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CRL OP No. 23784 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29-01-2026

CORAM:

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

CRL.O.P.No.23784 of 2025

and

CRL.M.P.No. 24456 of 2025

1. Sudha
2. Kowsalya
3. Satheesh @ K.Satheesh Kumar

..Petitioner(s)

Vs

1. State Rep by,
The Inspector of Police,
K-5, Peravallur Police Station,
Chennai.

2. V.Vanisha,

..Respondent(s)

Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records and quash the First Information Report dated 09.05.2025 in Crime No.166/2025 on the file of K-5, Peravallur Police Station, Chennai against the petitioners.

For Petitioners

Mr.T.Jayaramaraj

For Respondents:

Mr.K.M.D. Muhilan
Additional Public Prosecutor
for R1

Mr.M.Naveen Kumar Murthi
for R2



ORDER

This petition has been filed seeking to quash the First Information Report dated 09.05.2025 in Crime No.166 of 2025 on the file of the 1st respondent for the offences punishable under Sections 406, 420 and 506(I) of IPC.

2. The case of the prosecution is that the *de facto* complainant became acquainted with the first petitioner through their respective children who were studying at SBOA School. Owing to such acquaintance, the first petitioner, along with the second petitioner, who is the mother of the first petitioner, used to visit the house of the *de facto* complainant and thus their relationship developed as family friendship. It is alleged that during the period from 02.06.2015 to 09.08.2018, the first and second accused received a total sum of Rs.43,50,000/- from the *de facto* complainant towards renovation of their house and for other miscellaneous purposes. Subsequently, when the *de facto* complainant had gone to London, the first petitioner is stated to have contacted her over phone and, during the period from 26.10.2018 to 13.11.2018, received a further sum of Rs.7,50,000/-. While in London, upon the request of the first petitioner, the *de facto* complainant purchased certain items worth Rs.2,04,600/- and sent the same to the first petitioner, who had allegedly agreed to repay the said amount. Thereafter, in the year 2022, upon the request of the first petitioner, the *de facto* complainant is said to have purchased electronic items worth Rs.7,36,800/-, but the first petitioner allegedly failed to return the money.



When the husband of the *de facto* complainant got employment in Canada, the *de facto* complainant relocated to Canada and subsequently, demanded repayment of the amounts allegedly due. While so, the petitioners are alleged to have failed to repay the money and when questioned, are said to have threatened the *de facto* complainant with dire consequences.

3. The learned counsel appearing for the petitioners contended that even as per the prosecution case, the dispute arises purely out of a monetary transaction between the parties who have admittedly been close friends for a long period. The alleged monetary transactions are stated to have taken place between the years 2015 and 2018 and even if the entire averments in the complaint are taken at their face value and accepted in their entirety, the essential ingredients for constituting the offence under Section 420 IPC are wholly absent and hence, the said offence cannot be made out against the petitioners. In support of his contention that offences under Sections 406 and 420 IPC cannot co-exist and that the said offences can be attracted only when intention to defraud or dishonest intention is present, from the very beginning or inception and that for cheating, criminal intention is necessary since inception, the learned counsel for the petitioners relied on the judgment of the Supreme Court in **Delhi Race Club 1940 Limited and others v. State of Uttar Pradesh and another [(2024) 10 SCC 690]**.



4. The learned counsel for the petitioners further contended that the allegation of criminal intimidation has been introduced only with an ulterior motive to give a criminal colour to what is essentially a civil dispute, solely for the purpose of registering the present case. He further contended that the petitioners have already repaid a sum of Rs.60,00,000/- and that the 2nd respondent is attempting to misuse the criminal process and exert pressure upon the petitioners through police intervention to secure an illegal settlement and that the ingredients necessary to attract Section 506(I) IPC are also absent as per the judgment in **Manik Taneja and another v. State of Karnataka and another [(2015) 7 SCC 423]**.

5. The learned Additional Public Prosecutor appearing for the 1st respondent police contended that the petitioners have induced the *de facto* complainant and received a sum of Rs.60,41,400/- and refused to repay the amount and when it was demanded by the *de facto* complainant, they threatened the *de facto* complainant with dire consequences. He further submitted that the investigation is pending.

6. Mr.M.Naveen Kumar Murthi, learned counsel for the *de facto* complainant submitted that the petitioners, misusing the trust and friendship, with an intention to cheat, induced the *de facto* complainant to part with cash to



the tune of Rs.43.50 lakhs towards renovation of their house and other purposes during the period between 02.06.2015 and 09.08.2018 and during the period between 26.10.2018 to 13.11.2018, received a further sum of Rs.7.50 lakhs and they also made the *de facto* complainant purchase certain items to the tune of Rs.2,04,600/- and electronic items for a sum of Rs.7,36,800/- and later, refused to repay the amount. The petitioners repeatedly assured that they would return the money and there are communications, including WhatsApp messages evidencing the petitioners acknowledging liability and agreeing to repay the amount. Later, they refused to return the amount and when the *de facto* complainant demanded the amount, they had criminally intimidated the *de facto* complainant and their family members. He would further submit that the offences alleged are made out against the petitioners and the FIR cannot be quashed at this stage.

7. In reply, the learned counsel appearing for the petitioners submitted that even then, the dispute is purely civil in nature arising out of loan transactions and no offence of cheating or criminal intimidation can be made out as against the petitioners.



8. Heard the learned counsel appearing on either side and perused the materials on record.

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9. The allegation, in short, as against the petitioners is that the petitioners, misusing the friendship and trust, had received an amount of Rs.43.50 lakhs during the period between 02.06.2015 and 09.08.2018 towards renovation of their house and other purposes and subsequently, after the *de facto* complainant had gone to London, contacted her over phone and during the period from 26.10.2018 to 13.11.2018 received a further sum of Rs.7.50 lakhs and they also made the *de facto* complainant purchase several items, including electronic items worth about Rs.10 lakhs and later, refused to repay the amount of Rs.60,41,400/- to the *de facto* complainant and hence, a case was registered for the offences punishable under Sections 406, 420 and 506(i) of IPC.

10. It is trite law that for an offence of cheating, there should be an intention to cheat from the inception of the contract. In this case, it is stated that there are several transactions between the petitioners and the *de facto* complainant from the year 2015 and further, the 1st petitioner and the *de facto* complainant are known to each other for a long time and no averments of inducement or intention to cheat from the inception of the transaction are made out in the complaint.

11. In this regard, it would be felicitous to advert to the judgment in **Delhi Race Club**, *supra*, the relevant portion of which reads as under:



“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.

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 420 IPC, 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



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(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)

12. Further, in **Manik Taneja**, *supra*, the Supreme Court has held as to when an offence under Section 506(I) IPC can be said to be made out. The relevant paragraph from the said judgment reads as under:



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“11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. “Criminal intimidation” as defined in Section 503 IPC is as under:

“503.*Criminal intimidation*.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section.”

A reading of the definition of “criminal intimidation” would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.”

13. In the instant case, other than the vague and bald allegations that the petitioners had failed to repay the amount of Rs.60,41,400/- and when questioned, are said to have threatened the *de facto* complainant with dire consequences, there is no other averment in the FIR for making out a case for the offence under Section 506(I) IPC.

14. In view of the above discussion, this Court is of the opinion that the impugned case against the petitioners in Cr.No.166 of 2025 on the file of K-5, Peravallur Police Station, Chennai, is an abuse of process of law and ergo, the same is quashed. However, it is made clear that this Court has not rendered any finding with regard to the civil dispute between the parties.



15. As a sequel, this Criminal Original Petition is allowed. Connected
Crl.M.P. stands closed.

29-01-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
MPS

To

1. The Inspector of Police
K-5, Peravallur Police Station
Chennai
2. The Public Prosecutor
Madras High Court
Chennai – 600 104



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A.D.JAGADISH CHANDIRA J.

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