



REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. _____ OF 2025
[@ SPECIAL LEAVE PETITION (CRIMINAL) NO.8626 OF 2024]

S. N. VIJAYALAKSHMI & ORS. ...APPELLANTS

A1: S. N. VIJAYALAKSHMI

A2: V. S. SRIDEVI

A3: V. S. SRILEKHA

A4: K. V. KRISHNAPRASAD

VERSUS

STATE OF KARNATAKA & ANR. ...RESPONDENTS

R1: STATE OF KARNATAKA

R2: KEERTHIRAJ SHETTY

J U D G M E N T

AHSANUDDIN AMANULLAH, J.

Leave granted

2. I.A. Nos.141246/2024 and 215072/2024 are allowed; exemptions from filing Official Translation(s) are granted. I.A. No.215071 of 2024 is closed.

3. The respondent no. 2/complainant (Keerthiraj Shetty) had filed Private Complaint Report No.12357/2022 dated 20.07.2022 (hereinafter referred to as 'PCR'), under Section 200 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') before the learned IIIrd Additional Chief Metropolitan Magistrate, Bengaluru (hereinafter referred to as the 'ACMM'). The PCR was referred to the Sanjay Nagar Police Station for investigation under Section 156(3) of the CrPC *vide* Order dated 21.07.2023. After the referral order, First Information Report bearing Crime No.260/2023 (hereinafter referred to as the 'FIR') came to be registered on 05.10.2023 against the four appellants and the other accused ¹ for offences punishable under Sections 405, 406, 415, 417, 418, 420, 504, 506, 384 and 120B read with 34 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').

4. The present appeal impugns the Final Judgment and Order dated 03.06.2024 in Criminal Petition No.12452 of 2023 (hereinafter referred to as the 'Impugned Judgment') passed by a learned Single Judge of the High Court of Karnataka at Bengaluru (hereinafter referred to as the 'High Court'), whereby the appellants' petition seeking quashing of the FIR was dismissed.

¹Reference to the accused in this judgment is as per their position in the FIR

FACTUAL SETTING:

5. The case has a chequered history and it would be necessary to advert, in some detail, to the relevant factual backdrop amidst which the FIR came to be lodged, as can be culled out from the Impugned Judgment and pleadings. The complainant has alleged that the accused no.1-K. V. Jayalakshamma (in some cases/records, this is spelt as 'Jayalakshamma' but reference is to the one and same person) along with K. V. Srinivasa Murthy and K. V. Prabhakar (these three have passed away – the accused appellants are their family members) were joint owners of the properties in Sy. No.20 measuring 3 acres 33 *guntas* and in Sy. No.21 to an extent of 2 acres 32 *guntas* in Bhoopasandra Village, Bangalore North Taluk (these properties are hereinafter collectively referred to as the 'subject property'). One D. Muniswamy executed Sale Deed dated 19.10.1967 in respect of the said land of Sy. No.20 to one Lakshminarasimhaiah, who purchased the same in trust for K. V. Shrinivas Murthy and K. V. Prabhakar. Later, K. V. Shrinivas Murthy and K. V. Prabhakar filed a suit viz. O. S. No.907/1975 for declaration and permanent injunction against the said Lakshminarasimhaiah. The said suit came to be decreed on 28.11.1975/19.02.1976. In respect of Sy. No.21 land, occupancy rights for 3

acres in Bhoopasandra Village was conferred *vide* Order dated 22.06.1994 in proceedings being LRF-924, 941 of 1974-1975 by the Land Tribunal. Accordingly, Form No.10 was issued in favour of K. V. Jayalakshamma and K. V. Shrinivas Murthy.

6. Meanwhile, the Bangalore Development Authority (hereinafter referred to as the 'BDA') came into the picture. The BDA was set up by an Act of the Karnataka State Legislature on 06.01.1976. It sought to acquire the subject property and Preliminary Notification dated 19.01.1978 and Final Notification dated 28.12.1982 was issued. Pursuant to the acquisition, the lands in the subject property were allotted to other persons. In 1988, there was a dispute as to the ownership of the subject property between Syed Bashid and others on one side and K. V. Jayalakshamma along with K. V. Srinivasa Murthy and K. V. Prabhakar on the other side. The subject property was in the possession of Syed Bashid. Later, the Government de-notified the subject property by Notification dated 27.08.1992. Since the BDA had already allotted the sites, the allottees filed Writ Petitions No.37719-25/1992, 3216-17/1993, 11001/1993, 23205/1993, 32221/1993, 15718/1996 and 2154/1996 challenging the de-notification before the High Court. During the pendency of these petitions in the High Court, both parties

referred above, entered into a Mutual Agreement dated 06.09.1996, which was arbitrated by Ravishankara Shetty. The possession of the subject property was purportedly handed over to Ravishankara Shetty and, it is claimed, he has been in possession since then. Thereafter, the writ petitions filed by the allottees came to be allowed and the order of de-notification came to be quashed by a learned Single Judge of the High Court *vide* Order dated 23.09.1996. It is around then that the accused sought the help of Ravishankara Shetty to fight the litigations on the pretext that once the title becomes marketable, they would sell the subject property to him. The order of the learned Single Judge dated 23.09.1996 in the writ petitions adverted to above was sought to be reviewed by filing Writ Petitions No.9517/1999 and 10875-92/1999 which were dismissed by another learned Single Judge on 03.12.2001. The Order dated 03.12.2001 was subjected to an intra-Court challenge in Writ Appeals No.679/2002 and 3479-96/2002 connected with 680/2002 and 3497-3514/2002, which were dismissed by a learned Division Bench on 26.03.2004. Civil Appeal No.6220/2009, with analogous cases, filed before this Court, emanating from the Writ Appeals, were finally dismissed on 18.11.2015. It is the complainant's case that based on the false assurances by the accused, Ravishankara Shetty spent a lot of time,

money and energy fighting the litigation(s) and on his insistence, and after much reluctance, the accused agreed to enter into an Agreement to Sell (hereinafter referred to as the 'ATS'). Ravishankara Shetty permitted his nominee (the complainant) to enter into the ATS on his behalf.

7. Accordingly, on 30.11.2015, the accused executed an ATS with the complainant for a sale consideration of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs) in respect of the subject property. All the accused signed the ATS and K. V. Krishna Prasad (appellant no.4) signed as a consenting witness. On even date, the accused also executed a General Power of Attorney (hereinafter referred to as 'GPA') in favour of the complainant, which included the power to sell the subject property. Further, it is alleged that appellant no.4 requested the complainant not to include a time-stipulation clause in the ATS as they were not aware when they would get the alienable title to the subject property. A sum of Rs.2,00,000/- (Rupees Two Lakhs) was paid to the appellant no.4 with the consent of the other accused.

8. Writ Petitions No.53124-53126/2015 were filed by K. V. Jayalakshamma, seeking to declare the land acquisition as lapsed in respect of the subject property as the BDA had failed to implement the

concerned scheme. The said writ petitions came to be allowed by a learned Single Judge of the High Court *vide* Order dated 05.02.2016. The subsequent appeals bearing Writ Appeals No.547-548 and 1483/2016 filed by BDA were dismissed as withdrawn *vide* Order dated 07.06.2016. The allottees of the sites had also filed Writ Appeals No.550-551/2016 and 611/2016, which were disposed of by Order dated 05.12.2016, with liberty to initiate independent proceedings before the BDA. Thereafter, a Memorandum of Understanding (hereinafter referred to as 'MoU') dated 10.12.2016 was entered into between one M/s Legacy Global Realty i.e., developers with the family of the accused i.e., the appellants and a sum of Rs.2,00,00,000/- (Rupees Two Crores) was paid into the account of K.V. Prabhakar, who in turn remitted a sum of Rs.1,00,00,000/- (Rupees One Crore) into the account of appellant no.4 for himself and the rest of the accused, who are his family members.

9. On 22.04.2020, the Deputy Commissioner, Bangalore City issued a conversion order in respect of the subject property. After the title of the subject property became marketable, the complainant went to the accused for making further payment, but the accused refused to honour the ATS. On 12.05.2022, the complainant approached appellant no.4, who extended

death threats to him. Aggrieved, the complainant lodged a complaint by approaching the jurisdictional Sanjay Nagar police, who issued an acknowledgment but refused to register an FIR. On 06.06.2022, the complainant learnt that the accused had revoked the GPA executed by them in his favour. The complainant issued Legal Notice dated 14.06.2022 to execute the Sale Deed and calling upon the accused to receive the balance sale consideration of Rs.1,48,00,000/- (Rupees One Crore Forty-Eight Lakhs). The appellants no.1-3 along with accused no.3 executed a registered Release Deed dated 27.06.2022 in favour of accused no.1 with regard to the subject property. On the same day, accused no.1 executed a GPA in favour of the appellant no.4. Subsequently, *vide* a registered Gift Deed dated 12.07.2022, accused no.1 conveyed the subject property in favour of appellant no.4. Pursuant to this, the complainant filed PCR No.12357/2022 on 20.07.2022 with the ACMM, setting up the case that he had invested a huge sum of money, but the accused with a clear intention had cheated him.

10. On 22.07.2022, the complainant filed O.S. No.4780/2022 against the appellants before the learned Principal City Civil Judge at Bengaluru City (hereinafter referred to as the 'Civil Court') seeking to declare the Release

Deed and GPA dated 27.06.2022 as not binding and for directing the defendants therein to perform their part of the ATS. This suit is still pending adjudication. Meanwhile, on 19.12.2022, the complainant approached the Deputy Commissioner of Police by filing a complaint under Section 154(3) of the CrPC. Subsequently, on 21.07.2023, the ACMM referred the complaint to the Sanjay Nagar Police Station, which registered the FIR. Aggrieved by the registration of the FIR, the appellants who are accused nos.2, 4, 5, and 6 in the complaint, approached the High Court by filing Criminal Petition No.12452/2023 under Section 482 of the CrPC praying to quash the FIR, which has been rejected by way of the Impugned Judgment.

APPELLANTS' SUBMISSIONS:

11. At the outset, learned senior counsel for the appellants submitted that this Court in ***Priyanka Srivastava v State of Uttar Pradesh, (2015) 6 SCC 287*** mandated following of a certain procedure before invoking the provisions of Section 200 of the CrPC. However, in the present matter, the complainant did not comply with the requirements as provided under Section 154(1) and Section 154(3) of the CrPC, and the Impugned Judgment erred in observing that the said was a curable defect.

12. On merits, it was submitted that the essential ingredients of Sections 415 and 420 of the IPC are conspicuously absent in the FIR. There is no mention of any inducement by the appellants of the complainant from the inception nor of any dishonest intention at the time of making of the promise in question. Reliance was placed on ***Onkar Nath Mishra v State of NCT Delhi, (2008) 2 SCC 561*** to argue that the essential ingredients of Section 406 of the IPC pertaining to criminal breach of trust i.e., entrustment, misappropriation, conversion etc. are completely missing from the FIR. Thus, the *sine qua non* for maintaining an FIR under the said provisions of the IPC is missing and the FIR ought to be quashed on this count alone.

13. In contrast, it was pointed out, it is alleged in the FIR by the complainant himself that '*after the increase in the market value of the said property, the accused started cheating the complainant.*' Thus, the complainant's own statement militates against any claim of inducement at the inception or harbouring of a dishonest intention at the time of making the promise. This statement by itself, it was urged, is fatal to any FIR alleging cheating.

14. Learned senior counsel relied on the decision in ***Delhi Race Club (1940) Limited v State of Uttar Pradesh, 2024 SCC Online SC 2248*** and argued that it is now settled law that an FIR cannot be maintained under both Sections 406 and 420 of the IPC as the ingredients of both Sections are mutually exclusive and cannot co-exist.

15. Reference was made to the decision in ***G Sagar Suri v State of Uttar Pradesh, (2000) 2 SCC 636*** to contend that the dispute *inter-se* the parties is purely of a civil nature, which is maliciously being given a colour of criminality and the averments in the FIR do not constitute any offence whatsoever. Further, the averments are substantially the very basis for the reliefs claimed in the pending civil suit.

16. It was pointed out by the learned senior counsel that in terms of the ATS, the complainant was required to resolve problems/litigations concerning the title of the subject property, ensuring it became saleable within three months of the resolution of litigation. Clearances were obtained in the year 2016 following the filing of writ petitions related to the acquisition of the subject property by the BDA. However, no further action occurred nor were any steps taken for several years thereafter.

17. Therefore, in 2022, the appellants were constrained to take protective steps like relinquishing the property to their mother-in-law etc., only after issuing prior Legal Notice to the complainant dated 06.06.2022 and a Public Notice as well. The Power of Attorney executed in the complainant's favour was cancelled only after duly intimating him.

18. It was submitted that the High Court primarily focused on the law relating to registration of FIRs and private complaints, with no discussion on whether the ingredients of the alleged offences were made out and there was absolutely no inquiry on the absence of essential ingredients of the Sections invoked in the FIR.

19. It was further submitted that a sum of Rs.2,00,00,000/- (Rupees Two Crores) was paid to one K. V. Prabhakar, who has since passed away, through a separate MoU executed by a different entity, namely, M/s Legacy Global Realty. Consequently, funds were never received by the appellants. The MoU was only restricted to the development of the subject property.

20. Learned senior counsel contended that the statements recorded in favour of the complainant is of Mrs. Achalavidya, daughter of Late K. V. Prabhakar, with whom the complainant had entered into a compromise in

the civil suit filed by them. The said compromise has been rejected by the Civil Court. These two facts establish that the statement of P. Nagalakshmi (Defendant No.6) and Mrs. Achalavidya (Defendant No.7) cannot be given any credence since they are not independent, and are evidently siding with the complainant against the appellants.

21. Learned senior counsel relied on ***V P Shrivastava v Indian Explosives Ltd., (2010) 10 SCC 361*** to argue that it is settled law that subsequent failure to not honour a promise cannot form basis of initiating criminal actions alleging cheating or criminal breach of trust. On the basis of these submissions, learned counsel submitted that the High Court has erred in not quashing the FIR. It was advanced that the appeal be allowed and the FIR be quashed by this Court.

RESPONDENT NO.2-COMPLAINANT'S SUBMISSIONS:

22. At the outset, learned senior counsel for the respondent no.2-complainant submitted that it is well-settled that at the stage of an FIR, the Court does not interfere if the complaint on the face of it discloses the commission of offences, as alleged. At this stage, only the complaint has to be looked into and nothing else. The High Court has, therefore, rightly

declined to interfere and this Court, under Article 136 of the Constitution of India, 1950 (hereinafter referred to as the 'Constitution'), ought not interfere now. Reliance was placed on the decisions of this Court in ***Neeharika Infrastructure Private Ltd. v State of Maharashtra***, (2021) 19 SCC 401 and ***Siddharth Mukesh Bhandari v State of Gujarat***, (2022) 10 SCC 525.

23. It was submitted that during the pendency of the complaint with the ACMM, in order to comply with the requirement of law laid down in ***Priyanka Srivastava*** (*supra*), the complainant also filed a complaint before the Deputy Commissioner of Police, Bengaluru on 19.12.2022. The complainant filed an affidavit before the ACMM on 12.01.2023. After compliance of the mandate of law, the ACMM, acting under Section 156(3) of the CrPC, referred the case to the jurisdictional police to register FIR, conduct investigation and submit report. It was reiterated that the affidavit as per ***Priyanka Srivastava*** (*supra*) was filed before the referral order by the ACMM was passed.

24. It was submitted that the ATS was arrived at between the parties on account of the fact that the vendors had realised that they had lost their land in the acquisition proceedings. The consideration for sale was fixed at Rs.3,50,00,000/- (Rupees Three Crores and Fifty Lakhs), out of which

Rs.2,00,000/- (Rupees Two Lakhs) in cash was paid immediately and the balance sale consideration was payable on the execution and registration of the deed of conveyance. Along with the ATS, the accused/vendors executed GPA dated 30.11.2015 acknowledging the execution of the ATS and conferring upon the complainant all powers, including the power to sell the subject property. All these facts are evident from the provisions of the ATS.

25. It was submitted that it is an admitted position that the complainant took diverse steps over a long period of time to make the land saleable. Learned senior counsel took us through the steps so taken in this regard and submitted that the title of the subject property is still not clear as Writ Petitions No.16093/2021 [***Smt K V Jayalakshamma and Anr. v The Bruhat Bangalore Mahanagara Palike and Ors.***] and 16179/2020 [***Smt K V Jayalakshamma and Anr. v The Bruhat Bangalore Mahanagara Palike and Ors.***] are still pending before the High Court, on account of resistance by the Bruhat Bengaluru Mahanagara Palike (hereinafter referred to as the 'BBMP') to *Katha* registration. It was further submitted that time was clearly not the essence of the ATS and therefore the stage has yet not been reached to execute the Sale Deed.

26. The appellants, being clearly aware of this position, decided to defraud and cheat the Complainant by first cancelling the GPA followed by execution of release deed dated 27.06.2022 by Accused Nos.2 to 5 in favour of Accused No.1, coupled with execution of GPA in favour of Accused No.6-K. V. Krishna Prasad by Accused No.1 on 27.06.2022 and execution of Gift deeds on 12.07.2022 in favour of Mr. K. V. Krishnaprasad by Jayalakshamma. All these actions have been taken with a view to cheat the complainant of his valuable right to the property in question and misappropriate the said property which was categorically promised to be sold to the complainant.

27. It was submitted that all these facts need to be investigated by the police and therefore the ACMM has rightly passed the order for investigation which was completed and subsequently Chargesheet dated 28.08.2024 has been filed and cognizance taken on 30.08.2024.

28. Moreover, it was contended that the accused first received Rs. 2,00,000/- (Rupees Two Lakhs) and subsequently received Rs.2,00,00,000/- (Rupees Two Crores) through the complainant's efforts

from M/s Legacy Global Realty. This fact has been corroborated by the manager Shri Sanjay C. of M/s Legacy Global Realty, the statement of Smt. P. Nagalakshmi w/o Mr. K. V. Prabhakar and the statement of Achalavidya D/o of Mr. K. V. Prabhakar.

29. On the basis of the above, it was submitted that this is not a fit case for interference under Article 136 of the Constitution, as the appellants neither have a case on merits nor does the law support them. Prayer was made to dismiss the appeal. It was thereafter submitted that in case this Court was inclined to allow the appeal, in the interest of justice and equity, it would be necessary to prevent the appellants from creating third-party rights with respect to the subject property. Hence, alternative prayer was made to direct the appellants not to create third-party rights in respect of the subject property.

SUBMISSIONS BY THE RESPONDENT-STATE:

30. Learned counsel for the State of Karnataka submitted that offences under Sections 406, 420, 120B, 34 of the IPC are made out against the appellants based on the evidence collected during investigation. In this

regard, attention was drawn to the fact that the Chargesheet was filed on 28.08.2024 before the ACMM and cognizance thereupon has been taken on 30.08.2024.

31. It was found during investigation that the appellants had dishonest intention from the inception and that they never intended to honour the agreement. In this regard, R. M. Chandran, a witness to the ATS and GPA dated 30.11.2015, has stated that the accused had no intention of honouring the agreement and that the accused induced Ravishankara Shetty and the complainant to enter into the ATS only with the intention of taking their help to clear the pending litigation. Further, Nagalakshmi and Achalavidya, wife and daughter of Late Mr. K. V. Prabhakar, respectively who was one of the executants of the ATS and the GPA, have given a statement about the execution of the ATS and the GPA on 30.11.2015 and receipt of sum of Rs.2,00,00,000/- (Rupees Two Crores) and Rs.2,00,000/- (Rupees Two Lakhs). Hence, the execution of the ATS and GPA dated 30.11.2015 is clearly established by the said statements.

32. It was submitted that investigation revealed that the complainant has been fraudulently and dishonestly induced to enter in to the ATS and has

been deceived. It was urged that there is sufficient material on record to proceed against all the appellants. In these circumstances, prayer was made to dismiss the appeal.

ANALYSIS, REASONING & CONCLUSION:

33. Having heard learned senior counsel for the parties and after going through the material on record, the issue that emerges is as to whether the criminal case against the appellants should proceed. This has to be examined from two angles. *Firstly*, as to whether any criminal offence in the background of the factual position is made out to justify criminal proceedings against the appellants? *Secondly*, whether on the same cause of action, based on the afore-noted facts, both civil and criminal proceedings can simultaneously go on?

34. On the first question, the admitted position is that the appellants have title over the subject property. They are said to have entered into an ATS with the complainant, who was himself the nominee of one Ravishankara Shetty. The ATS stipulated that the complainant's side would help to get the legal issues which had cropped up with regard to the ownership of the subject property resolved in favour of the appellants and upon the same

being done, the appellants agreed to sell the subject property to the complainant for a total consideration of Rs.3,50,00,000/- (Rupees Three Crores Fifty Lakhs). The ATS was entered on 30.11.2015. Pursuant thereto, the appellants also executed a GPA in favour of the complainant on the same day, which authorised him to take all necessary steps for getting the title of the appellants clear and marketable and also for selling the property on their behalf. Writ Petitions No.53124-53126/2015 were filed by Jayalakshamma, through the GPA-holder, seeking to declare the land acquisition as lapsed in respect of the subject property, contending that the BDA failed to implement the concerned scheme. These writ petitions were allowed in the favour of the appellants by the learned Single Judge on 05.02.2016. Though, the same was challenged by BDA, the writ appeal(s) was later on withdrawn. The appeals filed by the allottees were also disposed of with liberty to initiate proceedings before the BDA. After all this, the appellants are said to have taken Rs.2,02,00,000/- (Rupees Two Crores Two Lakhs) from one M/s Legacy Global Realty for transferring the subject property. Thereafter, the accused revoked the GPA executed in favour of the complainant and executed another GPA and registered Gift Deed by which the subject property was conveyed in favour of appellant no.4. This

prompted the complainant to institute a civil suit to declare the subsequent GPA and Release Deed as not binding and also seeking specific performance of the ATS, taking the stand that he proposed to pay the remaining Rs.1,48,00,000 (Rupees One Crore Forty-Eight Lakhs) which the appellants refused and were also not ready to transfer the subject property. The complainant, having filed the civil suit, soon thereafter filed the FIR. Chargesheet stands submitted and cognizance has been taken. Challenge to the same having failed before the High Court, the Impugned Judgment is under challenge before us.

35. In this background, the Court needs to consider as to whether the accusations of criminal nature levelled in the FIR are sustainable to permit the continuance of the criminal proceedings or not. Cognizance has finally been taken under Sections 120B, 406 and 420 of the IPC. For convenience, the said provisions are reproduced hereinbelow:

'120B. Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence. (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either

description for a term not exceeding six months, or with fine or with both.

XXX

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.*

XXX

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.'*

36. It would be useful, in addition, to set out the relevant definitional Sections from the IPC:

'120-A. Definition of criminal conspiracy.—*When two or more persons agree to do, or cause to be done,—*

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

XXX

405. Criminal breach of trust.—*Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in*

violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust".

Explanation 1.—A person, being an employer of an establishment whether exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not] who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriates them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z, going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.

(c) A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the directions and employs the money in his own business. A has committed criminal breach of trust.

(d) But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.

(e) A, a revenue officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.

(f) A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust.

xxx

415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.

Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.

Illustrations

(a) A, by falsely pretending to be in the Civil Service, intentionally deceives Z, and thus dishonestly induces Z to let him have on credit goods for which he does not mean to pay. A cheats.

(b) A, by putting a counterfeit mark on an article, intentionally deceives Z into a belief that this article was made by a certain celebrated manufacturer, and thus dishonestly induces Z to buy and pay for the article. A cheats.

(c) A, by exhibiting to Z a false sample of an article, intentionally deceives Z into believing that the article corresponds with the sample, and thereby dishonestly induces Z to buy and pay for the article. A cheats.

(d) A, by tendering in payment for an article a bill on a house with which A keeps no money, and by which A expects that the bill will be dishonoured, intentionally deceives Z, and thereby dishonestly induces Z to deliver the article, intending not to pay for it. A cheats.

(e) A, by pledging as diamonds articles which he knows are not diamonds, intentionally deceives Z, and thereby dishonestly induces Z to lend money. A cheats.

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money, A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery, A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

(h) A intentionally deceives Z into a belief that A has performed A's part of a contract made with Z, which he has not performed, and thereby dishonestly induces Z to pay money. A cheats.

(i) A sells and conveys an estate to B. A, knowing that in consequence of such sale he has no right to the property, sells or mortgages the same to Z, without disclosing the fact of the

previous sale and conveyance to B, and receives the purchase or mortgage money from Z. A cheats.'

37. Purely from a legal lens, it is now settled that the same person cannot be simultaneously charged for offences punishable under Sections 406 and 420 of the IPC with regard to one particular transaction, as per the decision rendered in ***Delhi Race Club (1940) Limited*** (*supra*). In this regard, reference may also be made to a subsequent decision by us in ***V D Raveesha v State of Karnataka, 2024 INSC 1060*** (penned by Ahsanuddin Amanullah, J.), which noticed the exposition in ***Delhi Race Club (1940) Limited*** (*supra*). In ***V D Raveesha*** (*supra*), the distinction between Sections 406 and 420 of the IPC was duly taken note of, but charges under Sections 406 and 420 of the IPC against the same person were upheld, not being part of a single transaction and committed against different persons. The relevant passage from ***V D Raveesha*** (*supra*) reads thus:

'21. Though, having regard to the afore-enumerated position of law, on an overall conspectus of the factual aspects juxtaposed with the evidence on record, as regards fulfilment of the ingredients of Sections 406 and 420 of the IPC, at first sight, it may appear that the petitioner cannot be convicted both under Sections 406 and 420 of the IPC, but, in the present case, on a proper consideration of the issue in its entirety, there is a fine distinction inasmuch as, there are two different persons against whom the petitioner has committed the respective offences under the Sections supra: first, the Company and second,

Mallikarjuna (PW4 and husband of purchaser Savithramma). Thus, in the facts and circumstances of the present case, evidently the petitioner is guilty of offence committed against the Company punishable under Section 406 of the IPC and also, of offence committed against Mallikarjuna (PW4 and husband of purchaser Savithramma) punishable under Section 420 of the IPC.'

(emphasis supplied)

38. Section 406 deals with punishment for criminal breach of trust, which itself has been defined under Section 405 of the IPC. Section 420 of the IPC deals with cheating and dishonestly inducing delivery of property, the substantive offence of cheating has been defined in Section 415 of the IPC. We now apply the ingredients to the factual position.

39. From a bare reading of Section 405 of the IPC, criminal breach of trust would arise only in a situation where the accused in any manner has been entrusted with property, or with any dominion over property and dishonestly misappropriates or converts the same to his own use, or dishonestly uses or disposes of that property. Here, it is not a case where the accused were entrusted with the subject property. The subject property belongs to them and they had rights over it as owners with title. Thus, the very foundation for invoking Section 406 of the IPC falls to the ground.

40. Coming to Section 415 of the IPC, it is required that the person charged, by deceiving any person, fraudulently or dishonestly induces him to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or not to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property. In the present case, we do not find that by deceiving the complainant, the appellants had fraudulently or dishonestly induced him to deliver the property to them or to any other person or to consent that any person shall retain any property or intentionally induced the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived. From the case set up by the complainant himself, as averred, the ATS was entered into between the appellants and the complainant on 30.11.2015. However, the subject property is said to have been handed over to Ravishankara Shetty on 06.09.1996. Thus, if the same was correct, then there is no explanation as to why possession of the subject property, being prime land, would be handed over to any other person without any other agreement or safeguard, for if the version of the complainant is to be taken as correct, then it appears

that Ravishankara Shetty got possession of the subject property way back on 06.09.1996, but the ATS with the complainant, albeit as a nominee of Ravishankara Shetty, was only executed much later on 30.11.2015. However, on a reading of the recitals in the ATS, it is seen that possession was with the appellants and in fact, Clause 6 of the ATS concerning possession, it has been postulated that possession of the subject property would be handed over in ready condition upon execution of the Sale Deed by the vendors. This version of events, put forth by the complainant, falsifies the claim of Ravishankara Shetty to have taken over possession of the subject property on 06.09.1996, for the simple reason that he himself is a witness cited in the FIR filed at the instance of the complainant. Thus, when from the own pleadings of the complainant, it emerges that possession of the subject property was never given to the complainant and rather, stipulation was made for such possession being handed over after execution of Sale Deed, Section 420 of the IPC would not be attracted, regard being had to the definition in Section 415 of the IPC.

41. Thus, we do not find any criminal aspect in the allegations *ex-facie*. Moreover, be it noted, the complainant has filed a civil suit for reliefs already enumerated above.

42. Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations *qua* the same person(s), the answer *stricto sensu*, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, *ipso facto*, is not sufficient ground to quash an FIR, as pointed out, *inter alia*, in ***P Swaroopa Rani v M Hari Narayana*, (2008) 5 SCC 765** and ***Syed Aksari Hadi Ali Augustine Imam v State (Delhi Admn.)*, (2009) 5 SCC 528**. The obvious caveat being that the allegations, even if having a civil flavour to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, ***Paramjeet Batra v State of Uttarakhand*, (2013) 11 SCC 673** can be referred to:

'12. ... Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.'

(emphasis supplied)

43. In ***Usha Chakraborty v State of West Bengal***, (2023) 15 SCC 135, while quashing the FIR therein and further proceedings based thereon, it was observed '*...the factual position thus would reveal that the genesis as also the purpose of criminal proceedings are nothing but the aforesaid incident and further that the dispute involved is essentially of civil nature.*'

44. A further contention urged by the appellants is that the procedure laid down in ***Priyanka Srivastava*** (*supra*) has not been followed by the complainant before filing the PCR. As per the guidelines prescribed in ***Priyanka Srivastava*** (*supra*), any person aggrieved by non-registration of an FIR by the police is required to approach the concerned Superintendent of Police and on his failure to take action, can move before the Magistrate concerned under Section 200 of the CrPC by filing a private complaint. In

this case, the complainant approached the police on 12.05.2022 which refused to register an FIR. Thereafter, the complainant approached the ACMM by filing the PCR on 20.07.2022, and while such private complaint was pending on the file of the ACMM, the complainant approached the Deputy Commissioner of Police, Bangalore City. On nothing being done even then, faced with such inaction, the complainant finally filed the requisite affidavit before the ACMM. Subsequently on 21.07.2023, the ACMM referred the PCR to the police, culminating into the underlying FIR.

45. The High Court has taken a view that this is a curable defect since before the referral order on the PCR by the ACMM for registering an FIR under Section 156(3) of the CrPC, the required formalities were done. In our considered opinion, this approach cannot be labelled erroneous. The requirement under **Priyanka Srivastava** (*supra*) is to safeguard the rights of the citizenry and to put a stop to unjust criminal action and filing of vexatious applications to settle personal scores. Thus, such requirement could not be said to be a mere formality. One of us (Sudhanshu Dhulia, J.) as a Single Judge of the Uttarakhand High Court, in **Sachin Chamoli v State of Uttarakhand, 2016 (3) NCC 68**, where no affidavit had been filed, held that filing of affidavit was a mandatory requirement as per **Priyanka Srivastava**

(*supra*). In ***Babu Venkatesh v State of Karnataka, (2022) 5 SCC 639***, this Court held that the Magistrate concerned should not have entertained the complaint/application under Section 156(3) of the CrPC therein, as it was not supported by an affidavit. In the case at hand, before the ACMM passed the referral order, the complaint was backed by an affidavit. In ***Ramesh Kumar Bung v State of Telangana, 2024 SCC OnLine SC 264***, the Court, while stating that the directions in ***Priyanka Srivastava*** (*supra*) are mandatory, declined to interfere with the order(s) impugned therein, but noted that the informant had filed the affidavit belatedly. To complete the discussion on this aspect of the law, we may also refer to our judgment in ***Kanishk Sinha v State of West Bengal, 2025 SCC OnLine SC 443*** where, speaking through Sudhanshu Dhulia, J., this Court upheld an order of the Calcutta High Court, to the effect that the direction in ***Priyanka Srivastava*** (*supra*) to file the affidavit, was prospective in nature. Therefore, if after the filing of the complaint/application but before any order thereon is passed, such requirement is allowed to be fulfilled/complied with by the complainant, it would not, in our view, run counter to the law expounded in ***Priyanka Srivastava*** (*supra*). We sum up our conclusions on this score as follows: (i) Directions issued in ***Priyanka Srivastava*** (*supra*) are mandatory; (ii)

Guidelines laid down in **Priyanka Srivastava** (*supra*) operate prospectively; (iii) Non-filing of the supporting affidavit is a curable defect, but must be cured before the Magistrate passes any substantive order on the complaint/application, and; (iv) If the Magistrate proceeds without the requisite affidavit, such order/any consequential orders/proceedings can be quashed on the sole ground of non-compliance with **Priyanka Srivastava** (*supra*).

46. In the above view, the Impugned Judgment does not militate against the law laid down in **Priyanka Srivastava** (*supra*). That said, and as reasoned above, our interference with the Impugned Judgment is necessitated as the ingredients of offences apropos which cognizance was taken by the ACMM are not made out. The *dicta* in **State of Haryana v Bhajan Lal**, 1992 Supp (1) SCC 335; **Vesa Holdings Private Limited v State of Kerala**, (2015) 8 SCC 293, and; **Gulam Mustafa v State of Karnataka**, (2023) 18 SCC 265 also impel this Court to intervene.

47. Accordingly, for the reasons aforesaid, FIR Crime No.260/2023 along with all consequential orders including the Chargesheet dated 28.08.2024 and the cognizance order dated 30.08.2024 stand quashed *qua* the appellants.

48. It is required to be clarified that though co-accused Vidyasree V. S., the daughter of appellant no.1 is not in appeal, for reasons unbeknownst to us, yet, as all the accused stand on the same footing and we have already quashed the proceedings against the appellants, in the interest of justice, the benefit of the quashing *supra* will enure to the benefit of Vidyasree V. S. also. Parity would so demand, in the facts and circumstances, as also to serve the cause of justice. In ***Pawan Kumar v State of Haryana, (2003) 11 SCC 241*** and ***Javed Shaukat Ali Qureshi v State of Gujarat, (2023) 9 SCC 164***, this Court exercised *suo motu* powers to deliver justice to affected parties not before it. In like circumstances, albeit in jurisdiction under Section 482 of the CrPC, one of us (Ahsanuddin Amanullah, J.), as a Single Judge of the Patna High Court, quashed criminal proceedings of a co-accused not before the Court as the facts of the case against that accused and the one before the Court were identical, in ***Baidyanath Mishra v State of Bihar, 2019 SCC OnLine Pat 662***.

49. The appeal is allowed. Costs made easy.

50. Though the Court has allowed the present appeal but the judicial conscience of the Court is ill at ease, inasmuch as from the entire story

emerging, it appears that the interest of the common citizens, especially of Bengaluru, has been compromised due to various extraneous considerations, including by acts of omission and commission by statutory bodies.

51. The subject property is said to have been acquired by issuing the Notification by the BDA, which process was initiated in the year 1978 and culminated in issuance of the final Notification in the year 1982. After that, there is no allegation from any quarter that no compensation was paid for the land acquired and thus, it is deemed that the same was paid over to and received by the appellants/their predecessors-in-interest. This presumption is also fortified by the fact that the acquisition in the year 1978/1982 was, for the first time, challenged by and/or on behalf of the appellants only in the year 2015 before the High Court, that is after a gap of about 33 years. In the meantime, certain developments took place, which are required to be taken note of. BDA, after acquisition, had allotted the lands (out of the subject property) in favour of various persons. However, it appears that in the year 1992 i.e., after 10 years of the acquisition proceedings having been completed, the BDA de-notified the acquisition, which was challenged by the concerned beneficiaries/allottees before the High Court, to whom lands

from the subject property were allotted. The challenge was allowed by a learned Single Judge and the de-notification by the BDA was quashed. The matter travelled up to this Court, which dismissed the appeal on 18.11.2015 and the order of the learned Single Judge was upheld. Thus, the matter attained finality.

52. It is vital to record that all this happened prior to the appellants/their representatives moving the High Court for declaring acquisition of the subject property as lapsed. Thus, the presumption operative would be that all legal formalities required, had been considered in the earlier round of litigation, and reached conclusion. The writ petition(s) filed by the appellants was allowed and the acquisition was declared as lapsed in respect of the subject property. This is where things take an interesting turn. The BDA surprisingly (nay, shockingly) having filed intra-court appeal(s) against the order, withdrew the same later. Though many issues were argued before us, but for the present, we refrain from delving into the same and restrict ourselves only to the admitted position.

53. It is further noted that in the writ proceedings before the learned Single Judge, a purchaser of a site in Sy. No.20 (part of the subject property) from an allottee had filed an application for

intervention/impleadment and prayed for time to bring on record relevant facts, but the High Court did not afford any such opportunity. This was the first phase where, in our view, a miscarriage of justice occurred. Thereafter, the action of the BDA in not pursuing the appeal(s) filed by itself, is the second phase where the course of justice was thwarted. The fact that the subject property had been utilised by the BDA is *prima facie* clear for the reason that beneficiaries/allottees of the lands of the subject property had sought impleadment, which would lend credence that the scheme was implemented, or at the very least, a significant chunk thereof, as the case may be, had been implemented.

54. Common citizens who were the beneficiaries of the acquisition by the BDA have been denied the benefits thereof, and we have no hesitation in saying so, what could only be termed as collusive litigation between the BDA and the appellants. The obvious reasons are writ large on the facts and circumstances of the case. This Court cannot, and would not, turn a blind eye to such blatant misuse of the law and acts of omissions/commissions, especially by statutory authorities. As such, we do not propose to leave the matter as is.

55. Thus, we were of the perspective that this is a fit case where the Court should exercise its powers under Article 142 of the Constitution, for doing complete justice, which reads as under:

‘142. Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.—(1) The Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it, and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribe. (2) Subject to the provisions of any law made in this behalf by Parliament, the Supreme Court shall, as respects the whole of the territory of India, have all and every power to make any order for the purpose of securing the attendance of any person, the discovery or production of any documents, or the investigation or punishment of any contempt of itself.

(emphasis supplied)

56. Exercise of such power has been examined in, amongst others, ***M Siddiq (Ram Janmabhumi Temple 5J) v Suresh Das*, (2020) 1 SCC 1; *Anoop Baranwal v Union of India [Election Commissions Appointments]*, (2023) 6 SCC 161, and; *Shilpa Sailesh v Varun Srinivasan*, (2023) 14 SCC 231.**

57. However, since what the Court decides eventually would obviously result in drastic consequences for the parties concerned, including those not

before us, we were proposing to (i) take *suo motu* cognizance, and (ii) direct the Registry to institute a petition under Article 32 of the Constitution assailing the Orders passed by the learned Single Judge dated 05.02.2016 [2016:KHC:4079] in Writ Petitions No.53124-53126/2015 as well as of the learned Division Bench dated 07.06.2016 [2016:KHC:14898-DB] in W.A. Nos.547-548/2016 and 1483/2016 (withdrawn by BDA) and dated 05.12.2016 [2016:KHC:32666-DB] in W.A. Nos.550-551/2016 and 611/2016 (proposed impleaders' appeals disposed of by a short order). On 09.01.2025, the BDA woke up from slumber and filed I.A.s 01/2025 (condonation of delay in filing recall application) and 02/2025 (to recall the Order dated 07.06.2016 of the Division Bench) in the High Court. These I.A.s were dismissed on 03.02.2025 by a Division Bench holding that no acceptable reason was available to condone the delay of 2392 days in filing the recall application.

58. At this stage, we take note of the fact that BDA has filed SLP (C) Nos.10134-10135/2025 against the Order dated 03.02.2025, wherein a Coordinate Bench has issued notice on 02.05.2025. That being the position, though a deeper scrutiny into the saga, as has unfolded above, is warranted; however, to maintain judicial propriety, in our considered opinion,

the present issue should be left to be gone into in the above-mentioned case filed by the BDA before this Court.

59. Accordingly, the Registry is directed to place a copy of this Judgment on the record of SLP (C) Nos.10134-10135/2025.

60. Further, for securing the ends of justice, till such time, the Court takes a view on the matter in SLP (C) Nos.10134-10135/2025, no third-party rights will be created or given effect to in the subject property by the appellants. The civil suit filed by the complainant can also proceed in the interregnum, subject to orders as may be passed in SLP (C) Nos.10134-10135/2025.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
JULY 31, 2025