IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-01-2026

CORAM

THE HON'BLE MR JUSTICE A.D.JAGADISH CHANDIRA

CRL OP No. 19118 of 2023 and Crl.M.P.Nos.12802 and 18186 of 2023

1. SPAC Power Engineering India Pvt., Ltd.,
   Represented by its Managing Director,
   Praveen Miranda, S/o. Stanley Mrianda,
   Door No. 1451 (2nd Floor) Garden Avenue,
   Thiruvalluvar Nagar, Mogappair, Chennai - 37.

2. Praveen Miranda

3. Shifa

..Petitioners

Vs

1. State Represented by its
   The Inspector of Police,
   Central Crime Branch -1, Chennai.
   (Crime No. 10 Of 2023)

2. L.V. Karthikeyan,
   Managing Director,
   LVK Properties Private Limited,
   No. 3/7, Navaratna Garden 1st Cross Street,
   Ekkatuthangal, Chennai - 600 097. ..Respondents

PRAYER: Criminal Original Petition is filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records of the Cr.No.10 of 2023, pending on the file of Inspector of Police, Central Crime Branch - I, Chennai and quash the same as illegal.

For Petitioners : Mr.C.Pritheevraj
For Respondents : Mr.S.Santhosh
Government Advocate (Criminal Side) for R1
Mr.E.Hariharan for R2

## ORDER

The present Criminal Original Petition has been filed to quash the proceedings in Crime No.10 of 2023, pending on the file of Inspector of Police, Central Crime Branch - I, Chennai.

2. The case of the prosecution is that the second respondent company received a work order from the petitioner company on 18.07.2022 for piling works at desalination plant at AV Nagaram in Andhra Pradesh site. The work order was initially valued at Rs.10,56,81,000/-. The second respondent company carried out all the works as per the work order issued by the petitioner company and no default was reported by the petitioner company until the petitioner company issued Demand Notice under Insolvency and Bankruptcy Code, 2016 on 21.11.2022 for a total outstanding of Rs.1,79,73,185/-. The second respondent company, in fact, had installed a plant in A V Nagaram by spending around Rs.25,00,000/-. Further, the petitioner company borrowed a sum of Rs.10,50,000/- from the second respondent by way of account transfer and cash on 08.08.2022, 17.08.2022 and 24.08.2022. The petitioner company informed the second respondent company that the contract which they had entered into with one Lyfius Pharma Private Limited got cancelled and the work order stalls. Later, when the second respondent company requested the petitioner company to clear the dues, there was no proper response from the petitioner company. However, on 21.10.2022, the petitioner company transferred a sum of

Rs.50,00,000/- as they received a part payment from Lyfius Pharma Private Limited, who is the project holder and also promised to pay the remaining amount of Rs.1,79,73,185/- when they receive the next payment from Lyfius Pharma Private Limited. Thereafter, on 12.11.2022, the Managing Director of the petitioner company orally promised to clear the balance amount of Rs.1,79,73,185/- on or before 15.11.2022 and also issued a cheque dated 15.11.2022 bearing No.000609 drawn on ICICI Bank, Porur Branch, for the said sum. On 15.11.2022, the said cheque was presented into the second respondent company's bank account but before it could be encashed, the petitioner company had issued “stop payment” instruction to the bank which resulted in dishonour of the cheque. Therefore, the second respondent company gave a complaint before the first respondent police which was registered in Crime No.10 of 2023 for the offences under Sections 406 and 420 r/w. Section 34 of IPC.

3. The learned counsel appearing for the petitioners submitted that the prosecution case revolves around the complaint regarding non-payment of money against the work order dated 18.07.2022. He further submitted that even considering the entire averments in the FIR at their face value, neither a case of cheating nor a case of criminal breach of trust can be made out as against the petitioners. Further, the de facto complainant has also approached this Court seeking arbitration and the said petition was dismissed directing the de facto

complainant to approach the Civil Court for recovery of money. Based on these submissions, the learned counsel for the petitioner submitted that the impugned FIR has to be quashed *in limine*.

4. The learned Government Advocate (Criminal Side) appearing for the first respondent police submitted that based on the complaint given by the second respondent/de facto complainant that the accused have not paid the amounts towards work order carried on, the case has been registered. He further submitted that the accused have to pay an amount of Rs.1,79,73,185/- and the investigation has been stayed.

5. The learned counsel appearing for the second respondent submitted that the petitioner induced the de facto complainant to take up the work and subsequently, failed to honour the commitment.

6. In reply, the learned counsel appearing for the petitioners submitted that the petitioners have so far paid an amount of Rs.86,00,000/- and since the work was not performed properly and due to the stoppage of work by Aurobindo Pharma Limited (sister concern of Lyfius Pharma Ltd.), the petitioners were not able to continue with the work and the ingredients of cheating and criminal breach of trust cannot co-exist and the allegations do not make out a case for cheating or criminal breach of trust.

7. Heard the learned counsel for the respective parties and also perused the materials available on record.

8. At the outset, it is to be pointed out that to make out an offence under Section 420 IPC, there should be deception from inception which is evidently absent in this case from a reading of the complaint. Superadded, as rightly argued by the learned counsel for the petitioner, the offences under Sections 406 and 420 IPC cannot co-exist simultaneously as has been unequivocally held in **Delhi Race Club 1940 Ltd. & others vs State of Uttar Pradesh and another**[1]. The relevant portion of the said judgment, at the cost of prolixity, is reproduced below:

> ***"Difference between criminal breach of trust and cheating***
>
> 35. This Court in its decision in *S.W. Palanitkar* v. *State of Bihar* [*S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10)
>
>> "*9*. The ingredients in order to constitute a criminal breach of trust are : (*i*) entrusting a person with property or with any dominion over property; (*ii*) that person entrusted : (*a*) dishonestly misappropriating or converting that property to his own use; or (*b*) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (*i*) of any direction of law prescribing the mode in which such trust is to be discharged, (*ii*) of any legal contract made, touching the discharge of such trust.

[1] (2024) 10 SCC 690

> *10*. The ingredients of an offence of cheating are : (*i*) there should be fraudulent or dishonest inducement of a person by deceiving him, (*ii*)(*a*) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (*b*) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (*iii*) in cases covered by (*ii*)(*b*), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

*In order to constitute a criminal breach of trust (Section 406 IPC)*

> (1) There must be entrustment with person for property or dominion over the property, and
>
> (2) The person entrusted:
>
> (*a*) Dishonestly misappropriated or converted property to his own use, or
>
> (*b*) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:
>
> (*i*) Any direction of law prescribing the method in which the trust is discharged; or
>
> (*ii*) Legal contract touching the discharge of trust (see : *S.W. Palanitkar* [*S.W. Palanitkar* v. *State of Bihar*, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] ).

*Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:*

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: *Harmanpreet Singh Ahluwalia* v. *State of Punjab* [*Harmanpreet Singh Ahluwalia* v. *State of Punjab*, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620] ).

37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

38. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal

breach of trust as defined under Section 405IPC, punishable under Section 406IPC, 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 and explained in Section 415IPC, punishable under Section 420 IPC.

39. 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. It has been held in *Hari Prasad Chamaria* v. *Bishun Kumar Surekha* [*Hari Prasad Chamaria* v. *Bishun Kumar Surekha*, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082] as under : (SCC p. 824, para 4)

> "*4*. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

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 transaction i.e. the time when the offence is said to have been committed. Therefore, it is this 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.

43. 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."

(emphasis supplied)

9. Taking into consideration the entire averments in the complaint, it is as clear as day that the alleged breach of contract has been give a cloak of criminal offence. Further, no intention to cheat existed on the part of the petitioners from the inception nor any act of criminal breach of trust was committed by the petitioners. That apart, the second respondent/de facto complainant is said to have approached this Court seeking arbitration and the said petition has also been dismissed directing the second respondent/de facto complainant to approach the Civil Court for recovery of money. From these, it

is easily discernible that an attempt has been made by the de facto complainant to arm-twist the petitioners and recover money from the petitioners by police action.

10. *Ergo*, this Court is of the considered view that continuation of the impugned proceedings is nothing but an abuse of process of law and the same is liable to be quashed.

10. Accordingly, the case in Cr.No.10 of 2023 on the file of the first respondent police is quashed and as a sequel, this Criminal Original Petition stands allowed. Consequently, the connected criminal miscellaneous petitions are closed.

**09-01-2026**

Index: Yes/No
Neutral Citation: Yes/No
SRM

To

1.The Inspector of Police,
Central Crime Branch -1,
Chennai.

2.The Public Prosecutor,
High Court of Madras.

**A.D.JAGADISH CHANDIRA, J.**

SRM

CRL OP No. 19118 of 2023

09-01-2026