IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL MISC.APPLICATION (FOR QUASHING & SET ASIDE FIR/ORDER) NO. 9644 of 2017

With
R/CRIMINAL MISC.APPLICATION NO. 9645 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE P. M. RAVAL

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Approved for Reporting	Yes	No
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VYANKTESH SHANTILAL PANDYA & ANR.
Versus
STATE OF GUJARAT & ANR.

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Appearance:
MR YATIN SONI(868) for the Applicant(s) No. 1,2
MR HARDIK H DAVE(6295) for the Respondent(s) No. 2
MR. ROHAN SHAH, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR.JUSTICE P. M. RAVAL**

Date : 12/08/2026

ORAL JUDGMENT

1. Learned advocate Mr. Yatin Soni for the petitioners submits a photocopy of the death certificate of original accused No.2 – petitioner No.1 herein in Criminal Misc. Application No.9644 of 2017, namely Vyankatesh Shantilal Pandya having expired on 16.10.2025, which is taken on record.

2. The petition being Criminal Misc. Application No.9644 of 2017, qua the petitioner No.1 stands abated.

3. The petitioners before this Court invoking Section 482 of the Criminal Procedure Code, 1973, interalia praying to quash and set aside the FIR being C.R.No.I-86 of 2017, lodged before the Anand Town Police Station, District: Anand, dated 05.04.2017, for the offences punishable under Sections 406, 420, 34, 120-B read with Section 114 of the Indian Penal Code, 1860, and consequential proceedings arising therefrom.

4. The sum and substance of the allegations made in the FIR is to the effect that the son of the petitioner Nos.1 and 2 namely Jaimin Pandya fraudulently married with Kruti – niece of the complainant on 05.03.2013 as Kruiti was Canadian citizen. As the accused No.1 – Jaimin wanted to go abroad, he married with niece of complainant and thereafter, has taken divorce on 21.12.2016, and that the petitioners have aided the accused No.1 by conspiring and abating the offence. On the basis of this allegations, the FIR has been lodged. Hence the present petitions.

5. Learned advocate Mr. Yatin Soni for the petitioners would submit that petitioner No.1, who has now expired was a retired person, whereas petitioner No.2 of Criminal Misc. Application No.9644 of 2017 was serving as a teacher and has retired on 30.04.2017. Whereas petitioner in Criminal Misc. Application No.9645 is serving at a private institute at Mehsana.

5.1. Learned advocate for the petitioners would further submit that looking to the facts as narrated in the FIR, no specific allegations are levelled against the petitioners. No role is attributed against any of the petitioners. In fact, the petitioners have not played any role in the commission of the alleged offence and have been implicated and arraigned as accused merely because they are the parents and brother of original accused No.1 who is husband of niece of complainant namely Kruti.

5.2. Learned advocate would further submit that even as per the averments in the FIR which has been lodged on 05.04.2017 for the offence alleged to have taken place on 05.03.2013, that is almost after a delay of four years without there any being cogent explanation. That, the allegations made in the FIR are vague, general in nature and without attributing any specific role or commission of the alleged offence having been committed at a particular time and place, under such circumstances, the lodging of the FIR against the present petitioners is abuse of process of law.

5.3. Learned advocate for the petitioners would also submit that the niece of the complainant has already obtained divorce against her husband - original accused No.1. That, the marriage of original accused No.1 and the niece of the complainant had taken place after due consent of parents of both the sides as well as the original accused No.1 and Kruti, and marriage was performed as per the Hindu rites and rituals in presence of the family members of both the

sides as well as community members. That, the niece of the complainant had stayed only for 30 days with the family in the year 2013. Thereafter, the niece of the complainant had never met the petitioners.

5.4. Learned advocate would also submit that the present petitioners have not conspired with accused No.1 nor have abated the offence, and the petitioners have been falsely roped into the offence merely because divorce took place between the accused No.1 and the niece of the complainant. Thus, it is argued to allow the present petitions

6. Per contra, learned advocate Shradhdha C. Pipaliya for learned advocate Mr. Hardik S. Dave for the complainant and learned Additional Public Prosecutor Mr. Rohan Shah for the State, would submit that reading from the FIR itself, a strong *prima facie* case of cheating is made out as the marriage was contracted only with a purpose to see that original accused No.1 may reach Canada on the strength of the marriage with Kruti, and after reaching there, his next destination was to reach America which he has achieved, however, accused No.1 has not taken care of his wife Kruti, and that, a detailed FIR alleging the manner in which the cheating has been perpetrated is stated in the FIR. Under such circumstances, the Court should not exercise its discretionary power in favour of the petitioners.

6.1. It would further submit that even while granting divorce on 21.12.2016, the Superior Court of Justice at Ontario (Canada) has observed that "evidence presented to the Court leaves no doubt that the respondent utilized his marriage to the applicant solely to gain entry into Canada from where he has apparently been able to secure a Visa into United States."

6.2. Thus, it is *prima facie* established that it is only for the purpose to ultimately reach USA that the original accused No.1 - Jaimin Pandya in connivance with the present petitioners had contracted marriage and that such findings are also forwarded to the Immigration Department of the United States and the Canadian Immigration Department, and thus, have argued to reject the present petitions.

7. Heard the learned advocates for the respective parties. This Court has gone through the papers of chargesheet submitted for the perusal of this Court by learned Additional Public Prosecutor as well as the averments made in the FIR. The bone of contention of the complainant is that the original accused No.1 namely Jaimin Vyankatesh Pandya had married his niece Kruti with a predetermined conspiracy for cheating and breach of trust in which the present petitioners had also conspired inhaling common intention to commit such crime.

8. In this regards, it would be apt to refer to the judgment in the

case of ***Race Club (1940) Ltd. and Others v. State of Uttar Pradesh and Another***, reported in ***2024 (10) SCC 690***, wherein the Hon'ble Apex Court has observed in paragraph 24 to 41 as follows:

> *"24. This Court in its decision in S.W. Palanitkar & Ors. v. State of Bihar & Anr. reported in (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*
> *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
> *10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*
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> *25. What can be discerned from the above is that the offences*

of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients. In order to constitute a criminal breach of trust (Section 406 IPC): -
1) There must be entrustment with person for property or dominion over the property, and
2) The person entrusted: -
a) dishonestly misappropriated or converted property to his own use, or
b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:
i. any direction of law prescribing the method in which the trust is discharged; or ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).
Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -
1) deception of any person, either by making a false or misleading representation or by other action or by omission;
2) fraudulently or dishonestly inducing any person to deliver any property, or
3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law

in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be

false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

29. 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.

30. 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. 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. 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 misappropriated 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.

31. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.

32. Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside,

as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.

33. It has been held in State of Gujarat v. Jaswantlal Nathalal reported in (1968) 2 SCR 408, "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment"".

34. Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta reported in (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person

and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under: -

"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but

the same is kept in trust by the pledgee. [...]" (Emphasis supplied)

35. The aforesaid exposition of law makes it clear that there should be some entrustment of property to the accused wherein the ownership is not transferred to the accused. In case of sale of movable property, although the payment may be deferred yet the property in the goods passes on delivery as per Sections 20 and 24 respectively of the Sale of Goods Act, 1930.

"20. Specific goods in a deliverable state. - Where there is an unconditional contract for the sale of specific goods in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment of the price or the time of delivery of goods, or both, is postponed.

xxx xxx xxx

24. Goods sent on approval or "on sale or return". - When goods are delivered to the buyer on approval or "on sale or return" or other similar terms, the property therein passes to the buyer -

(a) when he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time."

36. From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it

cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another : 2024 SCC OnLine SC 171 & Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another : 2023 SCC OnLine Jhar 301]

37. The case at hand falls in category No. 1 as laid in Smt. Nagawwa (supra) referred to in para 7 of this judgment.

38. If it is the case of the complainant that a particular amount is due and payable to him then he should have filed a civil suit for recovery of the amount against the appellants herein. But he could not have gone to the court of Additional Chief Judicial Magistrate by filing a complaint of cheating and criminal breach of trust.

39. It appears that till this date, the complainant has not filed any civil suit for recovery of the amount which according to him is due and payable to him by the appellants. He seems to have prima facie lost the period of limitation for filing such a civil suit.

40. In such circumstances referred to above, the continuation of the criminal proceeding would be nothing but abuse of the process of law.

> *41. Before we close this matter, we would like to say something as regards the casual approach of the courts below in cases like the one at hand. The Indian Penal Code (IPC) was the official Criminal Code in the Republic of India inherited from the British India after independence. The IPC came into force in the sub-continent during the British rule in 1862. The IPC remained in force for almost a period of 162 years until it was repealed and replaced by the Bharatiya Nyaya Sanhita ("BNS) in December 2023 which came into effect on 1st July 2024. It is indeed very sad to note that even after these many years, the courts have not been able to understand the fine distinction between criminal breach of trust and cheating.*

8.1. Thus, applying the ratio as held by the Hon'ble Apex Court in the aforesaid judgment and the allegations leveled in the FIR tested on the aforesaid principle, would clearly fail to pass the test as applied herein above, more particularly, the stay of Kruti with the present petitioners is for very short span which does not inspire confidence with regards to the allegations qua the petitioners. This is so because to attract the provisions of 406, i.e. criminal breach of trust, the first and foremost requirement is entrustment a person with the property or with any dominion over property. However, no averment in the FIR reveals with regards to entrustment or dominion over property, thus, punishment for criminal breach of trust is not attracted. As far as ingredients of offence of cheating is concerned, as provided under Section 415 and punishable under Section 420, the ingredients to constitute cheating is that, there should be a

fraudulent or dishonest inducement of a person by deceiving him. As far as present case is concerned, the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived. However, the act of omission should be one which causes or is likely to cause damage or harm to a person induced in body, mind, reputation or property. As far as the allegations of cheating against present petitioners are concerned, the entire averment as taken as it is in the FIR, would not constitute any fraudulent or dishonest inducement by the petitioners, thereby deceiving the niece of the complainant intentionally to induce to do or omit to do anything. More particularly, the averments against the present petitioners are conspicuously silent in the FIR, as to how the petitioners would be held liable for cheating, only to see that accused No.1 – Jaimin Vyankatesh Pandya married with the niece of the complainant, only with the purpose to see that he reaches Canada so as to ultimately travel USA. When there is nothing to point out such fact that the niece of the complainant was deceived intentionally so that she was induced to marry, or that there was omission intentionally and that if she had known that the marriage was only for the purpose of seeing that Jaimin reaches Canada, somehow, even then also such omission has caused or was likely to cause damage or harm to the niece of the complainant in body, mind, reputation or property is also conspicuously missing, and thus, the present petitioners cannot be held liable for cheating, and ultimately either attracting provisions of Section 417 or 420 of

the IPC.

9. As far as conspiracy and common intention is concerned, except for bare statement, there is nothing on chargesheet to point out that the present petitioners had conspired, and it is clearly seems to be a dispute between husband and wife wherein the petitioners being mother-in-law and brother-in-law of original accused Jaimin have been dragged into, for no fault of theirs, without there being attributed any specific instances except for bare statement alleging of conspiracy and common intention.

10. Though, this Court is aware that there cannot be any direct evidence as far as conspiracy and common intention is concerned, but as such, from the entire papers of the chargesheet such fact cannot be gathered, under the circumstances, continuing proceedings against the present petitioners would amounts to abuse of process of law, more so, when no case is made out for Sections 406 or 420 of the IPC.

11. In view of the above, the present petitions succeed and accordingly, it is allowed. The FIR being C.R.No.I-86 of 2017, lodged before the Anand Town Police Station, District: Anand, dated 05.04.2017, qua petitioner No.2 of Criminal Misc. Application No.9644 of 2017 and petitioner of Criminal Misc. Application No.9645 of 2017, and consequential proceedings arising therefrom are hereby quashed and set aside, since the petitioner No.1 of

Criminal Misc. Application No.9644 of 2017 is abated.

12. Rule is made absolutely to the aforesaid extent. Direct service is permitted.

13. It is made clear that the investigation and/or trial Court shall not be influenced by the observation made herein qua original accused No.1 - husband of Kruti namely Jaimin Vyankatesh Pandya.

(P. M. RAVAL, J)

NITIN MAKWANA

Original copy of this order has been signed by the Hon'ble Judge.
Digitally signed by: NITIN INDRAVADAN MAKWANA(HCW0110), ENGLISH STENOGRAPHER GRADE ONE, at High Court of Gujarat on 14/08/2026 15:28:17