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Crl.O.P. No.27534 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.01.2026
DELIVERED ON: 19.01.2026

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

Crl.O.P. No.27534 of 2025 and Crl.M.P. Nos.18611 and 18615 of 2025

David K. Pillai
Managing Director of Transworld Educare Pvt. Ltd.
No.85, Lotus Floor
Guindy, Chennai 600 032

Petitioner

VS.

Ashok Kumar

Respondent

Criminal Original Petition filed under Section 528 of the BNSS, 2023, to call for the records pertaining to the case in C.C. No.938 of 2025 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai and quash the same.

For petitioner Mr. B. Arvind Srevatsa
For respondent Mr. D. Senthilvel

ORDER

This criminal original petition has been filed to call for the records pertaining to the case in C.C.No.938 of 2025 on the file of the IX Metropolitan Magistrate Court, Saidapet, Chennai¹ and quash the same.

2. For the sake of clarity, the parties are referred to as per their rank in this criminal original petition.

¹ for brevity "the Trial Court"



3. The facts leading to the filing of this criminal original petition could succinctly be stated thus:

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3.1 The respondent filed a private complaint against the petitioner alleging that he (respondent) was employed in Kings International Medical Academy run by the petitioner as an Accountant-cum-Manager; the petitioner was imparting medical courses in Philippines and the candidates who were aspiring to practise medicine were assured of practice in allopathic medicine in India; the nature of job of the respondent was to check the travel documents of those students and to follow up with regard to their stay in Philippines at the time of they pursuing their courses; during COVID-19 pandemic period, the respondent was given an additional responsibility of fetching students for the petitioner for which the petitioner promised the respondent to pay service charges on the basis of number of students he fetches for him; however, the students canvassed by the respondent and who underwent course in Philippines could not practise allopathic medicine in India since the course undergone by them in the institution run by the petitioner was not recognized by the National Medical Council; when questioned by the respondent, the petitioner threatened the respondent that he



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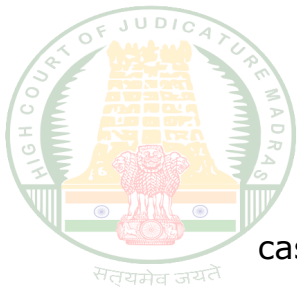
will not get his service charges and he will also be terminated from employment; upon being caused legal notice by the respondent, the petitioner stopped payment of salary to the respondent and also terminated the respondent from service; hence, the respondent filed the private complaint against the petitioner for the offences under Sections 406, 420 and 506(II) IPC.

3.2. Challenging the aforesaid complaint, the accused has filed the present criminal original petition.

4. The learned counsel for the petitioner made the following submissions:

a. in order to make out a case of cheating, there should be an intention on the part of the accused right from the inception of the contract, whereas, in the case on hand, there is no allegation that the petitioner had an intention to cheat the respondent right from the beginning and a case of alleged non-payment of service charges and termination is projected as a case of cheating;

b. even if the allegations in the complaint are considered at their face value, at the most, a case can be made out only for breach of contract and a case of breach of trust cannot be made out;



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c. the Supreme Court has, time and again, held that a case of cheating and criminal breach of trust cannot co-exist;

d. a mere allegation that the respondent was threatened of dire consequences will not make out a case for an offence under Section 506(II) IPC; and

e. when the complaint was filed by the respondent on 20.01.2025 and the date of cognizance is 03.06.2025 which is after the kicking in of the BNSS, 2023, *i.e.*, 01.07.2024, the Trial Court ought to have afforded an opportunity of hearing to the petitioner as mandated under the first proviso to Section 223(1), *ibid.*

5. In support of his contention that in order to make out a case for the offence under Section 420 IPC, deception should be right from the time of inception and that the offences under Section 406 and 420 IPC cannot co-exist, the learned counsel for the petitioner relied on the judgment of the Supreme Court in **Delhi Race Club 1940 Ltd. & others vs State of Uttar Pradesh and another**².

6. With regard to his contention that a mere allegation that the respondent was threatened with dire consequences will not make out a case for the offence under Section 506(II) IPC, the learned counsel for the

² (2024) 10 SCC 690



petitioner placed reliance on the judgment of the Hon'ble Apex Court in **Manik Taneja and another vs State of Karnataka**³.

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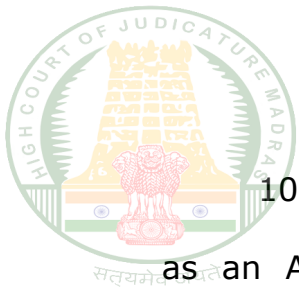
7. To buttress his argument that the petitioner ought to have been afforded an opportunity of hearing as per the first proviso to Section 223(1) of the BNSS before the respondent's complaint was taken cognizance, the learned counsel for the petitioner relied on a recent judgment of the Supreme Court in **Kushal Kumar Agarwal vs. Directorate of Enforcement**⁴.

8. The learned counsel for the respondent, *per contra*, contended that the petitioner, with an intention to cheat the respondent from the inception, had, by assuring to pay service charges, induced him to fetch candidates and after extracting his services, had cheated by not paying the service charges, besides criminally intimidating the respondent; the Trial Court, rightly finding that the offences of cheating and criminal intimidation are made out, had taken cognizance which is perfectly justified and hence, the same calls for no interference.

9. Heard the learned counsel for the parties and perused the materials available on record.

³ (2015) 7 SCC 423

⁴ (2025 SCC OnLine SC 1221)



10. Admittedly, the respondent was employed under the petitioner as an Accountant-cum-Manager and he was entrusted with the job of checking the travel documents of the students undergoing course in Philippines under the petitioner, to follow up with regard to their stay in Philippines at the time of they pursuing their courses and to do the needful to them, if any problem arises for them. It is also not in dispute that as a *quid pro quo*, the petitioner had promised to pay service charges to the respondent in commensurate with the number of candidates the respondent fetches for the petitioner to undergo the course concerned.

11. As stated in paragraph no.3.1, *supra*, the allegation against the petitioner is that he had cheated the respondent by not paying the service charges as agreed upon by him and when questioned, he terminated the respondent from service and also threatened him of dire consequences. To be noted, 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. 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 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



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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)

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12. Insofar as the offence of Section 506(II) IPC is concerned, in **Manik Taneja, supra**, it has been candidly held that mere expression of words without there being any intention to cause alarm would not suffice to attract the said offence. In this regard, it would suffice to extract the following portion from the said judgment:

“12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of “criminal intimidation”. The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty.....”

(emphasis supplied)

13. That apart, as rightly argued by the learned counsel for the petitioner, when admittedly the BNSS had kicked in on and from 01.07.2024 and cognizance having been taken post the kicking in of BNSS, the Trial Court ought to have afforded an opportunity of hearing to the petitioner before taking cognizance of the complaint as held in **Kushal Kumar Agarwal, supra** the relevant portion of which reads thus:



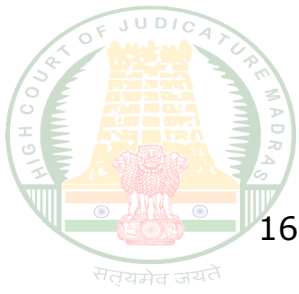
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“6. The proviso to sub-section (1) of Section 223 puts an embargo on the power of the Court to take cognizance by providing that no cognizance of an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard.

7. In this case, admittedly, an opportunity of being heard was not given by the learned Special Judge to the appellant before taking cognizance of the offence on the complaint. Only on that ground, the impugned order dated 20th April, 2024, will have to be set aside.”

14. Taking into consideration the facts of the present complaint which is sought to be quashed, the respondent, who is an employee under the petitioner, has alleged that he was not paid service charges as assured and that when he had demanded the same, he was intimidated by the petitioner. There is absolutely no averment that the petitioner had intended to cheat the respondent right from the inception. That apart, the threat also does not seem to be real. By no stretch of imagination, the allegation made in the complaint would attract the ingredients of the offences under Section 406, 420 and 506(II) IPC. Furthermore, concededly, no opportunity of being heard was also afforded to the petitioner before taking cognizance.

15. For all the reasons aforesaid, in the considered opinion of this Court, continuing with the impugned proceedings against the petitioner is an abuse of process of law and accordingly, the same is quashed.



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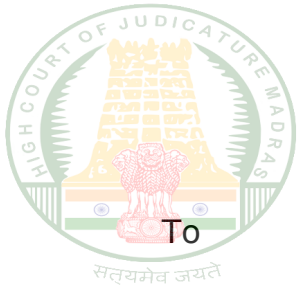
16. As a sequitur, this criminal original petition stands allowed.

Connected criminal miscellaneous petitions stand closed.

19.01.2026

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Neutral Citation:Yes



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The IX Metropolitan Magistrate
Saidapet
Chennai – 600 015



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A.D. JAGADISH CHANDIRA, J.

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