



IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.5000 OF 2025
(Arising out of Special Leave Petition (Crl.) No.4939 of 2018)

INDER CHAND BAGRI **...APPELLANT**

VERSUS

JAGADISH PRASAD BAGRI & ANOTHER **...RESPONDENTS**

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. This appeal arises out of the order dated 13.02.2018 passed by the High Court of Gauhati in Criminal Petition No.190 of 2015 dismissing the application filed under Section 482 of the Code of Criminal Procedure (hereinafter “CrPC” for short) preferred by the appellant-accused, Inder Chand Bagri and thereby refusing to quash the proceedings instituted under Sections 406/420/120B of

the Indian Penal Code, 1860 (for short, “IPC”) arising out of the Complaint Case C.R.No.3230c of 2013 dated 19.09.2013 before the Court of Chief Judicial Magistrate, Kamrup, Gauhati that was filed by Jagadish Prasad Bagri, the complainant/respondent No.1.

3. Briefly stated, the facts of the case are that the appellant-accused along with four other individuals namely Bhagwandas Bagri, Ramkishan Bagri, Shyamsundar Bagri and Jagdish Prasad Bagri (complaint/respondent No.1) resolved to constitute a partnership firm *vide* partnership deed dated 01.10.1976 in the name and style of ‘INDRACHAND BAGRI AND BROTHERS’ (hereinafter referred to as “firm”). The aim of said partnership firm was to carry on business of construction of warehouses and godowns and subsequently letting them out to third parties. As per the terms of the said partnership deed, the appellant-accused agreed to bring into the partnership, for the purpose of business, the land owned by him situated at New Dag No.2760 of New Patta No. 455, Village Maidamgaon, Mouza Beltola, District: Kamrup, Assam (hereinafter referred to as “disputed property”). Subsequently, two godowns were constructed on the said disputed property and leased out to Food Corporation of India on

01.04.1978 and 01.06.1978 for a period of fifteen years i.e. till 01.06.1993.

4. Thereafter, the partners of the said firm decided to enter into a supplementary agreement on 03.04.1981 that was an addendum to the original partnership deed dated 01.10.1976. In the said supplementary agreement, it was decided conjointly by all the partners that the appellant-accused shall be permitted to utilise the disputed property for his individual interest. It was also mutually decided that in the event of vacancy of the godowns by the Food Corporation of India after the determination of lease deed on 01.06.1993, the said disputed property shall revert back to the appellant-accused along with all the rights, title and interest to the said property.

5. The said godowns were vacated by 1995 thereafter the partners of the said firm decided to dissolve the said partnership firm *vide* the dissolution deed dated 03.04.1997 w.e.f. 01.04.1997. Further it was mutually agreed upon that all the assets and liabilities of the said firm would stand transferred to the appellant-accused and the said firm would be his sole proprietary concern.

6. The complainant/respondent No.1 filed a Title Suit No.144 of 1998 for dissolution of the firm and rendition of partnership accounts before Civil Judge (Senior Division) No.1, Gauhati wherein the Court, *vide* order dated 08.09.2020, passed an *ex-parte* preliminary decree declaring that the said partnership firm is dissolved with effect from 08.09.2000 and the same shall be advertised as such in the Gazette.

7. Thereafter, on 20.06.2011, the appellant-accused executed a sale deed No.5359 of 2011 in favour of his nephew, one Ajit Kumar Bagri for the consideration of Rs.94.60 lakh and thereby transferred the said disputed property situated at New Dag No.2760 of New Patta No.455, Village Maidamgaon, Beltola, District Kamrup, Assam to him.

8. Aggrieved by the execution of the said sale deed, the complainant/respondent No.1 filed a Title Suit No.160 of 2012 before Court of Civil Judge No.1, Kamrup at Gauhati against the appellant-accused and the rest of the partners of the said firm seeking relief of setting aside of the sale deed No.5359 of 2011 dated 20.06.2011 and declaration that the said disputed property

belongs to the firm and thereby permanently restraining the appellant-accused from alienating the said disputed property.

9. Furthermore, the complainant/respondent No.1 filed a complaint case being CR Case No.3230c of 2013 on 19.09.2013 against the appellant-accused and Ajit Kumar Bagri, who was arraigned as accused No.2, under Section 406, 420 and 120B of the IPC. The allegations made out in the said complaint can be summarised as follows:

- i. That the appellant-accused was entrusted by the complainant/respondent No.1 and other partners with the firm's properties i.e. the disputed property allotted in favour of the firm, the warehouses and godowns.
- ii. The appellant-accused dishonestly misappropriated the said disputed property belonging to the firm for his own and sold it to accused No.2 and therefore the appellant-accused has committed an offence of Criminal Breach of Trust. It is further alleged that the appellant-accused failed to account for profits and losses accruing to the firm post-March 1993.

iii. It is further alleged that the appellant-accused induced the complainant/respondent No.1 into entering in the partnership deed and thereafter connived with accused No.2 to intentionally cheat and deceive the complainant/respondent No.1 by selling the disputed property belonging to the firm and thereby committed the offence of cheating.

iv. Lastly, it is alleged by the complainant/respondent No.1 that appellant-accused and accused No.2 together hatched a conspiracy to misappropriate the property of the firm and connived and cheated the complainant/respondent No.1 by dishonestly inducing him to invest capital in the partnership firm and thereafter selling the disputed property of the firm to accused No.2.

10. *Vide* order dated 25.02.2014, the Sub-Divisional Judicial Magistrate(I) Kamrup, Gauhati took cognizance of the complaint against the appellant-accused in CR Case No.3230c of 2013 under Section 406, 420 and 34 of the IPC and thereafter issued summon to the appellant-accused to appear before the Court.

11. Aggrieved by the order dated 25.02.2014 of the Sub-Divisional Judicial Magistrate (I) Kamrup, the appellant-accused preferred Criminal Petition No.190 of 2015 under Section 482 CrPC before the Gauhati High Court praying for the relief of quashing of the cognizance order dated 25.02.2014 as well as the Complaint Case being CR Case No.3230c of 2013.

12. The Criminal Petition No.190 of 2015 preferred by the appellant-accused was clubbed together with Criminal Petition No.620 of 2014 preferred by accused No.2 and was disposed of *vide* common impugned order dated 13.02.2018 of the Gauhati High Court. The High Court deemed it fit to quash the criminal proceedings arising out of CR Case No.3230c of 2013 against accused No.2. However, the High Court refused to quash the said criminal proceedings against the appellant-accused wherein it was observed that the complainant/respondent No.1 has been successful in making out a *prima facie* case against the appellant-accused. It was also observed that the material relied upon by the appellant-accused is not of a quality so as to merit quashing of the charges against him. It was further held that the points raised by the appellant-accused deserve scrutiny which can only be done by

the Trial Court and not by the High Court while exercising its inherent jurisdiction under Section 482 CrPC. Therefore, the High Court directed the Trial Court to proceed with the criminal proceedings against the appellant-accused.

13. Aggrieved by the impugned order dated 13.02.2018 passed by the High Court of Gauhati, the appellant-accused has preferred the present appeal.

14. The learned counsel for the appellant-accused contends that the complaint filed by the complainant/respondent No.1 on 19.09.2013 is time-barred as the same was instituted 16 years after the alleged acts of criminal breach of trust, without any application for condonation of delay under Section 473 CrPC, and is thus barred by three-year limitation period under Section 468(2)(c) CrPC. It is further argued that the complainant/respondent No.1 suppressed the supplementary deed dated 03.04.1981 and the deed of dissolution dated 03.04.1997, based on which an *ex-parte* decree had already been passed in the Title suit No.144 of 1998 for the dissolution of partnership and rendition of accounts in a suit preferred by the complainant/ respondent No.1 himself and hence they cannot dispute the factum of

dissolution. It is also contended that since the Civil Suit No.160 of 2012 for setting aside the sale deed dated 20.06.2011 was filed by the complainant/respondent No.1, prior to the criminal complaint, the initiation of the latter amounts to an abuse of process of law, especially when no other partners raised any objections or complaints regarding the sale of the property. Finally, it is submitted that the appellant-accused resided in Bangalore and did not manage the partnership accounts, as the duty of maintaining accounts and distributing profits was entrusted to one Bhagwandas Bagri as per the partnership deed dated 01.10.1976.

15. On the contrary, the Learned Counsel for the complainant/respondent No.1 submits that the appellant-accused was expressly entrusted with the firm's properties, including the land allotted to the firm, thereby fulfilling the ingredients of offences under Sections 405 and 406 of the IPC. It is argued that any property brought in by a partner becomes the property of the firm, and upon dissolution, a partner is entitled only to a share in the value of the firm's assets after liabilities are settled, as reflected in Clause 4 of the partnership deed dated 01.10.1976. The complainant/respondent No.1 contends that the appellant-accused did not

disclose or rely upon the supplementary and dissolution deeds during the trial, rendering their authenticity doubtful. Lastly it is asserted that there is no legal bar on pursuing civil and criminal proceedings simultaneously, and despite the civil nature of the dispute, the existence of clear criminal elements justifies continuation of the criminal proceedings.

16. Heard the learned counsel for the appellant and learned counsel for the respondent-State as well as complainant/respondent No.1. We have perused the material on record and we have given our thorough consideration to the arguments advanced at the bar and the material on record.

17. The contents of the complaint would have to be read in light of the ingredients of Sections 406 and 420 of the IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 19.09.2013, it is noted that the complainant/respondent No.1 has filed the said complaint invoking Sections 406/420 of the IPC. For ease of reference, the aforesaid Sections are extracted as under:

“406. Punishment for criminal breach of trust.—

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a

term which may extend to three years, or with fine, or with both.

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420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

18. In ***Inder Mohan Goswami vs. State of Uttaranchal, (2007)***

12 SCC 1 (“Inder Mohan Goswami”), while dealing with Section 420 of the IPC, this Court observed thus:

“42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

19. In light of the facts and circumstances of the present case, we find that the complainant/respondent No.1 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 of the IPC. We fail to understand as to how the allegations against the appellant-accused herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the complaint, we do not find that the offence of cheating as defined under Section 420 of the IPC is made out at all and we do not find that there is any cheating and dishonest inducement to deliver any property of a valuable security involved in the instant case.

20. It is settled law that for establishing the offence of cheating, the complainant/respondent No.1 was required to show that the appellant-accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the partnership agreement. Such a culpable intention right at the beginning cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of material on record to attribute any dishonest and fraudulent intention to the appellant-accused at the time of creation of

partnership agreement. We must hasten to add that there is no allegation in the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant-accused right from the time of formation of the partnership deed. Nothing has been said on what the misrepresentations were and how the appellant-accused intentionally deceived the complainant/respondent No.1. Mere allegations that the appellant-accused dishonestly induced the complainant/respondent No.1 to part with the property of the partnership firm and subsequently sold the property to a third party does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 of the IPC.

21. On perusal of the allegations contained in the complaint, in the light of the ingredients of Section 406 of the IPC, read in the context of Section 405 of the IPC, we again fail to see how an offence of criminal breach of trust can be made out. It is a trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of a property entrusted to him. In the case of

criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only civil liability would depend upon the facts and circumstances of the case.

22. In the present case, the complainant/respondent No.1 has failed to establish ingredients essential to constitute an offence under Section 406 of the IPC. The complainant/respondent No.1 has failed to place any material on record to show us as to how he had entrusted the subject property to the appellant-accused. Furthermore, the complaint/respondent No.1 also omits to aver as to how the property, so entrusted to the appellant-accused, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust. On the contrary, the bare perusal of the partnership deed dated 01.10.1976 shows that the disputed property was solely owned and enjoyed by the appellant-accused wherein as per Clause 4 of the said agreement he agreed to bring into the partnership the said disputed property. We must hasten

to mention herein that upon reading of the supplementary agreement dated 03.04.1981, it becomes amply clear that all the partners including the complainant/respondent No.1 had agreed that upon expiry of the lease period of 15 years with the Food Corporation of India i.e. 01.06.1993, the said land would revert back to the appellant-accused along with all the constructions erected upon it. In the facts of the present case, the complainant/respondent No.1 cannot be allowed to blow hot and cold at the same time wherein on one hand, through the supplementary deed, he has agreed upon the reversion of the said disputed property back to the original owner i.e. appellant-accused and yet on the other hand has proceeded to file a complaint alleging cheating and misappropriation of said disputed property against appellant-accused.

23. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.1 that the offence of criminal breach of trust as defined under Section 405 of the IPC, punishable under Section 406 of the IPC, 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 in Section 415,

punishable under Section 420 of the IPC. This Court in ***Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690*** observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making 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 a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot coexist simultaneously in the same set of facts as they are antithetical to each other.

24. The complainant/respondent No.1 has an alternative remedy of filing a civil suit to set aside the sale deed dated 20.06.2011 and claim damages for the alleged violation of his contractual rights which he is already pursuing *vide* Title Suit No.160 of 2012 against the appellant-accused which is currently pending adjudication and

hence the route through criminal proceedings, when no ingredient of offence is made out, cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas. The appellant-accused therefore, in our view, could not be attributed any *mens rea* and therefore, the allegations levelled by the prosecution against the appellant-accused are unsustainable.

25. Furthermore, in ***Inder Mohan Goswami***, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant-accused herein would cause undue harassment to him because as observed hereinabove, no *prima facie* case for the offence under Sections 406 or 420 of the IPC is made out.

26. In this regard, it would be apposite to rely on the judgment in the case of ***State of Haryana vs. Bhajan Lal, 1992 Suppl (1) SCC 335 (“Bhajan Lal”)*** with particular reference to paragraph 102 therein, where this Court observed:

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power Under Article 226 or the inherent powers Under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the Accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the Accused and with a view to spite him due to private and personal grudge.”

27. On a careful consideration of the aforementioned judicial dicta, we find that none of the offences alleged against the appellant-accused herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant-accused herein have been made with a *mala-fide* intent and therefore, the judgment of this Court in the case of **Bhajan Lal** extracted above, squarely applies to the facts of these cases. It

is neither expedient nor in the interest of justice to permit the present prosecution to continue.

28. At this juncture, we find it apposite to mention the observations of this Court in ***Vishal Noble Singh vs. State of Uttar Pradesh, 2024 SCC OnLine SC 1680*** wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No.1 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.

29. In the aforementioned circumstances, the impugned order of the High Court is set aside and consequently, the Complaint Case No.3230c of 2013 dated 19.09.2013 pending before Sub-Divisional

Judicial Magistrate (I) Kamrup, Gauhati, Assam and all consequent proceedings initiated pursuant thereto stand quashed.

30. The appeal is allowed in the aforesaid terms.

.....J.
(B.V. NAGARATHNA)

.....J.
(R. MAHADEVAN)

**NEW DELHI;
NOVEMBER 24, 2025.**