

**IN THE COURT OF SH. JITENDRA SINGH,
SPECIAL JUDGE (PC ACT) (CBI)-23,
(MPs/ MLAs CASES),
ROUSE AVENUE COURT COMPLEX: NEW DELHI.**

**Criminal Revision Petition No. 24/2025
CNR No. DLCT11-000386-2025**

In the matter of :-

Sh. Rohit Singh Mahiyaria
R/o A/501, Duplex Heights,
Yamuna Nagar, Andheri (W),
Mumbai-400 053.

..... Complainant

Versus

1. State of N.C.T. of Delhi

.... Respondent no. 1

2. Sh. Bhanwar Jitendra Singh

R/o Phool Baug Palace,
Alwar, Rajasthan.

Also at - Secretary A.I.C.C. 24,
Akbar Road, New Delhi-110 001

Also at - L8 & 9, Ist Floor,
South Extension, Part-2,
New Delhi-110 011.

..... Respondent no. 2

(i) Date of filing of Revision Petition	: 01.05.2025
(ii) Date on which Order was reserved	: 31.10.2025
(iii) Date of pronouncement of Order	: 11.11.2025

ORDER

1. The present revision petition has been filed under Section 440 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as “BNSS”) by Sh. Rohit Singh Mahiyaria (hereinafter referred to as “the Complainant”), challenging the order dated 21.03.2025 (hereinafter referred to as “the impugned order”) passed by the Ld. Additional Chief Judicial Magistrate-01 (hereinafter referred to as “the Trial Court”) in Complaint Case No. 03/2025, titled “*Rohit Singh Mahiyaria vs. Bhanwar Jitender Singh*”.

2. By the said impugned order, the Ld. Trial Court dismissed the complaint filed by the complainant against respondent no. 2 under Section 190(1)(a) read with Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”), alleging commission of offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”), in exercise of powers under Section 203 Cr.P.C.

Brief Facts of the Case:

3. The complainant, an art collector and proprietor of *Art Sanatan*, alleged that in April 2014, respondent no. 2 approached his mother, Dr. Prabha Thakur, at her government residence, seeking to borrow a painting by late artist M.F. Hussain, purchased by her on 24.09.2013 from Gallery Sachi, Mumbai, for ₹22,50,000/-. The complainant further alleged that the respondent no. 2 had expressed his desire to borrow the painting in question with the intention of showing it

to his wife, who was an admirer of the works of late artist M.F. Hussain, and to discuss with her the possibility of purchasing the said artwork. It is further alleged that, since the respondent no. 2 was personally known to the complainant's mother, she acceded to his request and lent the painting to him. However, she had categorically informed the respondent no. 2 at the time of handing over the painting that its valuation exceeded ₹1 crore. The complaint further avers that, after a few days of lending the painting, the complainant requested the respondent no. 2 to return the same. The respondent no. 2, however, sought some time to comply, stating that the painting was presently in Alwar, Rajasthan. In 2017, respondent no. 2 expressed his inability to locate the said painting and offered Bundi miniature paintings in lieu thereof. He invited the complainant to his residence at 41, Meena Bagh, Maulana Azad Road, where, during the meeting, the complainant requested respondent no. 2 to display the miniature paintings so that their value could be assessed. In response, respondent no. 2 stated that he would bring the paintings to Alwar, and on this pretext, managed to delay the return of the original painting.

4. The complainant continued to rely on the assurances given by respondent no. 2 until around July 2018, when Dr. Prabha Thakur and the brother of the complainant met respondent no. 2 on the Shatabdi Express train, where he allegedly refused to return the painting. Since 2014, the complainant's mother had repeatedly requested respondent no. 2, through phone calls and messages sent to his mobile number, to return the painting. Despite receipt of these messages, respondent no. 2 failed to

respond. A legal notice dated 02.08.2019 was thereafter issued to him, which also remained unanswered.

Pre- summoning Evidence :

5. The complainant examined himself as CW-1 and, in his statement dated 17.07.2023, reiterated the facts stated in the complaint. He deposed that his mother, Dr. Prabha Thakur, had purchased a painting by late artist M.F. Husain on 24.09.2013 for ₹22,50,000/-, and subsequently gifted it to him. The invoice evidencing the purchase of painting in question has been exhibited as Ex. CW-1/A. Around April 2014, the respondent no. 2 approached Dr. Prabha Thakur at her Government residence, expressed interest in the artwork, and requested to borrow it for showing to his wife, who was said to be fond of the artist. Relying on this assurance, the painting, valued at about ₹1 crore, was handed over to him. When Dr. Prabha Thakur later sought its return, the respondent no. 2 stated that the painting was in Alwar, Rajasthan, and would be returned shortly. Despite repeated requests, he failed to do so, later claiming it could not be located and offering Bundi miniature paintings instead.

6. In October 2017, the respondent no. 2 met Dr. Prabha Thakur at their residence, 42, Meena Bagh, Delhi, but did not bring the paintings, promising to deliver them later, which he never did. In July 2018, during a journey from Jaipur to Delhi on the Shatabdi Express train, Dr. Prabha Thakur and her son Rahul Singh met the respondent no. 2, who bluntly refused to return the painting and told her to forget about

it. Despite several calls and messages. Respondent no. 2 neither responded nor returned the artwork. The copies of the SMS messages have been collectively exhibited as Ex. CW1/B (Colly). A legal notice dated 02.08.2019 was sent to the respondent no. 2 at his Delhi and Alwar addresses through Speed Post. The legal notice has been exhibited as Ex. CW1/C, while the postal receipts have been exhibited as CW1/D and CW1/E. However, no reply was received. Thereafter, the complainant was constrained to file the present complaint before the Ld. Trial Court.

7. The complainant examined his mother, Dr. Prabha Thakur, as CW-2, who deposed that she had purchased a painting by late artist M.F. Husain in September 2013 for a consideration of ₹22,50,000/- and had thereafter gifted the same to her son, the complainant. At the relevant time, CW-2 was serving as a Member of Parliament and residing at 7, Gurudwara Rakabganj Road, New Delhi, while the respondent no. 2 was also a Member of Parliament from Alwar, Rajasthan, and known to her personally. CW-2 stated that in April 2014, the respondent no. 2 approached her with a request to borrow the said painting to show it to his wife, who was an admirer of the artist's work, and expressed willingness to purchase it if she approved. Upon being informed that the painting was valued at about ₹1 crore, the respondent no. 2 took it with him. However, when subsequently inquired, he stated that he would not be purchasing it as it was costly and further delayed its return on one pretext or another, claiming that it was with his wife in Alwar. CW-2 further deposed that the respondent no. 2 later informed her that the painting could not be located but that he would hand over

certain Bundi miniature paintings of equivalent value. In 2017, when both parties were residing in the same premises, the respondent no. 2 met CW-2 and was asked to provide the said miniatures for valuation, which he failed to do and thereafter stopped responding to calls and messages. CW-2 testified that she had been sending messages and making phone calls to the respondent no. 2, which were never replied to. She further deposed that in July 2018, while travelling from Jaipur to Delhi by the Shatabdi Express train along with her son Rahul Singh, she met the respondent no. 2 on the same train and requested return of the painting, to which he bluntly replied that she should forget about it and that he would not return the same. Thereafter, a legal notice was sent by the complainant to the respondent no. 2, which remained unanswered. CW-2 clarified that no earlier legal action had been initiated owing to the longstanding personal and political association with the respondent no. 2, who was then serving as the In-charge of the Youth Congress.

Submissions by the Ld. Counsel for the Complainant:

8. Ld. Counsel for the Complainant has contended that the material placed on record, comprising the testimony of witnesses along with the relevant documentary evidence, is sufficient to justify the summoning of respondent no. 2. It is further submitted that the Ld. Trial Court failed to appreciate that the essential ingredients of the offences of cheating and criminal misappropriation are clearly made out from the pre-summoning evidence. It is also urged that the complainant is in possession of the mobile phone from which the SMS messages in

question were transmitted to respondent no. 2. However, the Ld. Trial Court, instead of examining the entire sequence of messages in their proper context, erroneously relied upon an isolated portion thereof. The findings of the Trial Court are thus founded on presumptions and inferences drawn from facts which do not exist on record. Lastly, it is submitted that the Ld. Trial Court has exceeded its jurisdiction by embarking upon a critical evaluation of evidence at the pre-summoning stage and basing its conclusions on mere surmises and conjectures. It is, therefore, prayed that the impugned order be set aside and respondent no. 2 be summoned to face trial in accordance with law.

Reply filed by respondent no. 2 :

9. In reply, respondent no. 2 opposed the revision petition filed by the complainant assailing the impugned order, whereby the complaint was dismissed for want of ingredients of the alleged offences. It is averred that the present revision petition is misconceived, devoid of merit, and a misuse of judicial process intended to harass and malign respondent no. 2. The complainant's mother, Dr. Prabha Thakur, and respondent no. 2 were members of the Indian National Congress; while Dr. Prabha Thakur served as an MP from 2002–2014, respondent no. 2 held ministerial positions. After 2014, Dr. Prabha Thakur repeatedly sought political favours which were declined, and the present complaint, filed in 2019, is a result of political animosity. Further, the allegation that a painting of Lord Ganesha was handed over in April 2014 and not returned is false and unsubstantiated. The impugned order is well-

reasoned and free from any illegality or perversity. It is, thus, prayed that order dated 21.03.2025, being reasoned and lawful, deserves to be upheld and the revision petition be dismissed with exemplary costs.

Submissions by the Ld. Counsel for respondent no. 2:

10. It is submitted by Ld. Counsel that the entire dispute, at its core, pertains to the ownership and return of a moveable property, which fundamentally is a civil dispute for which adequate remedies exist in civil law. Further, the institution of the criminal complaint is vitiated by an inordinate and unexplained delay of more than five years, which points towards the malafide intention of the complainant. It is the admitted case that the alleged transaction occurred in April 2014, yet the complaint was filed in 2019. Therefore, the complaint suffers from delay and barred u/s 468 of Cr.P.C.

11. It is further submitted that revisional powers cannot be exercised to re-appreciate evidence. The dispute, even on its face, is purely civil in nature, pertaining to ownership or consideration and does not entail criminal liability. The concurrent invocation of Sections 406 and 420 of IPC is self-contradictory and untenable. Moreover, the relied-upon documents i.e. a photocopy of the invoice, printed messages, and an unserved legal notice are inadmissible for lack of certification under Section 65B of the Indian Evidence Act, 1872. It is further submitted that there is no proof of delivery of the alleged painting, as CW-1 and CW-2 made inconsistent statements. The Ld. ACJM rightly held that no

prima facie offence is made out and that issuance of process under Section 204 Cr.P.C. Reliance has been placed upon the judgments; *Amit Kapoor v. Ramesh Chander*, (2012) 9 SCC 460, *Dilawar Singh v. State of Delhi*, (2007) 12 SCC 641, *Delhi Race Club (1940) Ltd. v. State of U.P.*, 2024 SCC OnLine SC 2248, *U. Sree v. U. Srinivas*, (2012) 2 SCC 114 and *Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749. Ld. Counsel has, thus, prayed for the dismissal of the revision petition.

Findings:

12. This Court observes that the revisional jurisdiction conferred under Section 397 of the Cr.P.C, is of a limited and supervisory nature. The provision empowers the Revisional Court to call for and examine the record of any inferior court to satisfy itself regarding the correctness, legality, or propriety of any finding, sentence, or order, and the regularity of the proceedings. The object of this jurisdiction is to rectify patent defects, jurisdictional errors, or manifest illegalities which have resulted in a miscarriage of justice.

13. It is a settled proposition that the revisional power cannot be invoked as a matter of course, nor can it be exercised to re-appreciate or re-evaluate evidence merely to reach a conclusion different from that of the Trial Court. Interference in revision is warranted only where the decision under challenge is grossly erroneous, based on no evidence, suffers from perversity or arbitrariness, or where material evidence has

been ignored or the provisions of law have not been duly complied with.

14. Bearing in mind the aforesaid principles, the facts and circumstances of the present case are required to be examined within the contours of the limited revisional jurisdiction. The power of the Revisional Court is to ensure that the proceedings before the subordinate court are in accordance with law, free from jurisdictional infirmity, and that the ends of justice have not been defeated by any illegality, irregularity, or perversity in the impugned order.

15. The Ld. Trial Court, while dismissing the complaint, appears to have primarily relied upon a solitary SMS sent by CW-2, Dr. Prabha Thakur, at 10:34 AM, to infer that the painting in question had been gifted to respondent no. 2. The said message, which was selectively extracted and relied upon by the Court, reads as under:

“Hussain’s painting of Ganesh is v expensive. My son can’t afford to gift you so pl return his painting. Pl call me. I have sent you many SMS but no response. Rohit is v upset blaming me.”

16. However, a holistic reading of the entire chain of SMS messages exchanged immediately prior to the aforesaid message clearly indicates that the complainant’s mother had been persistently requesting the return of the painting and that there was no reference whatsoever to any gift until the last message, which, in fact, conveys the contrary. The preceding messages, sent within minutes of each other, read as follows:

“10:31 a.m. — “Dear Shri Bhanwar Sa.. kindly return the Hussain Ganesha painting which is worth 80 lacs as my son Rohit is very

upset because he has already received a token gainer this painting and he has to close the deal. I have requested you the same ...”

10:32 a.m. — “Please send me my son’s paintings of Husain.”

10:32–10:33 a.m. — “Not sending our paintings, this is not fair. Pl reply. Prabha Thakur.”

10:33 a.m. — “Pl send Ganesh painting. Pl consider my request, take this painting back. Can’t bear so big loss.”

10:34 a.m. — “Rohit is very upset. Kindly return his Ganesh painting by Husain. Pls tell me when can I collect it from you? Prabha Thakur.”

17. When the entire sequence of communications is read conjointly, the inference drawn by the Ld. Trial Court that the painting was gifted to the respondent no. 2 is manifestly unsustainable. The tenor and language of the messages unmistakably show that CW-2 was repeatedly requesting the respondent no. 2 to return the painting and expressing distress over his continued non-response. Far from indicating a voluntary gift, the message at 10:34 a.m., relied upon by the Trial Court, specifically states that “my son can’t afford to gift you”, thereby negating the very notion of a gift and reaffirming that the painting belonged to the complainant.

18. Thus, when the series of messages is appreciated in its entirety, it becomes evident that the complainant’s mother was asserting ownership and seeking restitution of the painting, and that the isolated reliance on one portion of the last message, divorced from its context, has led to ignoring of material evidence and an erroneous finding by the

Ld. Trial Court.

19. This Court finds itself in agreement with the reasoning adopted by the learned Trial Court that, in the facts and circumstances of the present case, the offences of cheating and criminal misappropriation cannot simultaneously be invoked. It is a settled proposition of law that the offence of cheating presupposes a dishonest intention at the very inception of the transaction, whereas criminal misappropriation arises subsequent to a lawful entrustment, when the property so entrusted is dishonestly converted for one's own use. In the present case, the materials on record indicate that the painting in question was voluntarily entrusted by the mother of the complainant to the accused, which negates any inference of dishonest intention at the inception of the transaction. The nature of the entrustment, as reflected from the complaint and accompanying documents, therefore, does not prima facie satisfy the essential ingredients of the offence of cheating under Section 415 IPC. Consequently, the allegations, if taken at their face value, would at best give rise to the offence of criminal misappropriation.

20. Upon a careful consideration of the material placed on record, this Court finds that the Ld. Trial Court has erred in law and on facts in arriving at the conclusion that no offence is made out against the respondent no. 2. The record clearly demonstrates that the painting in question was entrusted to the respondent no. 2 in April, 2014 only for a limited purpose, namely, to show it to his wife and to consider its purchase. The entrustment was made in good faith and without any

transfer of ownership. The subsequent conduct of the respondent no. 2, in failing to return the painting despite repeated oral and written requests, offering false assurances, and ultimately refusing to return the same, unmistakably reflects dishonest retention and misappropriation of entrusted property, thereby fulfilling the ingredients of criminal breach of trust within the meaning of Section 406 of IPC.

21. It is further observed that the specific refusal to return the painting was made by the respondent no. 2 in July 2018, as deposed by CW-2, Dr. Prabha Thakur, who stated that while travelling in the Shatabdi Express train she met the respondent no. 2 and, upon requesting him to return the painting, he categorically refused to do so. Hence, the institution of the present complaint on 16.12.2019 is in conformity with the statutory period of limitation, as prescribed under Section 468 of Cr.P.C., and cannot be said to be barred by time.

22. **Thus, the material available on record prima facie discloses sufficient grounds to proceed against respondent no. 2 for the offence punishable under Section 406 of IPC.** Accordingly, the impugned order dismissing the complaint under Section 203 Cr.P.C. is set aside. The Ld. Trial Court is directed to proceed further in accordance with law and to pass appropriate orders. The complainant and respondent no. 2 are directed to appear before the Ld. Trial Court on **25.11.2025** for further proceedings.

23. A copy of this order, along with the Trial Court Record, be sent back to the Ld. Trial Court.

24. Let a copy of this order be given *dasti* to both the parties.

**Announced in the open Court
on 11.11.2025.**

**(Jitendra Singh)
Special Judge (PC Act) CBI-23
(MPs/MLAs Cases)
Rouse Avenue Court Complex,
New Delhi; 11.11.2025**