HC-KAR

NC: 2026:KHC:62702
CRL.P No. 1052 of 2025

CNR: KAHC010749902024

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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 1052 OF 2025 (482(Cr.PC) / 528(BNSS)-)

BETWEEN

1. SHREE SAI YASHASVI REALTY
   A PARTNERSHIP FIRM AND
   HAVING ITS REGISTERED OFFICE AT
   NO 59, 3RD MAIN, 1ST STAGE
   BTM LAYOUT, JAYANAGARA CIRCLE
   BANGALORE 560029.
   REP BY ITS PARTNERS
2. SRI K C NAGESH REDDY
   S/O SRI CHINNAPPA REDDY
   AGED ABOUT 52 YEARS
   R/AT HOUSE NO 6
   14TH FLOOR, 19TH BLOCK
   PRESTIGE SHANTINIKETAN APARTMENT
   WHITEFIELD ROAD
   MANAGING PARTNER OF
   SHREE SAI YASHASVI REALITY
3. SRI CHETAN KUMAR P
   S/O SRI PRASANNA KUMAR
   AGED ABOUT 42 YEARS
   R/AT NO 824, 1ST FLOOR
   20TH A MAIN, KORAMANGALA 8TH BLOCK
   NEAR NGV SIGNAL
   BANGALORE 560095.
4. SRI. SOMASHEKAR REDDY
   S/O SRI OBALA REDDY
   AGED ABOUT 58 YEARS
   R/AT NO 29, TCP LAYOUT
   OLD CHANDAPURA, HOSUR ROAD
   BANGALORE RURAL DISTRICT 560099.

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...PETITIONERS

(BY SRI. ANOOP HARNAHALLI, ADVOCATE FOR
SRI. SRINIVAS RAO.S.S., ADVOCATE)

AND

SRI. L. PRABHAKAR
S/O LATE SRI BANGARU LAXMINARAYANA
AGED ABOUT 55 YEARS
R/AT 8/2
UTTARADHIMUTT ROAD
SHANKARAPURAM
BENGALURU 560004.

…RESPONDENT

(BY SRI. DEVARAJ N., ADVOCATE)

THIS CRIMINAL PETITION IS FILED U/S.482(FILED U/S.528 BNSS) CR.P.C BY PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN C.C.NO.5660/2020 PENDING ON THE FILE OF THE IV ACJM BENGALURU FOR THE OFFENCE P/U/S/ 406, 415, 418, 420, 425, 463, 464, 468 OF IPC 1860 ARISING OUT OF PCR NO.11213/2018 FILED BY THE RESPONDENT ON THE FILE OF THE IV ACJM BENGALURU.

THIS CRIMINAL PETITION COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 06.10.2026, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The petitioners are before this Court seeking for the following reliefs;

   i. Quash the entire proceedings in C.C.No.5660/2020 pending on the file of the IV Additional Chief Judicial Magistrate, Bengaluru for the offences punishable under sections 406, 415,

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418, 420, 425, 463, 464, 468 of Indian Penal Code, 1860 arising out of PCR No.11213/2018 filed by the Respondent on the file of the IV Additional Chief Judicial Magistrate, Bengaluru in the interest of justice.

2. The respondent had filed a private complaint under Section 200 of the Code of Criminal Procedure, 1973 [for short 'CrPC'] for offences under Sections 406, 415, 418, 420, 425, 463, 464 and 468 of the Indian Penal Code, 1860 [for short 'IPC'].

3. On 11.09.2018, the Magistrate being of the opinion that the remedies under Section 154 and Section 154(3) of the CrPC had not been availed, inasmuch as there was no complaint filed with the Jurisdictional Police and subsequently the matter had not been escalated, being of the opinion that the requirement laid down by the Hon'ble Apex Court in ***Priyanka Srivastava and another -v- State of U.P. and others*** [AIR 2015 SC 1758] was not followed, rejected the application for referring the matter for investigation to the jurisdictional police and adjourned the matter for recordal of sworn statement.

4. The sworn statement was recorded on 13.03.2020 and the learned Magistrate considered whether

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sufficient ground had been made out to issue process against the accused for the offences alleged and, being of the opinion that there was sufficient material on record, took cognizance for the offences punishable under Sections 406, 415, 418, 420, 425, 463, 464 and 468 of the IPC and issued summons returnable by 19.06.2020.

5. Thereafter, the petitioners herein who were the accused therein had entered appearance and secured bail. It is challenging the said proceedings that the petitioners are before this Court seeking for the aforesaid reliefs.

6. Sri. Anoop Haranahalli, for Sri. Srinivas Rao, learned counsel for the petitioners would submit that the dispute between the petitioners and respondent is civil in nature, arising out of a partnership agreement between them. Petitioner Nos. 2 to 4, and Sri. Jayachandra and Sri. Gopinath were partners in SHREE SAI YASHASVI REALTY, in terms of the partnership deed dated 29.09.2011 registered on 04.11.2011 with respondent having 40% share and the other partners having the following shares:

i. Sri.K.C.Nagesh Reddy – petitioner No.2 – 20%

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ii. Sri.Chetan Kumar.P- petitioner No.3 – 12.5%

iii. Sri.Somashekar Reddy – petitioner No.4-12.5%

iv. Sri.Jayachandra Reddy – 10%

v. Sri.Gopinath – 5%

7. He submits that the firm had an account with Axis Bank, which is operated by all the six partners. On 29.09.2011, Sri.Gopinath wished to retire from the partnership firm and accordingly the partnership was reconstituted on 01.06.2013, with the share of Gopinath being taken over by accused No.2-petitioner No.2, K. C. Nagesh Reddy.

8. This reconstitution was informed to Axis Bank and it is on that basis that the authorization for operating the account came to be changed and subsequently, another account had been opened with Sreenidhi Souharda Sahakari Bank Niyamitha, as per the resolution passed by the partnership firm. He therefore submits that the actions taken including the resolution passed by the petitioners were as per the partnership deed. The claim, if any, of the respondent is only as regards rendition of accounts, the partnership firm continuing to operate, the criminal proceedings could not have been initiated for the aforesaid offences. These aspects have not been

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taken into consideration by the Magistrate while taking cognizance and issuing process.

9. He submits that the criminal proceedings have been initiated as regards the dispute between the parties being completely civil in nature, requiring this Court to intercede and quash those proceedings.

10. Sri.Devaraj.N, learned counsel for the respondent submits that the respondent continues to be a partner, without the concurrence of the respondent, bank accounts have been opened, the demand drafts had been taken from the earlier Axis Bank account and transferred to the Sreenidhi Souharda Sahakari Bank Niyamitha account and thereafter the account has been operated by the petitioners to the detriment of the partnership firm, thereby depriving the respondent of amounts due to him.

11. He submits that a legal notice has already been issued to the partners seeking for dissolution of the firm, despite which they have not come forward to dissolve the firm, but have continued to operate the bank accounts and businesses, thereby constituting an offence under the aforesaid provisions. On that ground, he submits that the proceedings ought to continue and this Court ought not to intercede.

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12. During the pendency of the above matter, accused No.4-petitioner No.4 i.e. Sri Somashekar Reddy expired on 23.02.2026. A memo enclosing his death certificate was filed on 06.10.2026. As such, the proceedings against Sri.Somashekar Reddy were dismissed as having abated.

13. Heard Sri Anoop Haranahalli, for Srinivas Rao learned counsel for the petitioners. Sri Devaraj.N, learned counsel for the respondent. Perused papers.

14. The points that would arise for consideration are:

(i) Whether the order passed by the Trial Court taking cognizance under Section 190 of the Code of Criminal Procedure, 1973, warrants interference in exercise of jurisdiction under Section 482 of Code?

(ii) What Order?

15. The above point is answered as follows:

16. **<u>Answer to Point No. (i):</u> Whether the order passed by the Trial Court taking cognizance under Section 190 of the Code of Criminal Procedure, 1973, warrants interference in exercise of jurisdiction under Section 482 of the Code?**

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16.1. The respondent's case is that the partnership firm was constituted to carry on real estate business and that he continues to be one of its partners. According to him, the other partners, without his concurrence, closed or discontinued the earlier bank account maintained with Axis Bank, opened a new account in Sreenidhi Souharda Sahakari Bank Niyamitha, transferred the demand drafts from the earlier account to the new account and thereafter operated the new account to his detriment. He contends that these acts were contrary to the partnership deed and deprived him of his legitimate share in the firm's funds.

16.2. Learned counsel for the respondent submits that the petitioners acted without authority and that the Magistrate, having considered the complaint and sworn statement, rightly found sufficient grounds to issue process for the offences alleged. He therefore seeks dismissal of the petition.

16.3. The petitioners contend that the partnership was reconstituted on 01.06.2013, the reconstitution was intimated to Axis Bank, that

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the operating mandate was changed accordingly and that the new account was opened pursuant to a resolution of the firm. According to them, the transactions were undertaken in the course of the firm's business and the respondent's grievance concerns the internal management and accounts of the partnership.

16.4. The complaint was presented under Section 200 of the CrPC. On 11.09.2018, the Magistrate declined to refer it for investigation under Section 156(3), as the respondent had not availed himself of the remedies under Sections 154(1) and 154(3) of the CrPC, having regard to the decision of the Hon'ble Supreme Court in ***Priyanka Srivastava and Another v. State of Uttar Pradesh and Others,*** [(2015) 6 SCC 287]. The Magistrate thereafter recorded the sworn statement and, by order dated 13.03.2020, took cognizance and issued summons for the offences punishable under Sections 406, 415, 418, 420, 425, 463, 464 and 468 of the IPC.

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16.5. The issue before this Court is whether the allegations in the complaint and the sworn statement disclose the ingredients of those offences.

16.6. A Magistrate taking cognizance under Section 190 of the CrPC must apply his mind to the facts alleged and determine whether they disclose an offence. Before issuing process under Section 204, the Magistrate must be satisfied that sufficient grounds exist for proceeding against the accused. The mere reference to penal provisions does not satisfy this requirement. The facts alleged must constitute the offences invoked.

16.7. The existence of a civil dispute does not, by itself, exclude criminal liability. However, criminal proceedings cannot be used to settle accounts or resolve disagreements between partners unless the allegations independently disclose the ingredients of a criminal offence.

16.8. The partnership firm was constituted under a partnership deed dated 29.09.2011, registered on 04.11.2011, to carry on real estate business. The respondent held a 40% share in

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the firm, while the other partners held the shares set out in the deed. The firm maintained a bank account with Axis Bank. The petitioners contend that the partnership was reconstituted on 01.06.2013, that the change was communicated to Axis Bank and that a new account was opened with Sreenidhi Souharda Sahakari Bank Niyamitha pursuant to a resolution of the firm.

16.9. The respondent's grievance is that the new account was opened without his concurrence and that the demand drafts in the earlier account were transferred to it. He alleges that the petitioners thereafter operated the new account to his detriment. The dispute, therefore, concerns the authority of the partners to operate the firm's bank accounts and the manner in which its funds were dealt with.

16.10. The rights and obligations of partners are governed by the Indian Partnership Act, 1932 and the terms of the partnership deed. Section 9 requires partners to act in good faith, carry on the business to the greatest common

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advantage and render true accounts and full information concerning matters affecting the firm. Sections 11 to 16 deal with the mutual rights and duties of partners, the conduct of the business, partnership property and the obligation to account for personal profits derived from the firm's business or property.

16.11. A partner who alleges unauthorised operation of the firm's accounts, failure to render accounts or misuse of partnership property may seek appropriate civil reliefs. These include rendition of accounts, dissolution of the firm under Section 44 of the Indian Partnership Act, 1932 and settlement of the firm's assets and liabilities in accordance with law. The respondent is not without a remedy merely because the dispute concerns the internal affairs of the partnership.

16.12. Section 406 of the IPC prescribes punishment for criminal breach of trust. Under Section 405, the prosecution must establish:

(a) entrustment of property or dominion over property to the accused;

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(b) dishonest misappropriation or conversion of that property, or its dishonest use or disposal in violation of a direction of law or a legal contract, or wilfully permitting another person to deal with it in that manner; and

(c) dishonest intention accompanying such conduct.

16.13. A partner's ordinary dominion over partnership property, arising from the partnership relationship, does not by itself amount to entrustment under Section 405. Specific entrustment by an agreement between the partners must be established.

16.14. In the present case, the respondent alleges that the petitioners opened a new account and transferred the firm's demand drafts without his concurrence. The complaint does not identify any specific entrustment of the funds or dominion over them to the petitioners for a particular purpose. It also does not allege that the transferred amounts were appropriated to the petitioners' personal accounts or diverted for purposes unrelated to the partnership business. There is no specific allegation of

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dishonest conversion, misappropriation or disposal of the funds in violation of an identified obligation arising from entrustment.

16.15. The mere transfer of funds from one account maintained for the partnership firm to another account in the firm's name does not constitute criminal breach of trust. The allegation that the respondent was deprived of amounts due to him concerns his entitlement to the firm's assets and the settlement of partnership accounts. The essential ingredients of Section 405, and consequently Section 406, are not made out.

16.16. Section 415 of the IPC defines cheating. Its essential ingredients are deception of a person and, as a consequence of that deception, fraudulent or dishonest inducement to deliver property, consent to its retention, or to do or omit to do an act which causes or is likely to cause damage or harm to that person.

16.17. The complaint does not allege that the petitioners made a false representation to induce the respondent to enter into the partnership in 2011 or to contribute his share

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of capital. Nor does it identify any subsequent false representation by which the respondent was induced to deliver property, permit its retention or act to his detriment.

16.18. The allegation is that the petitioners opened a new bank account without the respondent's concurrence and transferred the firm's funds to that account. Even accepting that the respondent's concurrence was required, acting contrary to the partnership deed does not, without deception and inducement, constitute cheating.

16.19. The dishonest intention relevant to cheating must exist when the particular inducement is made. It need not necessarily be traced to the formation of the partnership. However, the complaint must identify the representation, the person deceived and the act or delivery of property resulting from that deception. Those particulars are absent here. The ingredients of Section 415 are not disclosed.

16.20. Section 418 of the IPC deals with cheating where the accused knows that wrongful loss may result to a person whose interests he is

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bound, by law or legal contract, to protect. The provision requires the ingredients of cheating under Section 415 and, in addition, knowledge that the deception is likely to cause wrongful loss to a person whose interests the accused is bound to protect.

16.21. Partners owe duties of good faith and proper accounting to one another. However, breach of those duties does not automatically constitute cheating under Section 418. In the absence of deception and inducement under Section 415, the additional requirement of Section 418 cannot be satisfied. The complaint does not disclose the ingredients of this offence.

16.22. Section 420 of the IPC prescribes punishment for cheating and dishonestly inducing delivery of property or the making, alteration or destruction of a valuable security. Apart from deception and dishonest inducement, the provision requires delivery of property or the making, alteration or destruction of a valuable security as a consequence of the inducement.

16.23. The respondent does not allege that the petitioners deceived him into delivering

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property or induced a bank to release funds by means of a false representation. The allegation is that demand drafts belonging to the partnership firm were transferred from its Axis Bank account to another account maintained in the firm's name without obtaining his concurrence.

16.24. The transfer of funds between accounts of the partnership firm, even if disputed as unauthorised, does not by itself establish cheating or dishonest inducement to deliver property. The complaint does not identify the deception, the inducement or the delivery of property required under Section 420. The offence is not made out.

16.25. Section 425 of the IPC defines mischief. It requires destruction of property, or a change in property or its situation, which destroys or diminishes its value or utility or affects it injuriously, accompanied by an intention or knowledge of causing wrongful loss or damage.

16.26. The complaint alleges closure or discontinuance of the earlier bank account, opening of a new account and transfer of demand drafts. It does

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not allege destruction of property or any change in property which diminished its value or utility in the manner contemplated by Section 425. The transfer of the firm's funds from one bank account to another does not, by itself, constitute mischief. A claim that the respondent has been deprived of his share of the firm's money is a claim concerning accounts and entitlement, not an allegation of mischief within the meaning of the provision. The ingredients of Section 425 are absent.

16.27. Sections 463 and 464 of the IPC deal with forgery and the making of a false document. Section 463 requires the making of a false document with one of the specified intentions, including causing damage or injury, supporting a claim, inducing a person to part with property or committing fraud. Section 464 identifies the circumstances in which a person is said to make a false document. These include making or executing a document so that it appears to have been made by another person or with that person's authority, materially altering a document without lawful authority, or procuring a person's signature or execution by deception

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or under the circumstances specified in that section.

16.28. The complaint does not identify any document forged by the petitioners. It does not allege that the respondent's signature was forged on the reconstituted partnership deed, that a false resolution was created in his name, that his signature was materially altered or that he was deceived into signing a document without knowing its contents.

16.29. The allegation that a bank account was opened without the respondent's concurrence may raise a question about the authority of the partners and the validity of the resolution under the partnership deed. It does not, without more, constitute making a false document. An unauthorised or invalid document is not necessarily a forged document. The prosecution must establish the making of a false document in the manner contemplated by Section 464. The ingredients of Sections 463 and 464 are not disclosed.

16.30. Section 468 of the IPC prescribes punishment for forgery for the purpose of cheating. It

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requires the making of a false document amounting to forgery under Sections 463 and 464, with the intention that the document be used for cheating.

16.31. Since the complaint does not identify any false document made or altered by the petitioners, the foundational requirement of forgery is absent. It also does not allege that any identified document was prepared with the intention of using it to cheat the respondent or any other person. The ingredients of Section 468 are therefore not made out.

16.32. The complaint, read as a whole, alleges that the petitioners acted without the respondent's concurrence in changing the banking arrangements of the partnership firm, transferring demand drafts from the Axis Bank account to a new account and operating that account. The petitioners contend that these steps were taken pursuant to the reconstitution of the partnership and a resolution passed by the firm. The respondent disputes their authority.

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16.33. These allegations raise questions concerning the validity of the resolution, the authority of the partners to operate the firm's accounts, the application of partnership funds and the respondent's entitlement to accounts and settlement of his share. They do not disclose entrustment followed by dishonest misappropriation, deception and inducement, destruction or injurious alteration of property, or the making of a false document. The essential ingredients of the offences for which process has been issued are absent.

16.34. The availability of a civil remedy does not, by itself, bar criminal proceedings. A transaction arising out of a partnership may also disclose a criminal offence where the necessary ingredients are present. However, the criminal process cannot be used merely to enforce the partnership deed, obtain accounts or settle a dispute concerning the operation of the firm's bank accounts.

16.35. In the present case, the respondent continues to claim his status as a partner and alleges that the petitioners have acted contrary to the partnership deed. His grievance concerns the management of

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the firm and his entitlement to its funds. The appropriate remedy is to seek rendition of accounts, dissolution of the firm and settlement of its assets and liabilities in accordance with the Indian Partnership Act and the civil law.

16.36. The Magistrate, while passing the order dated 13.03.2020, treated the closure or discontinuance of the earlier bank account, the opening of a new account and the transfer of demand drafts as sufficient to attract Sections 406, 415, 418, 420, 425, 463, 464 and 468 of the IPC. The order does not identify how the essential ingredients of those distinct offences arise from the allegations in the complaint and the sworn statement.

16.37. The requirement at the stage of issuing process is not to determine the guilt of the accused. It is, however, necessary that the facts alleged, if accepted, constitute the offences for which process is issued. The order of the Magistrate does not satisfy that requirement. Continuation of the proceedings on the allegations made would amount to an abuse of the process of Court.

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16.38. For the foregoing reasons, Point No. (i) is answered in the affirmative. The order dated 13.03.2020 passed by the IV Additional Chief Judicial Magistrate, Bengaluru, taking cognizance and issuing process in PCR No.11213/2018, culminating in C.C.No.5660/2020, warrants interference in exercise of the inherent jurisdiction of this Court.

17. **Answer to Point No. (ii): What Order?**

17.1. In view of the answer to Point No. (i), this Court passes the following:

ORDER

i. Criminal petition is allowed.

ii. The proceedings in C.C. No.5660/2020 [arising out of PCR No.11213/2018] pending on the file of the IV Additional Chief Judicial Magistrate, Bengaluru, against the petitioners is quashed.

This Court has been assisted by Mr. Sourav, Law Clerk, in the formulation of this Judgement.

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(SURAJ GOVINDARAJ)
JUDGE

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