IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CRIMINAL PETITION NO. 9534 OF 2026

BETWEEN:

1. MR. VISHAL RAWAT,
   S/O. MR. ASHOK RAWAT,
   AGED ABOUT 39 YEARS,
   R/AT G-209, PREET VIHAR,
   NEW DELHI-110 092.

2. MS. PRATIBHA BHATNAGAR,
   D/O. MR. ASHOK RAWAT,
   W/O. MR. PANKAJ BHATNAGAR,
   AGED ABOUT 47 YEARS,
   R/AT F-126, GROUND FLOOR,
   LADO SARAI, NEW DELHI-110 030.

...PETITIONERS

(BY SRI GNANESH, ADVOCATE FOR
SMT VIJETHA R NAIK.,ADVOCATE)

AND:

Digitally signed by PRAMILA G V
Location: HIGH COURT OF KARNATAKA

1. THE STATE OF KARNATAKA,
   THROUGH ASHOKNAGAR POLICE STATION,
   REP. BY ITS STATE PUBLIC PROSECUTOR,
   HIGH COURT OF KARNATAKA,
   BENGALURU-560 001.

2. SHRIKRISHNA G KHODAY,
   S/O SRI. FURUNATH KHODAY,
   AGED ABOUT 33 YEARS,
   R/AT 75, 3RD CROSS, RESIDENCY ROAD,
   NEXT TO BALLAL RESIDENCY,
   BENGALURU - 560025.

...RESPONDENTS

(BY SRI NAGHARISH G S, HCGP FOR R1,
SRI ROHAN KOTHARI, ADVOCATE FOR R2)

THIS CRL.P IS FILED U/S 482 CR.PC (FILED U/S 528 BNNS) BY THE ADVOCATE FOR THE PETITIONER PRAYING THAT THIS HONOURABLE COURT MAY BE PLEASED TO QUASH THE CHARGE SHEET IN CC.NO.23989/2026 FILED BY THE RESPONDENT POLICE FOR OFFENCE P/U/S 403, 406, 420 AND 34 OF IPC PENDING ON THE FILE OF III ACJM COURT, BENGALURU CITY AND SET ASIDE THE ORDER OF TAKING COGNIZANCE DATED 23.04.2026 BY THE LEARNED MAGISTRATE AND ALL FURTHER PROCEEDINGS THERETO.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29TH SEPTEMBER, 2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE ANANT RAMANATH HEGDE

CAV ORDER

Petitioners are before this Court assailing the charge sheet in C.C. No.23989/2026 for the alleged offences under Sections 403, 406, 420 and Section 34 of Indian Penal Code, 1860 ('IPC').

2. The petitioners are also calling in question the order dated 23.04.2026 passed by the III Additional Chief Judicial Magistrate Court, Bengaluru taking cognizance of the aforementioned offences.

3. Heard the learned Senior Counsel appearing for the petitioners, learned HCGP appearing for the first respondent as well as the learned counsel appearing for the second respondent.

4. The private complaint is filed in PCR No.12220/2024. The Trial Court acting on the private complaint directed investigation by the police. Thereafter, the police have filed the charge sheet. After taking cognizance, pursuant to the charge sheet, the said case is numbered as C.C. No.23989/2026.

5. The order dated 14.03.2025 passed by the Trial Court would indicate that the Court has noticed that the complaint discloses both cognizable and non cognizable offences and the complainant had filed a complaint before Ashoknagar Police Station. Same was not registered. The complainant has brought it to the notice of the higher officer. But no action is taken in this behalf. The complainant has also filed the affidavit in this behalf.

6. Thereafter, acting under Section 175(3) of Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS'), the Trial Court has referred the matter to the police to register the FIR and to investigate the matter. The police have registered the FIR and have investigate the matter and file the charge sheet.

7. The order taking cognizance reads as under:-

"1. Perused the Office Note.

2. Perused the charge sheet, statement of witnesses and the accompanying material documents. The prosecution has made out a prima facie case & sufficient materials are placed on record to take the cognizance and prosecute the ACCUSED PERSONS at this stage. Accordingly, the following is passed:

ORDER

Cognizance is taken for the offences punishable under Section 403, 406, 420 read with Section 34 of INDIAN PENAL CODE.

Office is hereby directed to Register the Criminal Case against the ACCUSED NO.1, VISHAL RAWAT & ACCUSED NO.2 PRATIBHA BHATNAGAR for the offences punishable under section 403, 406, 420 R/W 34 of the INDIAN PENAL CODE.

ACCUSED NO.1 & 2 ARE REPORTED TO BE ABSCONDING. Issue NBW to ACCUSED NO.1 & 2, returnable by 15/05/2026.

Office to close the case in PCR No.12220/2024 in view of the charge sheet filed by the Investigating Agency."

8. The learned Senior Counsel appearing for the petitioners would contend that accused No.1 and 2, according to the complainant, are known to the complainant for more

than 10 years and they approached the complainant at Bengaluru seeking financial assistance to run their business. The complainant further alleged that the complainant invested a sum of Rs.1,35,29,900/- between 18.06.2015 to 12.02.2019 in the business under the name *Avante Exports* which was a partnership concern then.

9. It is also alleged in the complaint that Rs.65.00 lakh is transferred to the account of the partnership firm and balance is credited to the individual accounts of the accused No.1 and 2 and the mother of the accused No.1 and 2 on various dates between 18.06.2015 and 12.02.2019. The further allegation is that though the amount is transferred to the account of the mother of accused No.1 and 2, the amount is used by accused No.1 and 2 for their personal use.

10. The complainant alleges that it was mutually agreed that accused No.1 and 2 would repay the amount with profit earned from the partnership business. It is the allegation that accused No.1 and 2 cheated the complainant by using the complainant's signature without his knowledge and the complainant suspects that his signature is forged.

11. The complaint is filed on the allegation that neither the principal amount nor the profit which was assured was repaid to the complainant by December, 2023. It is the allegation that accused No.1 and 2 conspired and committed criminal breach of trust and dishonestly misappropriated the property and cheated the complainant by forging the signature.

12. The learned Senior Counsel for the petitioners would submit that a purely civil dispute is given a colour of a criminal case and contents of the complaint, FIR and charge sheet, do not disclose any ingredients of the criminal offence. Thus, it is urged that there could not have been an order to register an FIR and investigate the case and the charge sheet could not have been filed and the Court could not have taken cognizance of the alleged offences based on the charge sheet.

13. The requirements of Sections 403, 406, and 420 of IPC are not forthcoming, and the impugned orders and proceedings are untenable, is the submission.

14. It is also submitted that since the transactions are purely civil transactions, the complaint, FIR and the charge sheet are nothing but gross abuse of the process of the Court.

15. In addition, it is also urged that the impugned order is not a speaking order and does not reflect application of mind and thus would urge that the petition has to be allowed and the proceedings have to be quashed.

16. Learned counsel for the respondents would submit that the petitioners had the intention to cheat the complainant from the inception. They induced the complainant to invest in the partnership business of accused No.1 and 2 and the money invested by the complainant in the said business is diverted for the personal use and the petitioners have misappropriated the amount invested by the complainant and have committed criminal breach of trust.

17. It is the submission that the charge sheet materials clearly establish that the amount is diverted for various purposes unconcerned with the partnership business and the money which is lawfully entrusted with an understanding to invest the same for the said business is misappropriated by transferring the same to the personal account of the petitioners' mother, the petitioners and thereafter, the petitioners have withdrawn the said amount and misappropriated the said amount for their personal use with a

dishonest intention to make wrongful gain for themselves and cause wrongful loss to the respondent/complainant.

18. The Court has considered the contentions raised at the Bar and perused the records.

19. The complaint is filed by the second respondent and same is referred to the police for investigation and the police have filed the charge sheet.

20. From the contents of the complaint it is noticed that there is an allegation that accused No.1 and 2 approached the complainant and asked him to invest money in their business and assured to share the profit and return the investment along with the profit.

21. The police have collected materials during the investigation. *Prima facie* it is noticed that the complainant has invested Rs.1,35,29,900/- from 18.06.2015 to 12.02.2019 as said transfer of amount is reflected in the bank statement of the complainant. Out of which, Rs.65,00,000/- is transferred to the account of the partnership firm and remaining amount, is transferred to the account of the petitioners and their mother in different proportion on different dates.

22. It is alleged that the petitioners have cheated the complainant by taking his signature without the complainant's knowledge with an intention to make wrongful gain for themselves.

23. From the reading of the complaint it is noticed that the complainant does not say that the petitioners had an intention to cheat the complainant at the inception when they approached the complainant with a request to invest the amount in their business. *Prima facie* it appears that the money was transferred to 'Avante Exports' - Partnership Firm and also to the individual account of petitioners and their mother. There are about 43 online transactions between 2015 to 2016.

24. However, charge sheet material would indicate that the amount credited to the partnership firm is transferred to the personal account of the petitioners and also their mother.

25. It is also noticed that the accused have changed the partnership firm into a Company and allegedly appointed the complainant as a Director and claim to have issued the share certificates in the name of the complainant and those share certificates do not bear any seal and signature.

26. Paragraph No.10 of the complaint reads as under:-

> *"The Complainant further submits that Accused No.1 & 2 committed criminal conspiracy, criminal breach of trust, dishonest misappropriation of property & committed cheating, forgery for purpose of cheating, intentional insult with an intent to provoke breach of the peace, criminal intimidation and various acts and omissions resulting in committing various offences under the provisions of Indian Penal Code/the Bharatiya Nyaya Sanhita, 2023."*

27. Though it is urged that there are no specific details relating to the allegation of breach of trust, from the holistic reading of the complaint and the charge sheet materials, it is evident that the amount which is transferred to the account of the partnership firm is diverted to the personal account of the petitioners and their mother.

28. Though, the petitioners contend that the partnership firm is converted into a Company and the share have been issued to the complainant, the share certificate of the said Company allegedly issued in the name of the complainant does not bear the seal and signature of the competent officers of the Company or the Directors.

29. The learned counsel for the petitioners to substantiate his contention has relied on the judgment of the Apex Court in ***VIJAY KUMAR GHAI & ORS. vs THE STATE OF WEST BENGAL & ORS***[1]***, V. GANESAN vs STATE REP BY THE SUB INSPECTOR OF POLICE & ANR***[2] and the judgment in ***Criminal Appeal No.10478/2023*** and also the judgment of the Coordinate Bench of this Court in ***MS.ANN NIMMI SEBASTIAN vs STATE OF KARNATAKA & ANOTHER*** (***Criminal Petition No.9212/2021) C/w THOMAS SEBASTIAN NADAKAL vs STATE OF KARNATAKA & ANR. (Criminal Petition No.4676/2022).***

30. Learned counsel for the complainant/respondent placed reliance on the judgment of the Delhi High Court in ***CHINTALA RAMA MOHAN RAO & ANR. VS STATE OF NCT OF DELHI THROUGH CHIEF SECRETARY & ANR***[3]***,*** judgement of the Apex Court in ***SATVINDER KAUR vs STATE (GOVT. OF NCT OF DELHI) AND ANOTHER***[4]***, RAJ SHOUKEEN AND ANOTHER vs STATE OF NCT OF DELHI***

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[1] 2022 LiveLaw (SC) 305

[2] Crl. Appeal No.1470/2026 **(2026 INSC 265)**

[3] 2025 SCC OnLine Del 2041

[4] (1999) 8 SCC 728

AND ANOTHER*[5]*, the judgment of the High Court of Delhi in ***SUSHIL KUMAR DEORAH VS STATE*[6]*.***

31. As can be seen from the contents of the complaint, the complainant has alleged the offences under Sections 403, 405, 420, 465, 468, 506, 120B and Section 34 IPC. However, the charge sheet is filed for the offences under Sections 403, 406 and 420 read with Section 34 IPC.

32. The Court has noticed that there is no allegation in the complaint that the accused had the intention to cheat from the inception when they approached the complainant requesting investment. The contents of the complaint would categorically indicate that the accused requested the complainant to make investment in the partnership firm called 'Avante Exports' and in return, accused assured refund of the principal amount along with the share in the profit earned from the said partnership firm.

33. In the case of ***Vijay Kumar Ghai*** (supra) the Apex Court has quashed the FIR by setting aside the order passed by the Calcutta High Court which declined to quash the

[5] 2025 SCC OnLine Del 6378

[6] 2006 (87) DRJ 184

complaint and FIR. As can be readily noticed from the facts obtained in the said case, the complaint was filed against the accused in the said case on two occasions in respect of the same incident. As far as the first complaint and FIR is concerned, the Trial Court did not deem it appropriate to issue the process as the Court felt that the dispute is purely a civil dispute. Thereafter, the complainant suppressing this fact filed one more complaint in a different State in a different Police station. There also the Court declined to issue the process as the Court felt that the dispute is purely a civil dispute.

34. It is also noticed that in the said case, a protest petition is filed challenging the 'B' report and based on the statement made in the said protest petition, the Court took cognizance and said order was called in question. And it is also noticed from the facts of the second case that, there was an agreement between the complainant and the accused wherein the complainant agreed to invest in the accused/Company wherein the accused had promised to allot certain shares in the accused/company. The complaint was filed on the allegation that shares are not allotted.

35. The Apex Court in the aforementioned circumstances has come to the conclusion that breach of conditions relating to allotment of shares pursuant to the investment made by the complainant by itself cannot be a ground to initiate the criminal proceedings and that too in a situation where the earlier criminal complaint lodged before the Delhi Police resulted in closure on the ground that it is a civil dispute. It is also relevant to notice that report closing the complaint as a civil dispute had attained finality.

36. Thus, one can safely conclude that the facts obtained in the case of ***Vijay Kumar Ghai*** (supra) are entirely different from the facts of the case on hand.

37. As far as the judgment of the Apex Court in ***V Ganesan*** (surpa) it is noticed, that in the said case the complainant invested money with the accused who promised to produce a film and agreed to share the profit. The facts would indicate that the investment was made in 2 installments. As the producer could not complete the production in time, later, the producers/accused also agreed to refund the amount in case the film failed. The facts would indicate that film was produced and was released, however, it appears that the film did not do

well in the box office and the accused did not repay the amount. In those circumstances, the Apex Court has come to the conclusion that the criminal case for the offence under Section 420 cannot be lodged against the accused as there was no inducement at the inception. The accused had promised to produce a film and the film was indeed produced, however, it failed in the box office and the accused could not fulfill his commitment of returning the amount or the profit from this film. Hence, the said judgment also does not apply to the facts of the present case.

38. As far as the judgment of the co-ordinate Bench in ***Ms. Ann Nimmi Sebastian*** (supra) is concerned, it is to be noticed that in the said case the complainant claimed that he paid amount to the accused who assured to float a company. The Court noticed that the company was indeed floated however, the company did not do well as such the complainant did not get the returns on his investment as assured. In the aforementioned circumstances the Court said the criminal complaint is not tenable.

39. In the instant case in addition to the allegation of cheating there is also allegation of misappropriation of funds.

As already noticed the ingredients of the offence relating to cheating are not forthcoming either from the charge sheet or from the contents of the complaint.

40. The complainant as already noticed has stated that accused No.1 and 2 approached him to invest in a partnership firm called 'Avante Exports' and complainant has prima facie placed materials to show that Rs.65.00 lakhs is credited to the account of the partnership firm and remaining amount was credited to the account of accused Nos.1 and 2 and their mother on different dates in different proportion totaling Rs.70,29,900/-. And the charge sheet materials *prima facie* indicate that amount credited to the account of the partnership firm is diverted to the individual accounts of the petitioners and their mother.

41. Thus, the Court has to take a view that though the ingredients of Section 420 are totally missing, in view of the allegation of misappropriation of funds, there are materials to proceed under Sections 403 and 406 of Indian Penal Code.

42. It is relevant to notice that the accused No.1 and 2 being the partners were supposed to run the business and in the event of profit, they should have returned the amount

along with agreed proportion of the profit to the complainant. It is not a simple case of accused No.1 and 2 or the partnership firm suffering a loss and not returning the amount. It is a case where the allegation is the amount which is credited to the account of the partnership firm is unauthorisedly, dishonestly diverted to the individual account of accused Nos.1 and 2 and they have misappropriated the amount for their personal use.

43. The definition of Sections 403, 406 of IPC are extracted below:

> ***"403. Dishonest misappropriation of property.***
>
> *Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*
>
> ***406. Punishment for criminal breach of trust.—***
>
> *Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

44. From the definition it is evident that in case the amount is misappropriated, it amounts to an offence under Section 403 of IPC.

45. It is also evident from the language of Section 405 IPC that if any person entrusted with the property dishonestly misappropriates or converts it to his own use in violation of any direction or any legal contract express or implied commits criminal breach of trust.

46. When the complainant states that he has invested the amount in 'Avante Exports' – a partnership firm, the implied understanding between the parties is that the amount is to be used to run the business of the said partnership firm and not for any other purpose.

47. The charge materials collected during the investigation by the police include the bank statements of the complainant, partnership firm and also the bank statements of accused No.1 and 2 as well as their mother. From the aforementioned statements, it is very much apparent that the money which is credited by the complainant to the partnership account, is transferred to the account of accused No.1 and 2 and also to the account of the mother of accused No.1 and 2.

48. The accused at this juncture are not in a position to say that the amount is transferred as per the instructions of the complainant.

49. Thus, prima facie the ingredients of Sections 403, 405 and 406 of Indian Penal Code are met and the Court is justified in taking cognizance for the aforementioned offences. However, it is noticed that charge sheet is not filed for the offence under Section 405 IPC.

50. In addition, it is also noticed that the complainant has also alleged that the accused have converted the partnership firm into a company and allegedly issued shares to the complainant in lieu of his investment in the partnership firm.

51. The accused contend that this was done as per the understanding between the parties. However, what is required to be noticed is the share certificate allegedly issued to the complainant does not bear the seal and signature of the company and also the seal and signature of the directors.

52. For the aforementioned reasons, the Court has to hold that the petition has to be allowed in part. The proceedings and the charge sheet for the offence under Section 420 IPC has to be quashed.

53. Accused No.1 and 2 have to be tried for the offence under Sections 403, 406 read with Section 34 of Indian penal Code.

54. It is urged that the Court has not assigned reasons for taking cognizance for the aforementioned offences and not applied its mind before passing the impugned orders.

55. However, that by itself is not a ground to quash the impugned orders. If that is the case, the Court has to remand the matter to the trial Court for fresh consideration.

56. This Court in Criminal Petition No.101445/2022 connected with Criminal Petition No.101448/2022 disposed of on 30.10.2026 has held that in a situation where the order taking cognizance is not supported by reasons or suffers for lack of application of mind, the Higher Court can supplement the reasons.

57. Hence, the following:

ORDER

(i) The Petition is ***allowed-in-part***.

(ii) The order taking cognizance for the offence under Section 420 of Indian Penal Code is set aside.

(iii) The order taking cognizance for the offences under Sections 403 and 406 of Indian Penal Code is upheld.

(iv) The observations made in this order are only confined to the merits of the petition under Sections 528 of Bharatiya Nagarik Suraksha Sanhita, 2023.

Sd/-
(ANANT RAMANATH HEGDE)
JUDGE

brn