of Maharashtra, nor as such any business is being done by them. In the above, I also came to know that the bill shown by Manish Kumar Munda, Director of Niloy Syndicate Pvt Ltd Company, for the supply of liquor after taking money from our company, is a completely false and fabricated which fake bill. Similarly, our company has also received this information that the information uploaded on the website of the trademark by Syndicate Private Limited Company is completely fake. In relation to the above manual of Hologram and Scanning Machine shown by Niloy Syndicate Private Limited Company, by telling us that the cost of the above machine (total four machines) comes to about Rs.1,90,55,500/- was found fake. The amount was received from us by influence in false and conspiracy in trust was totally we are cheated by them. While our company tried to get the actual information about the company of Manish Kumar Munda, we got the information that reality of the cost of the above four machine is only around Rs.2100000 (total four machines). In this way Manish Kumar Munda, Director of Niloy Syndicate Pvt Ltd company conspired* *to misappropriate the amount of our company by and obtained forging fake documents Rs. 1,50,00,000/- on which I tried to contact Manish Kumar Munda, Director of Niloy Syndicate Private Limited Company in his office in the above relation issues but the above person started evading. After this we requested Manish Kumar Munda to give money on WhatsApp Chat in reply to which Manish Kumar Munda promised to return the money in April and assured to start the work shortly. But on demand of refund it said that the money has been spent and postponed the matter and did not even tell the proper details of the amount. In the above relation, I tried to talk about the money by going to the office of Niloy Syndicate Pvt Ltd Company and getting information several times. But when I went to the office of the above company, I came to know that the office of the above company is closed for the last several days. In this way Manish Kumar Munda, Director of Niloy Syndicate Pvt. Ltd Company, with the malicious intention of misappropriating the amount of our company by forging fake documents and using the above documents as original, obtained Rs.1,50,00,000/- later by evading and making excuses on demand for return in the above relation is serious financial loss has been caused to our company by committing a serious criminal act of cheating our company. Since the fraud perpetrated on our company by the company NILOY SYNDICATE PRIVATE LIMITED in criminal conspiracy, the fraud was committed by Manish Kumar Munda, Director of Niloy Syndicate Private Limited Company and the amounts have been received from our company in the bank account of Niloy Syndicate Partnership Firm. For this reason the partners of the partnership firm named Niloy Syndicate have also been fully involved in the above mentioned criminal conspiracy. Therefore, on my complaint, appropriate legal action should be taken by registering an FIR against the accused under sections 420, 409, 467, 468, 474, 34 and 120 IPC.*

Date 10.03.2022.
Complainant Sd/
Tilak Kumar Ghosh
Mob. No- 9893029086.

List:
1. copy of agreement,
2. copy of Bank Statement,
3. copy of non acceptance of letter of said address.
4. Copies of forged bills,"

5. Learned counsel for the petitioner would argue on the lines of grounds taken in the petition which, inter alia, are as under:

5.1 That FIR No. 167/2022 registered at P.S. IGI Airport is a gross abuse of process of law and a mala fide attempt to coerce the petitioner into succumbing to the illegal demands of Respondent No. 2.

5.2 That the said FIR has been lodged with an oblique motive, as a counterblast to the complaints filed by the petitioner in Delhi and Ranchi regarding the unfortunate incidents of 10.03.2022 in Delhi, wherein the petitioner was subjected to mental and physical torture by Respondent No. 2 and his associates.

5.3 That the FIR falsely alleges that the petitioner fraudulently received ₹1,50,00,000/- (Rupees One Crore Fifty Lakhs only). In fact, this amount was received under the Business Promotion Agreement dated 08.10.2021, which specifically provided that each party was required to invest ₹2,50,00,000/- (Rupees Two Crores Fifty Lakhs only) towards the Jharkhand business venture.

5.4 That the petitioner has admittedly received ₹1,50,00,000/- from the promoter in instalments, while he himself has invested approximately ₹3,00,00,000/- (Rupees Three Crores only) under the same agreement. On the contrary, Respondent No. 2 has repeatedly evaded fulfilling his investment obligation, despite giving assurances, while the petitioner continued to perform his part.

5.5 That the promoter has attempted to convert what is essentially a contractual dispute into a criminal case by concocting false allegations. Clause 11 of the Agreement provides for termination rights, and Clause 12(g) clearly stipulates that any dispute shall be referred to arbitration under the Arbitration and Conciliation Act, 1996. Instead of invoking these remedies, the promoter has lodged the FIR as a counterblast to the petitioner's complaints arising from the incident of 10.03.2022.

5.6 That the FIR has been registered on concocted and flimsy allegations as a means of arm-twisting. It is registered under Sections 406 and 420 IPC, which require specific legal ingredients. For Section 405 IPC (criminal breach of trust), the following must be satisfied:

- Entrustment of property or dominion over it;
- Dishonest misappropriation or conversion of such property;
- Dishonest use or disposal of such property in violation of law or contract.

A plain reading of the FIR shows that these elements are absent. The allegations merely state that forged documents were prepared and false assurances were given, which do not satisfy the requirements of Sections 405/406 IPC.

5.7 That the FIR rests on allegations of "forged documents" allegedly created by the petitioner to induce the promoter into the agreement. This is patently false, as the Business Promotion Agreement dated 08.10.2021 was executed after negotiations and mutual discussions.

5.8 That at the time of signing the agreement Rs.75,51,000/- was recorded as part payment by the promoter towards his total obligation of ₹2,50,00,000/-.

5.9 That soon after execution of the agreement, the petitioner diligently fulfilled his obligations by obtaining a manufacturing license vide Letter No. 2418 dated 31.12.2021 (License No. RNC/19C/59/2021-22). By 04.03.2022, the petitioner had also obtained approved MRP from the Excise Department (Letter No. 04/MRP-11-01/2021-418), during which time the promoter had already deposited ₹1,50,00,000/-.

5.10 That the promoter's part payment of ₹1,50,00,000/- itself proves that he was fully aware of, and consented to, the business activities and developments, including licensing and product approvals, under the agreement.

5.11 That it is the petitioner who, relying on the promoter's assurances, continued to invest and act towards the fulfilment of the contract, while the promoter defaulted in his obligations.

5.12 That the promoter orchestrated the events of 10.03.2022 in Delhi with the ulterior motive of pressurizing the petitioner into returning the invested sum.

5.13 That the FIR registered on 09.05.2022 is nothing but an afterthought and a counterblast to the petitioner's complaints. It is designed to give a civil dispute the colour of criminality by bringing in false allegations of forgery and cheating.

5.14 That none of the ingredients of Sections 405/406 or 420 IPC are satisfied. There is no entrustment, dishonest misappropriation, or dishonest inducement as alleged.

5.15 That Section 405 IPC requires dishonest intention (*mens rea*). Mere retention of money without misappropriation does not constitute criminal breach of trust. Similarly, "misappropriation" requires wrongful use of property to the exclusion of the owner, which is absent in this case.

5.16 That to attract Section 420 IPC, the prosecution must prove cheating coupled with dishonest inducement to deliver property. Breach of contract by itself cannot constitute cheating unless fraudulent intent exists at the inception of the transaction, which is not the case here.

5.17 That the FIR is nothing but an abuse of the legal process, lodged with the intent to harass the petitioner and pressurize him into yielding to the promoter's unjust demands. It is a retaliatory measure to the petitioner's complaints, and if allowed to stand, it would cause grave prejudice to the petitioner's rights and liberty.

6. Opposing the aforesaid, learned counsel for the complainant would submit that the petitioner has cheated the complainant by inducing him to part with a huge amount of Rs.1.5 Crores without performing the security part of his assurance of his agreement to deliver the goods i.e., alcohol/liquor as agreed vide agreement executed between the petitioner and the respondent No.2 (Annexure

P-2).

7. Furthermore, they would point out that the petitioner is also stated to be involved in four more criminal cases, i.e., three FIRs and one criminal complaint under Section 138 of the N.I. Act and thus they would contend in that he does not deserve any indulgence of this Court to exercise discretionary powers under Section 528 of the BNSS.

8. Adverting to the arguments in reverse, i.e., the arguments of the respondents were, i.e. the registration of other FIRs as well as proceedings under Section 138 of the N.I. Act.

9. At the very outset, on a query put to the learned counsel for the petitioner, he would submit that in one of the FIRs, closure report has been filed and the other was also in misuse of the police powers and thus quashed by the High Court of Chhattisgarh, inter alia, holding that it was also an outright civil dispute between the parties.

10. With regard to the third FIR he would state, under instructions of the petitioner, that the same does not pertain to him. As regards the fourth criminal complaint, the same also arose out of certain business transaction and there was no legally enforceable debt to be recovered from the petitioner and in any case, the same is *sub judice* before the Competent Court and thus has no bearing on the present proceedings.

11. Coming to the present case. There appears to be an outright civil dispute between the complainant and the accused. And yet, impugned FIR has been registered in complete misuse of powers by a pliant, nay, rather compliant police official. Obviously it would help the complainant to recover his money who has lodged an FIR under

Sections 406 read with 420 of the IPC. Thus giving the entire case a colour of criminal culpability, where none exists.

12. At the threshold, it may be pertinent to note here that in terms of guidelines laid down by Supreme Court in ***Arnesh Kumar Singh V. State of Bihar: [2014] 8 SCC 273;*** a preliminary inquiry had to be carried out before registration of the FIR. The impugned FIR contains a cryptic note that on receipt of the complaint, an enquiry was conducted in the above matter. But nothing more is stated about the proceedings carried out in and the result of the so-called inquiry. It seems that the note about conducting of so-called inquiry was just recorded as a paper formality and complaint received in the police station by the complainant was simply converted into an FIR.

13. Gist of relevant allegations in the FIR, necessary for adjudication of the matter, is that in their business, on behalf of Niloy Syndicate Private Limited Company, the complainant's company was told that it would get 50 percent profit on investing the amount as a promoter / investor in the State of Jharkhand. In this regard, an agreement was also executed between the complainant company and Niloy Syndicate Private Limited. Thereafter, the complainant company transferred sums of money time to time totaling Rs. 1,50,00,000/- to Niloy Syndicate. In relation to this, Manish Kumar Munda, Director of Niloy Syndicate Private Limited Company, assured that the amount of profit will be given to the complainant company on time and the complainant company believed him. But no profit was paid to the complainant. Instead, Manish Kumar Munda asked the complainant company to invest more money. The

complainant started doubting his intentions, tried to find out the reality and came to know that in fact there was no manufacturing unit of Manish Kumar Munda's liquor in the name of Niloy Syndicate Private Limited Company, nor has any brand been registered by him in the State of Maharashtra, nor was any such business being done by them. The complainant also came to know that the bill shown by Manish Kumar Munda, Director of Niloy Syndicate Pvt Ltd Company, for the supply of liquor after taking money from our company, was fake, false and fabricate. In this way Manish Kumar Munda, Director of Niloy Syndicate Pvt Ltd company conspired to misappropriate the complaiant company's amount of Rs.1,50,00,000/- by obtaining/ forging fake documents.

14. It would be seen that as per complainant's own allegations in the FIR, an agreement was executed between the complainant and the accused companies, for sharing the latter's profits, upon complainant's investing money therein. The complainant's grievance is that it had invested the amount of Rs. 1.5 crore in the company of the accused but no share of it's profit has been given by the accused. There is nothing brought out in the FIR to show that at or before the time of executing of the profit sharing agreement, the intention of the accused was dishonest and/or that they had no intention to share their company's profit with the complainant.

15. The petitioners' averments, *inter alia*, are that as per the business promotion agreement dated 08.10.2021 entered into between the parties, investment of Rs.2,50,000,00/- (Rupees Two Crores Fifty lakhs only) each by the respective parties was conceived. Petitioner

has so far received Rs.1,50,000,00/- (Rupees One crore Fifty Lakhs only) from the promoter in different instalments and the petitioner himself has invested approx. Rs. 3,00,000,00/- (Rupees Three Crores only) under the agreement. These factual averments have not been disputed/refuted on behalf of the complainant. It shows that the complainant's investment of Rupees One crore Fifty Lakhs is only a part of the promised investment of Rs. 2.5 crore in the business to entitle him to a share of the business profits. Further, it is not shown if at all since the investment of the complainant's amount in the business of Niloy Syndicate Private Limited Company till the lodging of the FIR, the company had earned any profits. Merely because the complainant has not been paid any amount by way of his share in the profits of the company of the accused, it cannot be readily inferred or presumed firstly that at or before the time of the execution of business promotion agreement dated 08.10.2021 entered into between the parties, or the investment of complainant's money in their business, the intention of the accused was dishonest and/or they had no intention to share their company's profit with the complainant.

16. Further, it is not even alleged, let alone shown, that since the investment of the complainant's amount in the business of Niloy Syndicate Private Limited Company till the lodging of the FIR, the company had actually earned any profits. This being so, it cannot be said that the accused failed to share the business profits with the complainant let alone holding that at or before the time of executing of the profit sharing agreement and the investment of money by the complainant in their business, the intention of the accused was

dishonest and/or they had no intention to share the company's business profit with the complainant. It follows that the allegations in the FIR do not make out an offence under section 420 IPC attributed to the accused.

17. Section 405 defines the offence of criminal breach of trust, punishable under section 406 IPC. It would be seen from their bare reading that the sine qua non for applicability of section 406 IPC, *inter alia*, is that the beneficial interest in the property in respect of which the offence is alleged to have been committed, continues to vest in the person by whom the entrustment was made i.e. in same person and not the accused.

18. In the instant case, the complainant had invested money in the company of the accused pursuant to an agreement for profit sharing. Upon it's investment by the complainant, the beneficial interest in that money had passed over to the accused/their company. In other words, it became the money of the accused company. Thereafter, the complainant's status was only that of a creditor while the accused became his debtor qua the amount invested. It cannot, therefore, be said that the beneficial interest in the money in respect of which the offence is alleged to have been committed, continued to vest in the complainant. Thus, the said essential ingredient for the applicability of section 405/406 IPC is lacking in the FIR. That apart, on the same set of factual allegations, two mutually inconsistent offences - under section 406 IPC for criminal breach of trust and also under section 420 IPC for cheating - have been invoked against the petitioner shows that the complainant is approbating and reprobating in the same breath.

19. The offence of cheating is defined in Section 415 IPC. While Section 405 envisages entrustment of property. Section 415 *ibid* envisages essential ingredient of inducement, thus entrustment and inducement cannot co-exist at the same time as the ingredients of both the sections are completely antithetical.

20. The very fact that on the same set of factual allegations, two mutually inconsistent offences - under section 406 IPC for criminal breach of trust and also under section 420 IPC for cheating - have been invoked against the petitioner shows that the complainant is approbating and reprobating in the same breath. Be that as it may, in somewhat similar circumstances, while being puisne judge in Rajasthan High Court, I had an occasion to render a judgment titled ***Rana Ram V. State of Rajasthan & Anr.: SB Criminal Misc.(Pet.) No. 4893/2024*** the relevant paragraphs of that judgement are reproduced hereunder:

> " *14. Section 405 of IPC defines the offence of criminal breach of trust, punishable under section 406 IPC, thus :-*
> *"**405. Criminal breach of trust**.-*
>
> *Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that perty in violation of any direction of law prescribing the mode in which such trust to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "Criminal breach of trust."*
>
> *Aforesaid Section 405 has been retained as it is, in verbatim as*

Section 316(1) in the Bhartiya Nyaya Sanhita, 2023 and reads as under:-

*"**316. Criminal breach of trust**. –*

(1) Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust."

15. Let us break down the ingredients of the section as below for its better understanding :-

(a). Entrustment :

The individual must be entrusted with property or some dominion over the property. This entrustment can be explicit (direct) or implied through legal agreement or duties.

(b). Dishonest Misappropriation or Use

The individual must dishonestly misappropriate, convert, or use
the entrusted property for their own benefit. This includes any
form of misuse that is contrary to law, the terms of the trust or
agreement.

(c). Violation of Directions or Contracts:

The misuse must be in violation of specific directions of law that outline how the trust is to be executed or contrary to any legal contract—whether express (clearly stated) or implied (understood without direct expression).

(d). Wilful Suffering:

If the individual knowingly allows another person to misuse the
property in violation of the trust, this also constitutes a breach.

15.1. It would be seen that the sine qua non for the applicability of the section, supra, is that the beneficial interest in the property in respect of which the offence is alleged to have been committed, continues to vest in the person by whom the entrustment was made i.e. in same person and not the accused. Examples of Criminal Breach of Trust are :

- An employee entrusted with company funds who uses them for personal expenses.

- A trustee of a property who sells the property against the terms of the trust.

- A warehouse keeper who disposes of goods stored under his care without the owner's permission.

15.2. The prosecution thus must prove the elements of entrustment and dishonest breach of terms of entrustment to secure a conviction. This is essential for discharge of fiduciary responsibilities and ensuring that entrusted property is handled as per law and intended by the terms of the trust or legal agreement.

16. Allegations in the instant FIR show that the complainant had sold goods to Ram Kishore Jhanwar and/or his son Narendra Jhanwar. This is further clear from the complainant's allegations in the FIR that when he requested payment for the total amount of Rs. 25,54,807/- for both transactions, instead of paying the due amount, the accused blocked (obviously Ram Kishore Jhanwar and/or his son Narendra Jhanwar) his phone number.

16. Allegations in the instant FIR show that the complainant had sold goods to Ram Kishore Jhanwar and/or his son Narendra Jhanwar. This is further clear from the complainant's allegations in the FIR that when he requested payment for the total amount of Rs. 25,54,807/- for both transactions, instead of paying the due amount, the accused blocked (obviously Ram Kishore Jhanwar and/or his son Narendra Jhanwar) his phone

number.

17. These allegations leveled by the complainant himself in the FIR run contrary to and demolish the submission of his learned counsel that the complainant had also sold the said goods to Rana Ram, the petitioner herein. Thus, the petitioner is equally complicit as he is claiming the same without paying the sale proceeds to the original seller i.e. the complainant. It is rather intriguing that a very contradictory stand has been taken by the petitioner in the FIR vis-à-vis submissions made in the Court.

18. Either way, it seems to be a simple commercial transaction of sale of goods by the complainant to Narendra Kumar Jhanwar. At the time of sale itself, the property (ownership) in the sold goods had passed on to the purchaser (Narendra Kumar Jhanwar) and no longer remained with the complainant or in some person other than Narendra Kumar Jhanwar accused.

19. To my mind, the allegations in the FIR herein, taken at their face value, do not disclose the commission of offence of criminal breach of trust defined in section 405 of IPC punishable under section 406 IPC.

20. As found above, it was a simple commercial transaction of salepurchase of goods; at the time of sale itself, the property/beneficial interest in the sold goods had passed on to the purchaser (Narendra Jhanwar) and no longer remained with the complainant or in some person other than the accused. The present petitioner has asserted that he had purchased the goods from said Narendra Jhanwar, had made the full and final payment for the said Guar Gum and, a sale receipt was issued by Narendra Kumar Jhanwar in favor of the petitioner on 14.06.2024 confirming the transaction.

21. Adverting now to section 420 IPC, a sine qua non for attracting criminal liability there under is the element of cheating and, thereby, dishonestly inducing the person deceived to deliver any property to any person. The present case being a simple sale of goods and its delivery by the complainant to Narendra Jhanwar, it cannot be *said that the complainant was cheated and thereby dishonestly induced by the accused to deliver the goods to the latter. In my opinion, the allegations in the FIR also do not even disclose the commission of an offence under section 420 IPC.*

22. There is yet another aspect of the case. The offences under Section 405 IPC and section 420 IPC are mutually anti-thetical and cannot stand together. In the case of Section 405 IPC, the property is delivered by the owner in trust to the accused and there is no element of dishonesty on the part of the accused at the inception i.e. before or time of entrustment of the property to him, but the element of dishonesty of the accused develops/arises subsequent to the entrustment of the property to him. As against this, for applicability of section 420, it is necessary to show that element of dishonesty of the accused existed prior to and/or at the time of the delivery of the property to him i.e., at the inception itself.

22.1. Both Sections 405 and 420 of the IPC operate in distinctly different domains i.e. entrustment versus inducement. Section 405 deals with entrustment, where the victim places trust in the accused by entrusting property, and any breach of this trust by the accused directly hurts the victim. In contrast, Section 420 pertains to inducement, where the accused actively approaches the victim, often through misrepresentation or deception, leading the victim to mistakenly believe in his honesty and part with their property under false pretenses/inducement. Therefore, entrustment centers on a breach of existing trust, while inducement involves deceit from the outset.

22.2. For ready reference, Section 420 IPC is also reproduced hereinbelow:-

"S. 420 Cheating and dishonestly inducing delivery of property Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable

security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

Aforesaid Section 420 IPC has been retained as it is, in verbatim, as section 318 (4) in the Bhartiya Nyaya Sanhita, 2023 and reads as under:-

"318. Cheating. – (4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

22.3. The provision, ibid, thus envisages that the act of cheating where a person deceives someone ought to be such, whereby the deceived person is induced to: Deliver any property to another person.

- *Make, alter, or destroy the whole or any part of a valuable*
- *security. Modify or destroy anything signed, sealed, and capable of*
- *being converted into a valuable security.*

The provision thus highlights the serious consequences of using deceit to manipulate others into parting with property or altering valuable documents.

23. In the aforesaid backdrop, it is obvious that the report lodged with the police does not disclose the commission of the offences either under section 406 or 420 IPC or any other cognizable offence.

24. Moreover, before registering the FIR, the conditions/parameters laid down either in the case of Lalita Kumari (supra) were not complied with. Firstly, the allegations in report lodged with the police, taken at their face value, did not disclose the commission of an offence of criminal breach of trust defined in section 405 of IPC punishable under section 406 IPC and section 420 IPC or any other cognizable offence. Secondly, the *alleged offences arose out of purely commercial transactions of sale and purchase of goods. Yet, before registering an FIR, any preliminary inquiry was not at all conducted, to ascertain whether or not a cognizable offence was disclosed. Had the needful been done, obviously the result would have been different.*

25. Be that as it may, it is for the complainant to institute appropriate civil proceedings for recovering his claimed money from the debtor and not for the police officials to substitute themselves as his civil recovery agents under the garb of doing the investigation by misusing their khaki uniform."

21. I hold the same view in the present case as well, as expressed in **Rana Ram** *supra*.

22. For reasons stated earlier, I am of the opinion that the dispute *inter se* the complainant and the accused is purely of a civil nature. It has arisen out of the profit sharing agreement, pursuant to which the complainant had invested money with the accused company. His perceived grievance is over non-payment of share of the claimed profit and the refund of the money paid by him. However, by skilful and astute framing of the complaint, the civil dispute has been given the colour of criminality and the impugned FIR has been registered to armtwist and pressurise the petitioner to recover money and/or settle the civil dispute on complainant's terms. The registration of the FIR is an utter abuse of the process of law. Continuance of the consequential proceedings would cause unnecessary further hardship, harassment and humiliation to the petitioners.

23. As an upshot, the FIR No. 167/2022 under Sections 406/420 of the IPC registered at Police Station IGI Airport along with all the

criminal proceedings which may have arisen therefrom against the petitioners are quashed**,** with liberty to the complainant to seek remedy in civil law including arbitration, in accordance with law.

ARUN MONGA, J

AUGUST 8, 2025/Sv