APHC010552612026

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3521]**
(Special Original Jurisdiction)

MONDAY, THE 2nd DAY OF NOVEMBER 2026

PRESENT

THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION NO: 9225/2026

Between:

1. DUGGASANI SIVATHIRUPATHI REDDY, S/O. RAGHAVA REDDY, AGED ABOUT 53 YEARS,R/O. 16-11-781/11, FLAT NO.203, 2ND FLOOR,MILE STONE APARTMENTS, MOOSARAMBAGH,NEAR TV TOWER SIGNAL, MALAKPET, HYDERABAD, TELANGANA - 500036.

...PETITIONER/ACCUSED

AND

1. THE STATE OF ANDHRA PRADESH, Rep. by its Public Prosecutor,High Court of A.P., at Amaravati

...RESPONDENT/COMPLAINANT

Counsel for the Petitioner/accused:

1. SIVASUBRAMANYAM AVINASH

Counsel for the Respondent/complainant:

1. PUBLIC PROSECUTOR

The Court made the following:

ORDER:

Criminal Petition has been filed under Section 482 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity 'the BNSS') by the Petitioner/Accused No.1 for granting of pre-arrest bail in connection with Crime No.291 of 2026 on the file of Kurnool IV Police Station, Kurnool, District District, registered for the alleged offences punishable under Sections 318(4) 316(2), 79 read with 3(5) of the Bharatiya Nyaya Sanhita, 2023 (for brevity 'the BNS')

2. Heard the learned Counsel for the Petitioner and the learned Assistant Public Prosecutor. Perused the record.

3. The defacto-complainant has alleged that the Petitioner/Accused No.1 has not only defrauded the defacto-complainant but also committed breach of trust.

4. The prosecution alleges that the Petitioner has committed offences of criminal breach of trust and cheating. In this regard, it is apposite to refer the judgment of the Hon'ble Apex Court in **Delhi Race Club (1940) Ltd. v. State of U.P.,**[1] at paragraph Nos.44 & 49 held as under:

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

[1](2024) 10 SCC 690

> *sold by him has not been paid. Once there is a sale, Section 406IPC 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.*
> *49. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi v. State of U.P. [Lalit Chaturvedi v. State of U.P., (2024) 12 SCC 483 : 2024 SCC OnLine SC 171] and Mideast Integrated Steels Ltd. v. State of Jharkhand [Mideast Integrated Steels Ltd. v. State of Jharkhand, 2023 SCC OnLineJhar 301"*

5. The Hon'ble Apex Court in **Arshad Neyaz Khan v. State of Jharkhand**[2], at paragraph No.21 held as under:

> *"21. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 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 in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making 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 misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."*

6. Section 406 of 'the I.P.C.,' deals with criminal breach of trust, which presupposes lawful entrustment of property followed by dishonest misappropriation or conversion. In contrast, Section 420 of 'the I.P.C.,' addresses cheating and dishonestly inducing delivery of property, which requires deception at the inception of the transaction. Thus, while Section 406

[2] 2025 SCC OnLine SC 2058

of 'the I.P.C.,' arises from a breach of an existing fiduciary relationship, Section 420 of 'the I.P.C.,' is predicated upon fraudulent inducement at the very outset. The two offences, therefore, operate in distinct spheres.

7. As seen from the record, the alleged offences levelled against the Petitioner are punishable with imprisonment for less than seven (07) years.

8. The Hon'ble Supreme Court, in **Satender Kumar Antil v. Central Bureau of Investigation**[3], wherein at paragraph No.33, it is held as under:

> *"33. On the basis of the interpretation given by us, we conclude as follows:*
>
> *a. An arrest by a police officer is a mere statutory discretion which facilitates him to conduct proper investigation, in the form of collection of evidence and, therefore, shall not be termed as mandatory.*
> *b. Consequently, the police officer shall ask himself the question as to whether an arrest is a necessity or not, before undertaking the said exercise.*
> *c. For effecting an arrest, qua an offence punishable with imprisonment up to 7 years, the mandate of Section 35(1)(b)(i) of the BNSS, 2023 along with any one of the conditions mentioned in Section 35(1)(b)(ii) of the BNSS, 2023 must be in existence.*
> *d. A notice under Section 35(3) of the BNSS, 2023 to an accused or any individual concerned, qua offences punishable with imprisonment up to 7 years, is the rule.*
> *e. Even if the circumstances warranting an arrest of a person are available in terms of the conditions mentioned under Section 35(1)(b) of the BNSS, 2023, the arrest shall not be undertaken, unless it absolutely warranted.*
> *f. Power of arrest under Section 35(6) read with Section 35(1)(b) of the BNSS, 2023, pursuant to a notice issued under Section 35(3) of the BNSS, 2023 is not a matter of routine, but an exception, and the police officer is expected to be circumspect and slow in exercising the said power."*

9. Furthermore, in this regard, it is apposite to mention the Hon'ble Apex Court in **Arnesh Kumar v. State of Bihar**[4], wherein detailed guidelines were

[3]Special Leave Petition (Crl.) No.5191 of 2021, dated 15.01.2026
[4](2014) 8 SCC 273

issued at Para Nos.11 and 12, for arresting a person, which are being reproduced herein below:-

> "*11. Our endeavor in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorize detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:*
>
> *a).All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 Code of Criminal Procedure, 1973 (for brevity 'the Cr.P.C.');*
>
> *b) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);*
>
> *c) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;*
>
> *d) The Magistrate while authorizing detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorize detention;*
>
> *e) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;*
>
> *f) Notice of appearance in terms of Section 41-A of Cr.P.C be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;*
>
> *g) Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, he shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction.*
>
> *h) Authorizing detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*
>
> *12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A of the I.P.C. or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine."*

10. The similar view is also reiterated by the Hon'ble Apex Court in **Md.Asfak Alam** *supra*, which also reiterated the guidelines laid down in the case of **Arnesh Kumar**.

11. In the light of the law laid down in the case of **Satender Kumar Antil, Arnesh Kumar** and **Md. Asfak Alam** *supra*, the Investigating Officer is under legal obligation to proceed in accordance with law, but he shall follow the procedure prescribed under Sections 41 and 41(A) of 'the Cr.P.C.,' (now Sections 35 and 35(3) of 'the B.N.S.S.,' 2023). The Petitioner is obliged to render his fullest cooperation in the ongoing investigation.

12. In the result, the Criminal Petition is disposed of directing the Investigating Officer to comply with Section 35(3) of 'the BNSS'/41-A of 'the Cr.P.C.,' and to strictly follow the directions issued in the cases of **Satender Kumar Antil, Arnesh Kumar** and **MD.Asfak Alam**. If it is noticed in the course of investigation that the Petitioner has committed any offence which is punishable with imprisonment beyond seven years, the Investigating Officer is at liberty to proceed in accordance with law.

As a sequel, Miscellaneous petitions, if any pending, shall stand closed.

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DR. Y. LAKSHMANA RAO, J

Date: 02.11.2026
vmm

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THE HONOURABLE DR JUSTICE Y. LAKSHMANA RAO

CRIMINAL PETITION No.9225 of 2026

Date: 02.11.2026

vmm