IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-03-2026

CORAM

THE HON'BLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL RC No. 870 of 2023

1. Pon Sivasamy
   S/o. Ponnusamy, 42, Sakthi Main Road,
   Gobichettiyapalayam.
2. C. Latha
   W/o. Ponsivasamy, 42, Sakthi Main Road,
   Gobichettipalayam.
3. U. Sumathi
   W/O. K. Udhayakumar, 4,Main Street, Ram
   Nagar, Gobichettipalayam.
4. K. Chinnasamy
   S/o. Karuppanagounder, No.110/1, Dhaskant
   Street, Kongu Nagar, Karumandisellipalayam,
   Perundurai, Erode.

..Petitioner(s)

Vs

Regional Manager,
Bank of Baroda, Nambiyur Branch, Nambiyur,
Erode District.

..Respondent(s)

Prayer: This Criminal Revision case is filed under Section 397 r/w 401 of Cr.P.C to set aside the conviction imposed in Judgement dated

27.04.2023 made in C.A.No.96 of 2022 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam confirming the conviction imposed in the judgment dated 24.06.2022 made on the file of the learned Judicial Magistrate No.1, Gobichettipalayam in CC.No.86 of 2012 by allowing this Criminal Appeal

For Petitioner(s): Mr.A. Nagarajan for M/s.
V.Anandhamoorthy
S. Kousik

For Respondent(s): Mrs.Revathi Manivannan For The Respondent

ORDER

This Revision case has been preferred as against the Judgment passed in C.A.No.96 of 2022 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam on 27.04.2023 thereby confirming the order of conviction and sentence imposed by the Trial Court in CC.No.86 of 2012 on 24.06.2022 made on the file of the learned Judicial Magistrate No.1, Gobichettipalayam.

2. The case of the prosecution is that the petitioners are the partners of Anbu Thanga Maligai shop and they obtained a loan for a sum of Rs.11,85,95,0000/- by pledging the movable and immovable properties of Anbu Thangamalaigai shop including gold jewellery and silver articles. While taking possession of the said properties under the SARFEASI Act, the Gold and Silver

articles were not available in the premises which were hypothecated with the Respondent/Bank thereby the petitioners have committed criminal breach of trust and cheating. Hence, the Respondent/Bank has given a private complaint before the concerned Judicial Magistrate and the same was taken cognizance by the Trial Court for the offence punishable under Sections 34,406 and 420 of IPC.

3. In order to prove the charges, the respondent had examined P.Ws. 1 to 7 and marked Exs.1 to 20 and no witness was examined on the side of the accused and six documents were marked as Exs.D.1 to 6 by the accused.

4. On a perusal of the oral and documentary evidence, the Trial Court found the petitioner guilty for the offence punishable under sections 420 r/w 34 of IPC and section u/s 406 r/w 35 of the IPC. The Trial Court passed a Judgment on 24.06.2022, wherein the petitioner was sentenced to undergo rigorous imprisonment for 3 years each and to pay a fine of Rs.5,000/- each and in default of fine, one month simple imprisonment for the offence under section 420 r/w 34 of IPC and sentenced them to undergo Rigorous imprisonment of 3 years each for the offence under section u/s 406 r/w 35 of the IPC. Aggrieved by the same the petitioner preferred an appeal in C.A.No.96 of 2022 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam and the same was also dismissed and the order passed by the Trial Court was confirmed . Hence, the present revision case.

5.The learned counsel for the petitioner submits that they have availed loan by pledging their immovable properties and gold and silver articles of the Anbu Thanga Maligai shop and there was a default in payment of the loan amount. Therefore, the respondent filed a suit for recovery of money in O.S.No.299 of 2008 on the file of the District Court, Erode and the same was decreed in favour of the respondent. In pursuance of the decree, the respondent had sold the property and obtained a part of the loan amount. He further submitted that the said loan was in existence prior to 31.08.2008 as a loan from Indian Bank and subsequently taken over by Respondent/Bank of Baroda. After committing default in payment of loan, the respondent invoked SARFAESI proceedings and attached the property. Now the substantive amount of the default loan amount has been realised by the respondent and the outstanding due was Rs.22,68,23,913.33/-. Though the respondent initiated SARFAESI proceedings to sell the properties, out of 11 properties given as collateral, the bank has sold only 5 properties for a sum of Rs.7.69 crores and realized the sale proceeds and no steps were taken to sell the remaining 6 properties. Therefore the charges under Sections 406 and 420 of IPC cannot go together. To attract the offence under section 406 of IPC, entrustment has to be made to the accused but in this case only floating charge was created on the property of the accused and therefore, the offence of criminal breach of trust is not made out. Unfortunately both the courts below convicted and sentenced the petitioner. Hence he prays to allow this petition.

6. *Per contra* the learned counsel for the respondent submits that after having been entered into the hypothecation agreement with regards to the movable and immovable properties, the petitioners deliberately moved the gold and silver ornaments from the premises which was hypothecated with the respondent. He further submitted that the report of the Advocate Commissioner shows that the stocks of gold ornaments were not found in the premises which were hypothecated with the respondent. Therefore, the petitioner had committed the offence under Sections 420 and 406 r/w of IPC. Hence, the Trial Court as well as the Appellate Court rightly convicted the petitioner which does not require any interference by this Court.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the entire materials on record.

8. On the private complaint lodged by the respondent, the Trial Court had taken cognizance for the offence under section 406 and 420 of I.P.C as against the petitioner. It is alleged that in the year 2000, the petitioner availed credit facility with the City Union Bank. Subsequently the said facility was taken over by the Indian Bank with outstanding amount of Rs.4.55 crores on 04.03.2008 in term loan account and Rs.8.5 crores in cash credit account. Thereafter, on 30.09.2009, the respondent had taken over the loan to the petitioners and on 13.10.2009 a composite hypothecation agreement was entered between the present partners/ accused and the respondent. In the said agreement a sum of

Rs.8.5 crores was credited to the account of the Indian Bank Vide No.02/6967. On 30.11.2009 the stock statement was valued to the tune of Rs.11.39 crores and statement was submitted to the respondent. Likewise on 30.10.2010 the stock statement valued to the tune of Rs.11.48 crores was sent to the respondent. While being so, the petitioners have committed default in repayment of the loan amount. Therefore, the respondent initiated proceedings under SARFAESI Act and issued notice under section 13(2) on 15.12.2010. Thereafter, the loan account was restructured and additional loan of Rs.42,00,000/- was distributed in favour of the petitioners. Therefore, it is alleged that the petitioners had committed default under SARFAESI Act. Hence, the petitioners filed a petition in C.M.P.No.421 of 2011 before the CJM, Erode seeking for appointment of Advocate Commissioner for taking possession of the immovable properties and possession of securities under section 14(1) and 14(2) of SARFAESI Act which was allowed by the learned Judge on 09.04.2011. Thereafter, the Advocate Commissioner had taken possession of the immovable properties on 28.05.2011 and he found that the stocks of gold ornaments were not available in the premises. Therefore, the respondents alleged that the petitioners sold the stock worth of Rs.11.48 crores and thereby cheated the respondent. Originally the erstwhile partners of the petitioners had availed credit facility with City Union Bank and thereafter, it was taken over by the Indian Bank. Subsequently the respondent had taken over the credit facility of the petitioners. In the mean time on 01.09.2009, the petitioner's firm was reconstituted with the present partners.

Therefore, the hypothecated stocks were sold out without the knowledge of the respondents.

9.Therefore, the point for consideration in this Revision is whether the charges under sections 406 and 420 of IPC have been proved by the respondent and whether the allegations as against the petitioners attract the offences under sections 406 and 420 of IPC. Before adverting further, it would be relevant to extract the Section 415 of Cr.P.C

> *Penal Code, 1860 – S.415 – Cheating – Ingredients – Having regard to allegations made in the complaint, held on facts, elements of deception and inducement with fradulent intention prima facie made out Held:*
>
> *The essential ingredients of the offence of "cheating" are (I) deception of a persons either by making a false or misleading representation or by other action of omission (ii) fraudulent or dishonest inducement of that person to either delivery any property or to consent to the retention thereof by any person or to intentionally induce that person to do or omit to do anything which he would not do or omit if he were not so deceived and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.*

In the case on hand it is admitted that the credit facility availed by the erstwhile partners from the Indian Bank was taken over by the respondent. Thereafter, the partnership firm was reconstituted by inducting the petitioners as partners. Admittedly a part of the amount were settled by the petitioners and thereby the petitioners had absolutely no intention to commit default even from the very inception of availing credit facility. Therefore the default in payment of loan does not attract the offence under sections 405,406 and 409 of IPC. The essential ingredients for the offence of criminal breach of trust defined in Section 405 and punishable under Sections 406 and 409 of IPC are (a) Entrustment of property in any manner or creation of dominion over property; (b) dishonest misappropriation, conversion to his own use or disposal of the said property; (c) Misappropriation etc, in violation of any legal contract touching the discharge of such trust; (d) Misappropriation either by the person entrusted with property or through any other person.

10. The expression “entrusted” means that a property has been voluntarily handed over for a specific purpose. The expression “entrusted” appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression “trust” in Section 405 of IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the

person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee.

11. In the case on hand, the floating charges were made on the goods by way of security to cover up credit facility. Therefore, in cases of disposing of the goods covering the security against credit facility, the offence of criminal breach of trust cannot be attracted.

12. On a perusal of records it is revealed that there is no ingredient to attract the offence under Sections 420 of I.P.C. Further even if it is a case of Breach of Trust, it would not mean that the accused had committed the offence of cheating.

13. Before adverting further, it would be relevant to go through the Judgments rendered by the Hon'ble Apex Court while dealing with the similar facts of the case.

a. I***n the case of Indian Oil Corpn Vs NEPS India Ltd and others*** reported in ***(2006) 6 SCC 736 ,*** the Hon'ble Supreme Court held as follows:-

25. The question is whether there is "entrustment" in an hypothecation/ Hypothecation is a mode of creating a security without delivery of title or possession. Both ownership of the movable property and possession thereof remain with the debtor. The creditor has an equitable charge over the property and is given a right to take possession and sell the hypothecated movables to recover his dues (note: we are not expressing any opinion on the question whether possession can be taken by the creditor without or with recourse to a Corut of law).. The Creditor may also hav ethe right to claim payment from the sale proceeds(if such proceeds are identifiable and available). The following definitions of the term " hypothecation" in P. Ramanatha Aiyar's Advanced Law Lexicon (3rd Edn (2005) Vol.2 pp,2179 and 2180) are relevant:

Hypothecation-- It is the act of pledging an asset as security for borrowing, without parting with its possession or ownership. The borrower enters into an agreement with the lender to hand over the possession of the hypothecated assets whenever called up to do so. The charge of hypothecation is then converted into that of a pledge and the lender enjoys the rights of a pledgee.

Hypothecation means a charge in or upon any movable property existing or future, created by a borrower in favour of a secured creditors without delivery of possession of the movable property to such creditor, as a security for financial assistance and includes floating charge and crystallisation of such charge into fixed charge on movable property . [Borrowed from Section 2(n) of Securitisation and Reconstruction for Financial Assets and Enforcement of Security Interest Act, 2002]"

But there is no "entrustment of the property" or "entrustment of dominion over the property" by the hypothecatee(Creditor) to the hypothecator (debtor) in an hypothecation. When possession has remained with the debtor/owner and when the creditor has neither ownership nor beneficial interest, obiviously there cannot be any entrustment by the creditor.

26. The question directly arose for consideration in Central Bureau of Investigation Vs Duncans Agro Industries Ltd. It related to a complaint against the accused for offences of Criminal breach of trust. It was alleged that a floating charge was created by the accused debtor on the goods by way of security under a deed of hypothecation, in favour of a bank to cover credit facility and that the said goods were disposed of by the debtor. It was contended that the disposal of the goods amounted to Criminal breach of trust. Negativing the said contention, this Court after estating the principle as to when a complaint can be quashed at the threshold, held thus

"[A] serious dispute has been raised by the learned counsel;; as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression " entrusted with property' or with any dominion over property' has been used in a wide sense in Section 405 of IPC. Such expression includes all cases in which goods are entrusted. That is voluntarily handed over for a specific purpose and dishonestly, disposed of in violation of law or in violation of contract. The expression " entrusted' appearing in Section 405 of IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is , however, necessary that the ownership of beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person by the same is kept in trust by the pledgee. In the instant case, a floating charge was made on the goods by way of security to cover up credit facility. In our view, in such case for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed:.

b. In the case of Delhi Race club (1940) Ltd. Vs State of U.P and others reported in (2024) 100 SCC 690***, the Hon'ble Supreme Court held as follows:-***

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transactions i.e the time when the offence is said to have been committed. Therefore, it is the intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

14. The above case squarely applies to the case on hand. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a *mens rea*, gives rise to a criminal prosecution as well.

15. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e since inception. In Criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property and he dishonestly misappropriated the same, whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

16. As stated supra the respondent was never entrusted with any property to attract the offence under sections 406 and 420 of I.P.C. Further in the case on hand admittedly the credit facility which was availed by the erstwhile partners of the petitioners' firm from the Indian Bank was taken over by the respondent. Thereafter, the partnership firm was reconstituted by inducting the petitioners as partners. Admittedly a part of the amount were settled by the petitioners and thereby the petitioners had absolutely no intention to commit default from the very inception of availing credit facility.

17. Hence, the Judgment passed in C.A.No.96 of 2022 on the file of III Additional District and Sessions Court, Erode at Gobichettipalayam on 27.04.2023 thereby confirming the order of conviction and sentence imposed by the Trial Court in CC.No.86 of 2012 on 24.06.2022 is hereby set aside and this

Criminal Revision case is allowed. The petitioners/accused is acquitted of all charges in CC.No.86 of 2012 on the file of the learned Principal Sessions Judge, Vellore, Vellore District and the petitioner is acquitted of all charges in C.C No.86 of 2012 on the file of the learned Principal Sessions Judge, Vellore, Vellore District. Fine amount, if any paid, shall be refunded to the petitioner forthwith. Bail bonds, if any executed, shall stand cancelled. However, the respondent is at liberty to proceed the case in the manner known to law.

30.03.2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

smn

To

1. The III Additional District and Sessions Court, Erode at Gobichettipalayam

2. The learned Judicial Magistrate No.1, Gobichettipalayam

3. The Regional Manager,
Bank of Baroda, Nambiyur Branch, Nambiyur,
Erode District.

4. The Public Prosecutor,

High Court, Madras

G.K.ILANTHIRAIYAN, J.

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