2026 INSC 772

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2026
(Arising out of Special Leave Petition (Criminal) No.10294 of 2025)

G. SAMINATHAN & ANOTHER ... APPELLANTS

VERSUS

THE STATE, REPRESENTED BY THE SUB-INSPECTOR OF POLICE & ANOTHER ... RESPONDENTS

J U D G M E N T

NAGARATHNA, J.

Leave granted.

2. The present criminal appeal arises out of the impugned order dated 28.03.2025, passed by the High Court of Judicature at Madras in Crl. O.P No.15131 of 2023 refusing to quash the

proceedings in C.C. No.2776 of 2023 pending on the file of the Metropolitan Magistrate for Special Court CCB, CBCID, Egmore, Chennai (hereinafter referred to as "trial court") against the appellants herein under Sections 406, 420 read with Sections 109 and 34 of the Indian Penal Code, 1860 (for short "IPC").

3. Briefly stated, the facts of the case are that respondent No.2 (hereinafter referred to as the "complainant") is the Joint Managing Director and authorised representative of M/s Barath Building Construction (India) Pvt. Ltd., (hereinafter referred to as the "construction company"), which is involved in the business of property development. Appellant Nos.1 and 2 herein, namely G. Saminathan and his wife S. Radhika Malini (hereinafter referred to as the "accused") are the owners of vacant land bearing Old Plot No.B-1, New Plot No.30A, admeasuring 0.50 acres and Old Plot No.B-2, New Plot No.31, admeasuring 0.50 acres, totalling 43,560 square feet comprised in Survey No.602/13, situated at Sholinganallur village and Taluk, Kancheepuram District (hereinafter referred to as the "disputed property"). The disputed property formed part of a layout known as Classic Retreat located

at 1st Main Road, Sholinganallur, Chennai and was originally purchased by the accused under sale deeds dated 31.05.1996 and 12.08.1996.

3.1 On 23.05.2012, an unregistered Joint Development Agreement was executed between the appellants-accused and the respondent No.2-complainant for the construction, development and promotion of the disputed property into residential flats. On the same date, the accused executed a General Power of Attorney (for short "GPA") bearing Document No.711 of 2012 in favour of the complainant. Subsequent to the execution of the GPA, the complainant, in terms of Clause 4(b) of the Joint Development Agreement, paid a refundable security to the tune of Rs.3,00,00,000/- (Rupees three crore) to the appellants-accused, through two cheques.

3.2 Thereafter, the construction company submitted a Planning Permission Application to the Member Secretary of the Chennai Metropolitan Development Authority (hereinafter referred to as the "Development Authority") for the construction of a basement floor, stilt floor and a four-storey residential building on the disputed property. The Member Secretary of the Development Authority, by way of a letter bearing No.B1/13485/2012 dated 26.08.2013, rejected the Permission Application on the ground that the disputed property was part of an unapproved layout. The relevant portion of the said letter is reproduced as follows:

> "The Planning permission application received in the reference cited has been examined and observed the following defects/violations.
>
> 1) The Sale under reference forms part of an unapproved layout made after 31.12.1989. Hence the site under reference is not regularisable.
>
> 2) Qualifying public road to a length of 250 meters was not established.
>
> In view of above, your planning permission Application is Prima-facie returned herewith unapproved."

3.3 Subsequently, the complainant became aware that on 05.01.2018, that the appellants-accused had cancelled the GPA executed in favour of the respondent-complainant *vide* Document No.116 of 2018 and had, on the very same day, sold the disputed property to one Smt. Banumathi by way of Sale Deed bearing Document No.117 of 2018.

3.4 On 09.01.2018, a written complaint was filed by the complainant against the accused before the Commissioner of Police, Chennai. The allegations in the said complaint are crystallised hereunder:

i) The Joint Development Agreement was entered into by the complainant on the assurance by the accused-owners that the disputed property was free from all encumbrances, and that there would not be any hindrance in obtaining a planning permission and developing the property.

ii) After the payment of the refundable security to the accused, in terms of the Joint Development Agreement, a registered GPA dated 23.05.2012 with respect to the disputed property was executed in favour of the complainant, and subsequently, possession of the disputed property, as well as the original title documents were also handed over to the complainant.

iii) In furtherance of the development agreement, the construction company had levelled the disputed property by filling up to 5 feet; raised compound walls; installed a sign board; engaged security personnel and also submitted an application seeking planning permission before the Chennai Metropolitan Development Authority.

iv) It was only when the aforesaid permission was sought that it came to light that the disputed property formed part of an unapproved layout plan and suffered from legal flaws which the accused-owners had suppressed at the time of the execution of the agreement.

v) The Joint Development Agreement entered into between the parties was never cancelled by the complainant and attempts were made to obtain approval from the statutory authority. The accused also kept reassuring the complainant that the flaws would be cleared by them in a short span of period.

vi) However, later it came to light that the accused-owners, in collusion and connivance with one Smt. Banumathi, illegally and unilaterally cancelled the GPA executed in favour of the complainant on 05.01.2018, without any prior intimation and on the same date sold the disputed property to her for a valuable sale consideration.

vii) In fact, the property was sold by the accused during the subsistence of the binding Joint Development Agreement.

viii) The sale of the disputed property in favour of Smt. Banumathi could not have been legally effected when the original title deeds were in the custody of the complainant.

ix) As per the Joint Development Agreement, the GPA was a *sine qua non* for execution of the Agreement and therefore, the GPA could not have been cancelled or rescinded.

x) The construction company incurred a huge loss to the tune of Rs.10,00,00,000/- (Rupees ten crore) in the development of the disputed property within a period of five years.

xi) Thus, the accused-owners in collusion with each other with a dishonest intention of cheating the complainant illegally cancelled the GPA and executed a sale deed in favour of a third party.

3.5 Pertinently, on the same day i.e. on 09.01.2018, the appellants-accused had issued a legal notice to the complainant demanding the handover of all the original title documents and for receiving repayment of the refundable security deposit of Rs.3,00,00,000/- (Rupees three crore). By way of reply dated 17.01.2018, the complainant refused to accept the offer of refund.

3.6 Meanwhile, since the complaint filed before the Commissioner of Police was closed, an application under Section 156(3) of the Code of Criminal Procedure, 1973 (for short "CrPC") was preferred by the complainant before trial court for registration of FIR based on the allegations contained in the written complaint.

3.7 Subsequent to the order dated 09.09.2021 passed by the trial court, directing registration of FIR, on 06.10.2021, P.S. Central Crime Branch-I, District Chennai-CCB, registered FIR No.181 of 2021 against the appellants-accused and Smt. Banumathi under Sections 406 and 420 of IPC.

3.8 Initially, the appellants-accused had filed a petition bearing Crl. O.P. No.19953 of 2021 before the High Court seeking quashing of FIR No.181 of 2021 registered against them. However, during the pendency of the aforesaid petition, a chargesheet dated 23.03.2023, came to be filed before the trial court, against the appellants-accused under Sections 406, 402 read with Sections 109 and 34 of IPC. Subsequently, the criminal machinery was set in motion against the appellants-accused herein, with the committal of criminal case bearing C.C. No.2776 of 2023 before the trial court.

3.9 Since the aforementioned petition bearing Crl. O.P. No.19953 of 2021 filed before the High Court for quashing of FIR No.181 of 2021 had become infructuous subsequent to the filing of the chargesheet and the same was dismissed by the High Court by order dated 09.06.2023.

3.10 Thereafter, the appellants-accused filed another petition bearing Crl. O.P. No.15131 of 2023 before the High Court for quashing of the proceedings in C.C. No.2776 of 2023 pending before the trial court. By way of the impugned judgment and final order dated 28.03.2025, the High Court refused to quash the criminal proceedings pending against the appellants-accused. The High Court, while taking note of the counter affidavit filed by the complainant, recorded that the accused, being the owners of the disputed property, were aware that it was an unapproved property and thus, with the said knowledge, they entered into a Joint Development Agreement with the complainant and received a sum of Rs.3,00,00,000/- (Rupees three crore) as a refundable security deposit. Later, the planning permission sought by the construction company came to be rejected by the Development Authority on the ground that the layout of the disputed property was an unapproved one. Since the permission was rejected, the complainant made repeated requests to the accused for return of the security deposit; however, the same was never returned. Subsequently, on 05.01.2018, the accused unilaterally cancelled the GPA executed in favour of the complainant without any notice or without consent from him. In complete disregard of the fact that the construction company, in furtherance of the development agreement, had started developing the property by putting up a compound wall in and around the disputed property and had spent around Rs.1,50,00,000/- (Rupees one crore fifty lakhs) for the same, the accused after unilaterally cancelling the power of attorney proceeded to sell the disputed property to a third party on the same day. It was only after effecting the sale in favour of the third party that the accused, as a means to escape from the clutches of law, sent a legal notice along with copies of the demand drafts of the refundable security amount. Thus, it was clear that from the very inception, the accused had an intention to cheat the complainant by entering into a Joint Development Agreement in respect of an unapproved property with complete awareness of the fact that the planning permission would not be granted. Moreover, after entering into the development agreement, the accused received Rs.3,00,00,000/- (Rupees three crore) as a refundable security deposit.

3.11 In the above backdrop, the Court arrived at an authoritative finding that the offences under Sections 406 and 420 of IPC were made out against the accused. Further, in view of the nature of the allegations made against the accused and having regard to the fact that the veracity of the allegations and counter-allegations by the accused and the complainant should be tested at the stage of trial, the High Court was of the view that the case did not warrant any interference. Being aggrieved, the appellants-accused have preferred the instant criminal appeal.

4. We have heard learned counsel for the appellants and respondent no.2-complainant, as well as learned counsel appearing for the State.

4.1 Learned counsel for the appellants-accused contended that the FIR and chargesheet in the present case reveal grievances of respondent No.2-complainant, which are completely contractual in nature arising out of the Joint Development Agreement, defective title of the subject property non-grant of planning permission, cancellation of GPA, sale of property and refund of money. It was submitted that the said issues have already been adjudicated upon in the arbitration proceedings invoked by the appellants-accused by an award dated 12.04.2023, whereby respondent No.2-complainant was directed to return all the original title documents in respect of the disputed property and the appellants-accused were directed to return the security deposit of Rs.3,00,00,000/- (Rupees three crore) to respondent No.2-complainant.

4.2 It was argued that respondent No.2-complainant admitted to not carrying out any comprehensive due diligence before entering into the agreement, despite Clause 6 of the Joint Development Agreement, which placed the onus on the construction company to carry out due diligence and obtain a legal opinion. Therefore, the subsequent failure to obtain planning permission could not be attributed to the appellants.

4.3 Learned counsel for the appellants-accused further submitted that there was no allegation at the time of execution of the Joint Development Agreement that they had a fraudulent or dishonest intention to cheat respondent No.2-complainant. In fact, the record demonstrates that both parties actively pursued the project and the venture failed only at a subsequent stage for which the appellants-accused could not be faulted.

4.4 It was contended that the present criminal proceeding instituted against the appellants-accused is a classic example of an attempt to give a criminal colour to a purely civil dispute and that mere breach of contractual obligations or non-payment of money *per se* does not constitute offences of cheating or criminal breach of trust.

4.5 Learned counsel for the appellants-accused emphatically argued that there was an unexplained delay of eight years in the filing of the FIR and that the same was an afterthought, having been filed after respondent No.2-complainant suffered adverse orders in the arbitration proceedings.

4.6 It was submitted that upon a collective reading of the Joint Development Agreement, it could be gathered that the clauses in the said agreement allocated commercial risks and obligations for approvals, title and development. Thus, the respondent-complainant ought to have carried out due diligence and obtained approvals, and the appellants-accused were to cooperate and provide documents/affidavits. Even otherwise, by no stretch of imagination, failure on the part of the appellants to honour their contractual covenants could constitute the offences under Sections 406 and 420 of IPC.

4.7 Learned counsel for the appellants-accused submitted that respondent No.2-complainant has challenged the award passed by the arbitrator by filing a petition under Section 34 of the Arbitration and Conciliation Act, 1996 (for short "Arbitration Act") and thus is actively pursuing civil remedies contemplated under the Joint Development Agreement and the Arbitration Act in respect of the very same subject matter that underlies the FIR in question. Moreover, if respondent No.2-complainant was dissatisfied with any other monetary relief or damages due to him apart from the refundable security deposit, it was argued that the proper recourse would have been to avail civil remedies rather than initiating parallel criminal proceedings on the same substratum of facts.

5. *Per contra*, learned counsel appearing for respondent No.2-complainant submitted that the impugned judgment passed by the High Court does not call for any interference inasmuch as the present appeal does not raise any substantial question of law but merely attempts to re-agitate the issues already dealt with by the High Court.

5.1 It was further argued that the appellants-accused dishonestly misappropriated the refundable security deposit of Rs.3,00,00,000/- (Rupees three crore) by retaining it even after the Development Authority rejected the planning permission; the project was impossible to execute; the accused themselves requested the cancellation of the Joint Development Agreement.

Moreover, the appellants-accused proceeded to sell the disputed property to Smt. Banumathi without refunding a single rupee to respondent No.2-complainant.

5.2 Highlighting appellants' intention to cheat and cause wrongful loss to the construction company, it was submitted that the appellants-accused were in ownership of the disputed property since 1996 i.e. for more than sixteen years and despite the knowledge about unapproved layout, at the time of entering into the contract, they made affirmative and unambiguous representations that the disputed property had a clear marketable title, free from encumbrances and suitable for residential development. It was only based on these representations and assurances that the construction company entered into the Joint Development Agreement and parted with Rs.3,00,00,000/- (Rupees three crore) towards security deposit.

5.3 It was further submitted that, despite being in custody of the original title documents of the disputed property, the appellants-accused proceeded to sell the said property in favour of Smt.

Banumathi, and the said conduct, in conjunction with the surrounding circumstances, clearly showed their dishonest intention and the fraudulent inducement from the very inception.

5.4 Rebutting the argument of the appellants-accused, learned counsel for respondent No.2-complainant submitted that, undisputedly, when there is evidence of dishonest intention and clear *prima facie* allegations of *mens rea* and fraudulent inducement from the inception, then even though the matter transcends to a civil dispute, it must be tried as a criminal case.

5.5 It was further argued that there was no delay in filing the FIR, and such a defence taken by the appellants was wholly misconceived inasmuch as the criminal complaint was filed on 09.01.2018, the same day when the complainant became aware of the clandestine sale of the disputed property to Smt. Banumathi. Thereafter, the period between 2018 and 2021 involved pursuing statutory remedies, including police complaints, High Court proceedings and obtaining a Magistrate's order under Section 156(3) of CrPC for registration of FIR. Suppressing these material facts, the appellants-accused were attempting to mischaracterise the legitimate legal process as a delay.

6. Before examining the facts of the present case, we deem it necessary to refer to the offences under the IPC invoked against the appellants-accused herein. For ease of reference the said provisions are extracted as hereunder:

6.1 Section 405 of IPC defines the offence of criminal breach of trust in the following manner:

> "**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".
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> Note*: Explanations* 1 and 2 to Section 405 are not relevant for the purpose of this case.

The offence under Section 405 of IPC is made punishable under Section 406, which reads as follows:

> "**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."

6.2 Section 420 of IPC provides for the offence of cheating and dishonestly inducing the delivery of property. For attracting the offence under Section 420 of IPC, the essential ingredients of the offence of cheating enumerated in Section 415 of IPC have to be satisfied. The said provisions are extracted as under:

> **"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.
>
> 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."

6.3 Section 109 of IPC deals with the punishment for abetment of an act or an offence. The said provision reads as follows:

> "**109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment**.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.
>
> *Explanation.*—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

6.4 Section 34 of IPC talks about common intention and reads as follows:

> "**34. Acts done by several persons in furtherance of common intention**.— When a criminal act is done by several persons in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone."

7. Upon a plain reading of the aforesaid provisions, the following principles can be discerned:

7.1 Section 406 of IPC, as extracted above, prescribes punishment for criminal breach of trust, which may extend to three years imprisonment or with fine or with both, when the ingredients of Section 405 of IPC are satisfied. Thus, for Section 406 of IPC to get attracted, there must be a criminal breach of trust in terms of Section 405 of IPC. The essential ingredients for invoking Section 405 of IPC are as follows:

(a) the accused was entrusted with property, or entrusted with dominion over property;

(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

In other words, for the invocation of the offence of criminal breach of trust, it is expedient that the use or disposal of the property is made by a person entrusted with or who has dominion over the property. Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust.

7.2 For the invocation of Section 420 of IPC, which provides for cheating and dishonestly inducing the delivery of property, the ingredients of Section 415 of IPC have to be established. To constitute the offence under Section 415 of IPC, it is essential that, by way of certain acts, a fraudulent or dishonest inducement is made and the person so deceived was made to deliver any property on account of such inducement. The said provision lays down two separate classes of acts which the person deceived may be induced to do, as follows:

i) In the first class of acts he may be induced fraudulently or dishonestly to deliver the property to any person or consent that any person shall retain any property.

ii) The second class of acts set forth in the Section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived.

7.3 While explaining the contours of the said provision, this Court in ***Deepak Gaba vs. State of U.P., (2023) 3 SCC 423*** observed that the *sine qua non* of Section 415 of IPC is “fraudulence”, “dishonesty”, or “intentional inducement” and that the absence of the said elements would debase the offence of cheating.

8. Now coming to the facts of the present case, the complainant has alleged that the accused continued to retain the refundable security deposit even after the planning permission was rejected by the development authority and the project had failed. It was also alleged that, in furtherance of the dishonest intention and despite being bound by the Joint Development Agreement, the accused sold off the disputed property to a third party while not even a single rupee of the refundable security deposit was returned. Thus, the accused committed the offence of criminal breach of trust as

defined under Section 405 of IPC. As discussed above, to constitute the offence under Section 405 of IPC, it must be proved that the accused was entrusted with the property and the property so entrusted was misappropriated, converted or disposed of by the accused with a dishonest intention and in contravention of any law or legal contract prescribing the mode in which such trust was to be discharged. In the present case, mere payment of a refundable security deposit by the complainant to the accused cannot be treated as entrustment of property inasmuch as the same was paid as a consideration in lieu of the execution of GPA in favour of the complainant. Even otherwise the FIR as well as the chargesheet in question are silent on the method and mode in which the appellants-accused misappropriated, converted, or disposed of the so-called entrusted property in the form of refundable security deposit for their own use to the disadvantage of the complainant in contravention of the Joint Development Agreement. Furthermore, a perusal of the legal notice dated 09.01.2018 issued by the accused reveals that the complainant was called upon to return the original title deeds pertaining to the disputed property and to receive the refundable security deposit lying with the accused. In view of the aforesaid circumstances, we are *prima facie* of the view that the allegation of dishonest intention on the part of the accused to retain the refundable security deposit and cause wrongful loss to the complainant is untenable. Therefore, a mere bald and omnibus allegation against the accused with regard to their dishonest intention to misappropriate the refundable security deposit, uncorroborated with any cogent material, cannot by itself sustain the charge under Section 405 of IPC against them.

8.1 In this regard, we find it apposite to refer to this Court's decision in ***Binod Kumar vs. State of Bihar***, ***(2014) 10 SCC 663*** wherein it considered a criminal complaint arising out of retention of bill amount in the course of a commercial transaction and found that the essential ingredients of criminal breach of trust or dishonest intention of inducement, which formed the foundation of the complaint missing. The relevant portion of the judgment reads as follows:

> "18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC.

> Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. <u>To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust</u>."
>
> (underlining by us)

8.2 On a *prima facie* view of the allegations contained in the FIR and the chargesheet, it appears that the complainant has attempted to hold the accused persons criminally liable for breach of a contract. This court in ***Hridaya Ranjan Prasad Verma vs. State of Bihar***, ***(2000) 4 SCC 168***, held that a mere breach of contract cannot give rise to criminal prosecution unless a fraudulent and dishonest intention of the accused is proved from the very inception of the transaction. The relevant portion of the judgment reads as follows:

> "15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

8.3 The aforesaid dictum was reiterated by this Court in the case of ***Dalip Kaur vs. Jagnar Singh**, **(2009) 14 SCC 696***, wherein it was held as under:

> "10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. <u>If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating.</u> Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code."
>
> (underlining by us)

8.4 It is trite law that for establishing the offence of cheating, the complainant was required to show that the accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the joint development agreement. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts. In the present case, the accused and the complainant entered into an unregistered Joint Development Agreement on 23.05.2012 with the objective of carrying out construction, development and promotion of the disputed property into residential flats. For the said purpose, the accused executed a GPA bearing Document No.711 of 2012 in favour of the complainant, and on the same day, the complainant, by way of two cheques, paid a refundable security deposit to the accused in terms of the development agreement. Thus, it cannot be said that the accused at the time of entering into the agreement had a fraudulent and dishonest intention to induce the complainant to part with the refundable security deposit inasmuch as both parties, pursuant to the execution of the development agreement, acted with the intention of performing their respective contractual obligations. It is only when the planning permission application sought by the complainant came to be rejected that the project was stalled. The complainant has alleged that the accused had knowledge that the disputed property was part of an unapproved layout, yet they suppressed the said fact from the complainant at the time of entering into the Joint Development Agreement. It is trite that before entering into a venture, the developer ought to conduct a comprehensive due diligence of the land sought to be developed. In the present case, the complainant failed to carry out a comprehensive due diligence before entering into the joint development agreement with the accused. In the aforesaid circumstances, any subsequent defects or legal flaws with respect to the disputed property could not have been used by the complainant as a means to criminally prosecute the accused-owners.

8.5 We therefore find force in the argument advanced by the learned counsel for the accused that the inability of the complainant to obtain planning permission from the development authority cannot give rise to criminal prosecution against the accused inasmuch as their obligation was limited to furnishing the required documents for the complainant to apply before the Development Authority. Furthermore, viewed in the backdrop of the totality of the circumstances, the mere allegation that the disputed property was subsequently sold to a third party, by itself, does not *prima facie* disclose the commission of the offence of cheating. We are therefore of the *prima facie* view that the allegations against the accused in the FIR as well as the chargesheet do not satisfy the ingredients for constituting the offence of cheating as defined under Section 415 of IPC.

8.6 We find that at this juncture, it would be useful to refer to the judgment of this Court in ***Delhi Race Club (1940) Ltd. vs. State of U.P.***, ***(2024) 10 SCC 690***, ***("Delhi Race Club")*** wherein it was held that offences of cheating and criminal breach of trust cannot be sustained on the same set of allegations. The relevant portion of the judgment is reproduced as under:

“40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

41. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.

42. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation

> i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

8.7 In the present case, the prosecution has alleged that Rs.3,00,00,000/- (Rupees three crore) paid by the complainant to the accused persons as a refundable security deposit constituted entrustment of property and that the said amount was dishonestly misappropriated by the accused as they continued to retain it after the Development Authority had rejected their planning permission and even after the accused had fraudulently sold the disputed property to a third party. It is alleged that the same was in complete disregard of the contractual obligations of the accused enumerated in the Joint Development Agreement. Thus, the accused committed the offence of criminal breach of trust. In addition to this, the prosecution has also alleged that the accused committed the offence of cheating by misrepresenting to the complainant that the disputed property was free from all encumbrances, which, in fact, the accused, from the very inception of the Agreement, knew was false. Thus, based on the said false representation coupled with a dishonest intention, the accused induced the complainant to part with the refundable security deposit.

8.8 This Court, in the case of ***Delhi Race Club***, while explaining the difference between the offences of criminal breach of trust and cheating, observed that to constitute the offence of cheating, it has to be sufficiently proved that the offender fraudulently or dishonestly induced a person by deceiving him to deliver any property and that the said dishonest intention was from the very inception of the transaction. Whereas, in the case of criminal breach of trust, what is to be proved is the act of dishonest misappropriation of the property which the offender was legally entrusted with, but illegally misappropriated or converted it to his own use against the terms of the contract. Thus, in view of the aforesaid fundamental distinction between the offences of criminal breach of trust and cheating, this Court in the abovementioned case observed that *both the offences cannot co-exist simultaneously.*

On a careful perusal of both the provisions as well as the aforesaid dictum of this Court, we find that with regard to the same property and on the same set of facts, the offences of criminal breach of trust and cheating cannot be sustained as against the accused. We say so because, on one hand, the prosecution alleges that the refundable security deposit was lawfully entrusted to the accused by the complainant, which the accused continued to retain even after the project had failed and after the disputed property was sold by them to a third party. On the other hand, it is also alleged that the accused cheated the complainant by inducing him to part with Rs.3,00,00,000/- (Rupees three crore) as refundable security based on a false representation that the disputed property was free from all encumbrances. In other words, the allegation by the prosecution is that the accused was entrusted with the refundable security deposit, which he later on dishonestly misappropriated and the allegation that the accused, with a dishonest intention, induced the complainant to part with the refundable security deposit based on a false representation, are not tenable on the same substratum of facts. If there was a lawful entrustment of

Rs.3,00,00,000/- (Rupees three crore) to the accused under the Joint Development Agreement, it cannot be a case of cheating and if so, the non-return of the amount by the accused as the plan sanction was not granted is not a case of criminal breach of trust. The dispute between the parties is essentially civil in nature. The subsequent sale of the subject property by the accused to a third party may give rise to a cause of action on the civil side to the complainant but not a case of cheating or criminal breach of trust as the said act of sale *per se* is not a criminal act.

8.9 Thus, on perusal of the material on record as well as from the aforesaid discussion, we hold that continuation of criminal proceedings instituted against the accused by the complainant would be nothing but a sheer abuse of the process of law inasmuch as on a consideration of the allegations, none of the offences invoked in the FIR as well as the chargesheet appear to be made out against the accused.

8.10 This Court in ***Indian Oil Corporation vs. NEPC India Ltd.***, ***(2006) 6 SCC 736***, while taking judicial notice of the surge of civil disputes being given a criminal flavour, observed as follows:

> "13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged. In ***G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513***] this Court observed: (SCC p. 643, para 8)
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> > "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."
>
> 14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in

> criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

9. We have given our careful consideration to the submissions advanced by the learned counsel for the respective parties as well as the material placed on record and analysed the same. In our view, the complainant in the present case has sought to give a criminal colour to a purely civil dispute. We must also hasten to add that the accused, in terms of the joint development agreement, has already invoked the arbitration clause, and an arbitral award dated 12.04.2023 has already been passed by the learned arbitrator determining the liabilities of both parties in terms of their contractual obligations. Moreover, the said award has been challenged under Section 34 of the Arbitration Act by the complainant. Thus, while the parties in the present case are also pursuing their civil remedies, we find that it will be in complete

disregard of the criminal justice system to permit the continuation of criminal prosecution against the accused herein for the offences under Section 406 and 420 of IPC. This aspect of the matter has not been noticed by the High Court.

9.1 At this juncture, we find it expedient to refer to the judgment in the case ***State of Haryana vs. Bhajan Lal**, **1992 Supp (1) SCC 335**, **("Bhajan Lal")*** wherein this Court enumerated the categories of cases warranting the exercise of extraordinary judicial powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of CrPC by the courts either to prevent the abuse of the process of law or otherwise to secure the ends of justice. The relevant para 102 of the said judgment reads as follows:

> "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."

9.2 We find that the categories (1), (3), (5) and (7) enlisted in ***Bhajan Lal*** are squarely applicable to the facts of the present case, making it a fit case for quashing of the criminal proceedings pending against the accused. Therefore, the High Court, by way of the impugned judgment and final order dated 28.03.2025, erred in dismissing the quashing petition filed by the accused. The High Court overlooked the fact that the allegations in the FIR and the chargesheet did not *prima facie* make out the offences under Section 406 and 420 of IPC. In fact, the allegations on the face of it point to a purely civil dispute between the parties.

9.3 We, therefore, set aside the judgment and final order dated 28.03.2025 passed by the High Court in Crl. O.P No.15131 of 2023. Consequently, the said petition filed under Section 482 of CrPC stands allowed and all consequential proceedings emanating from FIR No.181 of 2021, including chargesheet dated 23.03.2023 as well as the criminal case bearing C.C. No.2776 of 2023 pending on the file of the Metropolitan Magistrate for Special Court CCB, CBCID, Egmore, Chennai against the appellants-accused under Sections 406, 420 read with Sections 109 and 34 of IPC are hereby quashed.

9.4 It is needless to observe that the findings and observations made by this Court in the instant appeal will not come in the way of the parties pursuing appropriate civil remedies, and the same shall be decided on its own merits and in accordance with law.

10. The appeal is allowed in the aforesaid terms.

……………………………………J.
(B.V. NAGARATHNA)

……………………………………J.
(UJJAL BHUYAN)

NEW DELHI;
JULY 31, 2026.