



CNR: KAHC010160132025

NC: 2026:KHC:53492  
CRL.P No. 3230 of 2025

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 25<sup>TH</sup> DAY OF SEPTEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CRIMINAL PETITION NO. 3230 OF 2025**BETWEEN:**

PRITESH BARI,  
S/O SRIDHAR BARI,  
AGED ABOUT 35 YEARS,  
R/AT FLAT NO. 403, BUILDING NO. M7,  
B WING, PRATIKSHA NAGAR,  
NEAR SUNDAR VIHAR HOTEL,  
SION EAST, MUMBAI CITY,  
MAHARASHTRA 400022.

...PETITIONER

(BY SRI RAJATH, ADVOCATE)

**AND:**

1. STATE OF KARNATAKA  
BY SHANKAPURA P S,  
REP. BY THE OFFICE OF THE  
STATE PUBLIC PROSECUTOR,  
HIGH COURT OF KARNATAKA,  
AMBEDKAR VEEDHI, BANGALORE 560001.

2. ADARSH N SANDUR,  
S/O UNKNOWN,  
AGED ABOUT 50 YEARS,  
A.G.M, S.B.I, RACPC,  
BASAVANAGUDI BRANCH, BULL TEMPLE ROAD,  
SHANKARPURA, BANGALORE 560004.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R-1;  
SRI CHIDAMBER G.S, ADVOCATE FOR R-2)

THIS CRL.P IS FILED U/S.482(FILED U/S.528 BNSS) CR.P.C  
PRAYING TO QUASH THE FIR DATED 25.09.2024 REGISTERED IN  
CR.NO.55/2024 BY THE SHANKARAPURA POLICE STATION,





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BENGALURU FOR THE OFFENCES P/U/S  
406,408,418,419,420,423,465,467,468,417,471,504 AND 506 OF  
IPC PENDING ON THE FILE OF THE I.V A.C.M.M. COURT.

THIS PETITION, COMING ON FOR ADMISSION, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

### **ORAL ORDER**

1. The petitioner is before this Court seeking for the following reliefs:-

*"It is humbly prayed that this Hon'ble Court may be pleased to pass an order quashing the F.I.R. dt. 25.09.2024 registered in Cr.no.0055/2024 by the Shankarapura Police Station, Bengaluru, for the offences punishable under Sections 406, 408, 418, 419, 420, 423, 465, 467, 468, 417, 471,504, and 506 of the I.P.C. pending on the file of the IV A.C.M.M Court, to meet the ends of justice."*

2. Respondent No.2, who is the authorised signatory and Assistant General Manager of the State Bank of India, filed a private complaint before the IV Additional Chief Metropolitan Magistrate, Bengaluru, in PCR No.8789/2024 against the petitioner, who was arrayed as accused No.1, and certain others, who were arrayed as accused Nos.2 to 5, alleging commission of offences punishable under Sections 406, 408, 417, 418, 419, 420, 423, 465, 467, 468, 471, 504 and 506 of the IPC.





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3. The matter was referred for investigation under sub-section (3) of Section 156 of the Cr.P.C. by order dated 22.08.2024. Pursuant thereto, FIR in Crime No.55/2024 came to be registered by the Shankarapura Police Station on 25.09.2024 for the aforesaid offences. Upon summons being issued to the petitioner, the petitioner is before this Court seeking the aforesaid reliefs.
4. The submission of Sri Rajath, learned counsel for the petitioner, is that:
  - 4.1. The petitioner, who has been arrayed as accused No.1, is a purchaser of an apartment from accused No.2-Developer, of which accused Nos.3 to 5 are the partners. His submission is that, at the time when the petitioner availed a loan from the respondent-Bank, a tripartite agreement was entered into between the parties. The agreement specifically provided that the Bank would have a paramount lien over the amounts paid by the borrower to the builder and over such amounts as the borrower may pay to the builder in future, towards repayment of the loan sanctioned by the State





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Bank of India. Reliance is placed on Clause 1 of the tripartite agreement in this regard.

- 4.2. Under Clause 2 of the tripartite agreement, the builder had expressly conveyed its no-objection to the borrower mortgaging the apartment, together with the proportionate share in the land, in favour of the Bank.
- 4.3. Clause 4 of the agreement stipulated that, in the event of the builder cancelling the booking on account of any default committed by the borrower, or in the event of the project being shelved by the builder for any reason whatsoever, the builder would pay the entire amount received from the borrower to the Bank.
- 4.4. Clause 5 further stipulated that, in the event of the builder failing to complete the project, the builder would pay the entire amount received by it from the borrower to the Bank.
- 4.5. Clause 6 required the builder to record in its books the charge and lien of the Bank over the apartment and further stipulated that the builder would not transfer the apartment to any





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other person without the prior written consent of the Bank.

- 4.6. Learned counsel for the petitioner submits that the aforesaid clauses are material for considering the allegations made in the complaint.
- 4.7. According to the complaint, the builder had sold the property which was the subject matter of the loan transaction to a third party without obtaining the consent of the Bank, while the loan amount of ₹39,92,000/- had not been repaid either by the petitioner, accused No.1-purchaser, or by accused Nos.2 to 5, the developers/partners.
- 4.8. It is further alleged in the complaint that accused No.1 had assured the complainant-Bank that a registered sale deed would be executed in his favour and that, on the basis of the documents furnished in that regard, the loan was sanctioned. The petitioner subsequently became irregular in servicing the loan. Despite several reminders being issued to accused No.1 for repayment of the loan and to accused Nos.2 to 5 for completion of the project





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and registration of the apartment in favour of accused No.1, accused Nos.2 to 5 did not respond to the reminders.

4.9. It is alleged that accused No.1 stopped servicing the interest/EMIs in respect of the loan account and that the apartment was subsequently sold to M/s. Benaka Enterprises under a registered sale deed dated 27.03.2023. On the basis of the said transaction, the complaint alleges that the accused committed criminal breach of trust and misappropriation in respect of the loan amount advanced by the Bank, by producing documents and entering into an agreement of sale for the purpose of availing the loan. It is further alleged that the accused thereby cheated the Bank and committed the various offences referred to hereinabove.

4.10. Learned counsel for the petitioner submits that, even if the allegations in the complaint are taken at their face value, they do not disclose the commission of any criminal offence by the petitioner. According to him, the complaint itself proceeds on the basis that the builder had





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failed to complete the project and had thereafter sold the apartment to a third party without obtaining the consent of the Bank. If that were so, any violation of the tripartite agreement, according to the petitioner, would be attributable to the builder and not to the petitioner, who was himself a purchaser and borrower.

4.11. It is further submitted that the petitioner had availed the loan for purchase of the apartment and had entered into the tripartite arrangement with the Bank and the builder. The subsequent sale of the apartment by the builder to a third party was without the petitioner's consent as well as the Bank's consent. The petitioner, therefore, cannot be attributed with any dishonest intention merely because the loan remains outstanding.

4.12. Learned counsel submits that the petitioner is now left without the apartment, without the money paid towards the transaction and without the relevant title documents, and that initiation of criminal proceedings against him by the Bank has resulted in his being unnecessarily





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subjected to criminal prosecution, though the substance of the grievance of the Bank is against the acts of the builder.

- 4.13. On these grounds, learned counsel for the petitioner submits that continuation of the criminal proceedings against the petitioner would amount to an abuse of the process of law and that the proceedings, insofar as the petitioner is concerned, are liable to be quashed.
5. Per contra, Sri Chidamber G.S., learned counsel appearing for the respondent-Bank, would submit that:
- 5.1. The Bank had sanctioned and advanced a loan of ₹39,92,000/- to the petitioner. The said loan has neither been serviced by accused No.1 nor has the amount been paid by accused Nos.2 to 5. Since a tripartite agreement had been entered into between the petitioner, the Bank and the builder, the obligations arising therefrom were required to be complied with by the respective parties, and the outstanding loan amount could not be left unpaid.





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- 5.2. Instead of discharging their respective obligations, accused Nos.2 to 5 proceeded to sell the very property which was the subject matter of the loan transaction to M/s. Benaka Enterprises under a registered sale deed dated 27.03.2023. According to learned counsel, the subsequent sale, coupled with the non-servicing of the loan, gives rise to a serious allegation that the accused had acted with an intention to deceive and cause loss to the Bank.
- 5.3. He would therefore submit that the allegations in the complaint disclose matters requiring investigation. The registration of the FIR was pursuant to an order of the learned Magistrate under Section 156(3) of the Cr.P.C., and the jurisdictional police are required to investigate the allegations, collect the relevant documents, ascertain the role of each of the accused and determine whether the offences alleged have in fact been committed.
- 5.4. It is therefore submitted that, at this stage, this Court ought not to interdict the investigation merely on the basis of the defence sought to be raised by the petitioner. The respective





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obligations of the petitioner and the builder under the tripartite agreement, the circumstances in which the apartment came to be sold to M/s. Benaka Enterprises, the utilisation and repayment of the loan amount and the knowledge and participation of each of the accused are all matters which, according to learned counsel, require investigation.

6. Heard Sri.Rajath., learned counsel for the petitioner and Sri.Chidamber., learned counsel appearing for respondent No.2. Perused papers.
7. Essentially, the dispute arises out of the tripartite agreement dated 08.02.2020 entered into between accused No.1 on the one hand, accused Nos.2 to 5 on the other, and respondent No.2-Bank as the third party. Under the said arrangement, the Bank had agreed to advance a loan of ₹39,92,000/- to accused No.1 for purchase of Flat No.B-306, situated on the third floor, measuring 1050 square feet, in the building known as "Grandeur Park", which was to be constructed and handed over by accused No.2-Developer.





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8. Some of the material terms of the tripartite agreement have already been adverted to by learned counsel for the petitioner in the course of his submissions and, therefore, are not being repeated for the sake of brevity. What is material for consideration is that the agreement specifically contemplated the consequences in the event of cancellation of the booking by the builder on account of any default committed by the borrower, shelving of the project by the builder, or failure on the part of the builder to complete the project.
9. In each of the aforesaid eventualities, the obligation contemplated under the agreement was upon the builder to pay to the Bank the entire amount received by the builder from the borrower. Thus, insofar as the amounts received by the builder from the borrower are concerned, the tripartite agreement specifically fastened the obligation upon the builder to return such amounts to the Bank in the circumstances contemplated under the agreement.
10. The agreement, therefore, assumes considerable significance in examining the allegations made against accused No.1. The contractual arrangement itself contemplated that, upon the failure of the builder to complete the project or upon cancellation





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of the booking in the circumstances stipulated therein, the amounts received by the builder from the borrower were to be repaid by the builder to the Bank. The material placed before this Court does not disclose any corresponding obligation upon accused No.1 to make good to the Bank the amounts which, under the terms of the tripartite agreement, the builder was required to repay to the Bank in the aforesaid circumstances.

11. The allegations in the present case proceed, essentially, on two aspects. Firstly, that the project was not completed by the builder. Secondly, that even before completion of the project, the apartment was sold to M/s. Benaka Enterprises under a registered sale deed dated 27.03.2023.
12. The material fact which cannot be lost sight of is that no sale deed in respect of the subject apartment was ever executed in favour of accused No.1. Consequently, accused No.1 did not acquire title to the apartment, nor did he derive any benefit from the subsequent sale of the property in favour of M/s. Benaka Enterprises.
13. On the contrary, the transaction relied upon by the complainant indicates that the apartment which was to be constructed and conveyed to accused No.1 was





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ultimately dealt with by accused Nos.2 to 5 in favour of a third party. Therefore, insofar as the alleged sale of the apartment contrary to the terms of the tripartite agreement is concerned, the material presently available does not disclose any participation, benefit or wrongful gain attributable to accused No.1.

14. In the aforesaid circumstances, the question that arises for consideration is not whether any offence may have been committed by accused Nos.2 to 5. That issue is not being examined in the present proceedings and no opinion is expressed thereon. The limited question is whether the allegations contained in the private complaint, even if taken at their face value, disclose the commission of any criminal offence by accused No.1.
15. On a consideration of the tripartite agreement and the allegations contained in the complaint, this Court finds that they do not disclose the necessary criminal element insofar as accused No.1 is concerned. The petitioner was a purchaser who had availed a loan from the Bank for acquiring the apartment. The project was admittedly not completed, no sale deed was executed in favour of the petitioner and the property was subsequently sold by the builder to a third party. There is no material to indicate that the





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petitioner participated in the subsequent sale, derived any benefit therefrom, or acted in concert with accused Nos.2 to 5 to deceive or cause loss to the Bank.

16. What is rather disconcerting is the manner in which the Bank, despite being a party to the tripartite agreement and being fully aware of the obligations undertaken by the builder thereunder, has chosen to set the criminal law in motion against the petitioner. The very agreement on which the Bank relies clearly contemplated the consequences of the project not being completed and cast an obligation upon the builder to repay to the Bank the amounts received from the borrower. The Bank was, therefore, not unaware either of the nature of the transaction or of the respective obligations undertaken by the parties.
17. The subsequent sale of the apartment by the builder to a third party, without completion of the project and without execution of a sale deed in favour of the petitioner, could not, in the absence of any material showing the petitioner's participation or connivance, furnish a basis to attribute criminal liability to the petitioner. If the Bank was aggrieved by the acts of the builder or by the failure to honour the obligations under the tripartite agreement, the same could have been pursued against the persons responsible in





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accordance with law. The Bank, however, has proceeded against the petitioner merely because the loan account remained outstanding, notwithstanding the circumstances in which the underlying transaction itself had failed.

18. This Court is constrained to observe that the action of the Bank in setting the criminal machinery in motion against the petitioner, in the facts and circumstances of the present case, is wholly unwarranted and deserves to be deprecated. A financial institution, particularly a public sector bank, is expected to act with due care and circumspection before invoking the criminal process against a customer. The existence of an outstanding loan or the failure of the underlying transaction, by itself, cannot be treated as constituting a criminal offence. Criminal prosecution cannot be employed as a means of securing recovery of a financial liability unless the foundational ingredients of the alleged criminal offences are prima facie made out.
19. The circumstances of the present case make the course adopted by the Bank all the more difficult to appreciate. The petitioner has neither obtained the apartment for which the loan was sanctioned nor derived any benefit from its subsequent sale. The petitioner is left without the apartment and without





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the benefit of the transaction, while the Bank seeks to proceed against him for recovery of the very amount which, under the terms of the tripartite agreement, was contemplated to be recovered from the builder in the eventuality which has, in fact, occurred.

20. The petitioner cannot, merely because he continues to be shown as the borrower in the loan account, be made to answer criminally for the acts of the builder in dealing with the property contrary to the terms of the tripartite agreement. The distinction between a subsisting contractual or financial liability and criminal liability cannot be lost sight of. The former cannot, in the absence of the ingredients constituting the latter, be permitted to assume the character of a criminal prosecution.
21. The initiation and continuation of criminal proceedings against the petitioner in such circumstances is therefore wholly unjustified. The criminal process cannot be permitted to become a substitute for remedies available to the Bank for enforcement of its contractual or financial rights, particularly when the material on record does not disclose the requisite dishonest intention, deception, misappropriation or other criminal conduct on the part of the petitioner.





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22. In the considered opinion of this Court, permitting the criminal proceedings to continue against accused No.1 in the aforesaid circumstances would amount to permitting the criminal process to be utilised for enforcing a liability which, on the face of the tripartite agreement and the allegations in the complaint, cannot be attributed to him as a criminal act.
23. Accordingly, ex facie, the allegations and material placed before this Court do not disclose the commission of the offences alleged against accused No.1. The continuation of the criminal proceedings against the petitioner would consequently amount to an abuse of the process of law.
24. It is made clear that these observations are confined strictly to the case of accused No.1-petitioner and shall not be construed as an expression of opinion on the allegations or criminal liability, if any, of accused Nos.2 to 5.
25. Consequently, the proceedings in PCR No.8789/2024 and the consequential FIR in Crime No.55/2024, insofar as the petitioner/accused No.1 is concerned, are liable to be quashed.
26. In that view of the matter, deprecating the actions on the part of the respondent-Bank in filing a





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criminal complaint as regards a civil dispute of recovery of money, this Court passes the following;

**ORDER**

- i. Criminal petition is ***allowed.***
- ii. The FIR dated 25.09.2024 registered in Cr.no.0055/2024 by the Shankarapura Police Station, Bengaluru pending on the file of the IV A.C.M.M Court, Bengaluru, is quashed insofar as the petitioner who is accused No.1 in the said proceedings.



**(SURAJ GOVINDARAJ)**  
**JUDGE**

SR

List No.: 1 Sl No.: 27