Shabnoor

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.21 OF 2016

Rajiv Suryakant Mehta,
Aged 55 years, Indian Inhabitant,
permanently residing at 6, Gokul
Building, 2nd Floor, 3, Tejpal Road,
Gamdevi, Mumbai 400 007 ... **Petitioner**

Vs.

SHABNOOR AYUB PATHAN

Digitally signed by SHABNOOR AYUB PATHAN
Date: 2026.04.16 13:23:00 +0530

1. **State of Maharashtra**,
(at the instance of L.T. Marg
Police Station, Mumbai -
C.R. No.231 of 2015)
2. **Mithalal Devilal Jain @ Dhakan**,
having his office at 1st Floor,
Danabai House, Opp. ICICI Bank,
Zaveri Bazar, Mumbai – 400 002 ... **Respondents**

Mr. Subhash Jha with Mr. Sumeet Upadhyay i/by Law Global Advocates for the petitioner.

Mr. Yogesh M. Nakhwa, APP for respondent No.1-State.

Mr. Akash Patil with Mr. Jarin Doshi i/by Malvi Ranchhoddas & Co., for respondent No.2.

Mr. Kalidas N. Dhaware, PSI (Pairavi), L.T. Marg Police Station, Mumbai, is present.

CORAM : AMIT BORKAR, J.

RESERVED ON : APRIL 8, 2026.

PRONOUNCED ON : APRIL 16, 2026

JUDGMENT:

1. The present writ petition arises from Case No. 491/PW/16, wherein the petitioner has been arraigned as an accused for the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860. By the present petition, the petitioner seeks quashing of Crime Register No. 231 of 2014 registered with L.T. Marg Police Station, Mumbai, at the instance of respondent No. 2, being the original complainant, against the petitioner.

2. The factual background giving rise to the present writ petition, as set out by the petitioner, deserves to be noted. Respondent No. 2, namely Mithalal Devilal Jain, in his statement dated 13 June 2015 recorded before L.T. Marg Police Station, stated that he has been engaged in the business of manufacturing and sale of gold and diamond jewellery for the last 20 to 25 years under the name and style of Aarti Jewellers. He further stated that he was acquainted with one broker, namely Mehul Ashwanikumar Mehta, who, apart from acting as a broker, was also working for the petitioner. According to respondent No. 2, on 29 September 2014, the said broker introduced him to the petitioner. It is thereafter alleged that during the period from 29 September 2014 to 10 November 2014, though erroneously mentioned as 29 September 2011 in certain records, respondent No. 2, on three separate occasions, namely 29 September 2014, 18 November 2014, and 19 November 2014, entrusted gold ornaments valued at Rs. 60,66,606/- to the petitioner, with the understanding that the same were to be sold by the petitioner and the sale proceeds thereof were to be duly accounted for and remitted to respondent

No. 2.

3. It is further alleged that certain cheques issued by the petitioner towards discharge of the aforesaid liability came to be dishonoured upon presentation. Though the petitioner is stated to have thereafter assured respondent No. 2 that payment would be effected through RTGS transfer, the petitioner allegedly failed and neglected to remit the outstanding amount of Rs. 60,66,606/- to respondent No. 2. It is further the case that the business dealings between the petitioner and respondent No. 2 had commenced even prior to the aforesaid transactions, and during the period from 10 April 2014 to 7 November 2014, the petitioner had made payments aggregating to Rs. 59,20,000/- through cheques and RTGS transfers from his ICICI Bank and Dena Bank accounts.

4. The petitioner contends that, assuming without admitting that the aforesaid gold ornaments had in fact been entrusted to him, even then, having regard to the admitted position that payments aggregating to Rs. 59,20,000/- were made by the petitioner to respondent No. 2 during the period from 10 April 2014 to 7 November 2014, and even if the entire claim of respondent No. 2 for Rs. 60,66,606/- is accepted in its entirety, the balance amount allegedly remaining payable would only be Rs. 1,46,606/-. According to the petitioner, such a transaction, viewed from any perspective, would at best constitute a monetary dispute of civil nature and, by no stretch of imagination, can be said to attract the ingredients of any criminal offence or amount to breach of any penal statute for the time being in force.

5. Mr. Jha, learned counsel appearing for the petitioner, submitted that the supplementary statement of respondent No. 2 dated 14 July 2015 refers to six transactions aggregating to Rs.59,96,273/-. He submitted that, however, the present First Information Report has been registered only on the basis of three invoices dated 29 September 2014, 18 November 2014, and 19 November 2014, which, according to respondent No. 2, pertain to a total amount of Rs.60,66,606/-. Learned counsel invited attention to pages 138, 142, and 143 of the writ petition, where copies of the said invoices have been annexed, and contended that none of the said invoices bears the signature of the purchaser. It was, therefore, submitted that the mere unilateral issuance of invoices by respondent No. 2, in the absence of acknowledgment or signature by the purchaser, cannot by itself constitute proof of the alleged transaction. Learned counsel further submitted that the said invoices record that Value Added Tax (VAT) had been paid by respondent No. 2; however, to the best of his knowledge, no such VAT payment has in fact been made by respondent No. 2, despite the contrary recital in the invoices. He contended that the said claim appears to be false and dishonest, and that no investigation whatsoever has been undertaken by the investigating agency in that regard.

6. Mr. Jha further placed reliance upon the decision of the Supreme Court in *Delhi Race Club (1940) Limited & Ors. v. State of Uttar Pradesh & Anr., reported in* (2024) 10 SCC 690, and submitted that in a contract for sale of goods, the ownership in the goods passes from the seller to the purchaser upon delivery

thereof. It was submitted that once the property in the goods stands transferred, it cannot thereafter be contended that the purchaser was entrusted with the property of the seller. According to learned counsel, in the absence of the essential element of entrustment, the offence of criminal breach of trust cannot be said to be made out merely because the purchaser has failed to pay the sale consideration.

7. In support of the aforesaid submission, learned counsel also relied upon the judgment of the Supreme Court in *Vir Prakash Sharma v. Anil Kumar Agarwal, reported in* (2007) 7 SCC 373, wherein it has been held that dishonour of cheques issued towards payment for purchase of goods, or mere non-payment or short payment of sale consideration, would not ipso facto constitute the offence of cheating or criminal breach of trust.

8. Learned counsel further submitted that where the complainant alleges commission of an offence of criminal breach of trust punishable under Section 406 of the Indian Penal Code, it would not be legally permissible, on the same factual foundation, to simultaneously contend that the offence of cheating punishable under Section 420 of the Indian Penal Code is also made out, unless the necessary and distinct ingredients of both offences are independently established. According to him, the present prosecution has been initiated with an oblique motive and solely with a view to harass the petitioner. It was, therefore, prayed that apart from quashing the impugned proceedings, this Court may also direct the complainant to pay compensatory costs to the petitioner.

9. Per contra, Mr. Patil, learned counsel appearing for respondent No. 2, submitted that in view of the law laid down by the Supreme Court in *Delhi Race Club (1940) Limited & Ors*, the prosecution against the petitioner is maintainable and liable to proceed, at least insofar as the offence punishable under Section 406 of the Indian Penal Code is concerned. Learned counsel for respondent No. 2 invited the attention of the Court to the material collected during investigation and placed on record along with the charge sheet, and submitted that the same sufficiently discloses commission of the alleged offences. According to him, the petitioner had represented to respondent No. 2 that he was in contact with two diamond merchants who were desirous of purchasing jewellery belonging to respondent No. 2. Acting upon such representation, respondent No. 2 is stated to have delivered jewellery valued at Rs.16,96,870/- to the petitioner under a bill, upon which the petitioner allegedly mentioned his Permanent Account Number (PAN) and assured respondent No. 2 that payment would be made within two days, if not on the following day itself. It was further submitted that on 19 November 2014, the petitioner once again obtained jewellery valued at Rs.16,86,467/- from respondent No. 2 by preparing a bill and assuring payment of the consideration amount. According to respondent No. 2, during the period from 29 September 2014 to 19 November 2014, the petitioner had thus obtained jewellery aggregating to Rs.60,66,606/- from respondent No. 2, ostensibly for the purpose of sale.

10. Learned counsel submitted that despite receipt of the aforesaid goods, neither was the sale consideration paid by the petitioner nor were the goods returned to respondent No. 2. In the aforesaid circumstances, according to respondent No.2, the conduct of the petitioner clearly attracts the ingredients of the offence punishable under Section 406 of the Indian Penal Code. It was, therefore, submitted that the present writ petition is devoid of merit and deserves to be dismissed.

REASONS AND ANALYSIS:

11. After having heard the learned counsel for both sides and after going through the record placed before this Court, I am of the view that the matter is required to be seen on the real nature of the transaction and not on the mere words used in the complaint. The whole case of respondent No. 2 is that certain jewellery was handed over to the petitioner for sale and that the sale proceeds were to be returned or accounted for. On the other hand, the petitioner has consistently taken the stand that this was a business dealing in sale of goods, that substantial amounts were already paid by cheque and RTGS, and that at the highest there remained a monetary balance which cannot by itself be stretched into a criminal offence. When these rival submissions are examined in the light of the material on record, the question is whether the basic ingredients of Sections 406 and 420 of the Indian Penal Code are really made out.

12. For the purpose of adjudicating the issue involved in the present matter, it becomes necessary to reproduce the definition of

the offence of criminal breach of trust as contained in Section 405 of the Indian Penal Code, which reads thus:

> "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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> Explanation 1.— A person, being an employer [of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.
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> Explanation 2.—A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of

the said contribution in violation of a direction of law as aforesaid."

13. Section 405 of the Indian Penal Code defines the offence of criminal breach of trust. A plain reading of the provision would show that, in order to attract the said offence, the prosecution must prima facie establish the following essential ingredients:

(i) that the accused was entrusted with property, or was otherwise vested with dominion over such property;

(ii) that such entrustment was in the nature of confidence reposed in the accused requiring him to deal with the property in a particular manner;

(iii) that the accused dishonestly misappropriated or converted the said property to his own use, or dishonestly used or disposed of the same;

(iv) that such use, disposal, or conversion was in violation of any direction of law or in breach of any legal contract, whether express or implied, governing the discharge of such entrustment; and

(v) that the dishonest intention accompanying such misappropriation or conversion existed at the time of the alleged act complained of.

14. The foundation of the offence under Section 405 is the element of "entrustment". Unless it is first shown that the property in question continued to belong to the complainant and had merely been handed over to the accused in trust or for a specific

purpose, the question of criminal breach of trust does not arise. Mere receipt of property in the course of a commercial or contractual transaction does not by itself amount to entrustment within the meaning of Section 405. The relationship between the parties must disclose that the accused held the property on behalf of another and was under an obligation to deal with it in accordance with the directions of the person entrusting it.

15. Further even after establishing entrustment it must also be shown that the accused dishonestly misappropriated the property or converted the same to his own use. Mere retention of money, delayed payment, or failure to honour a promise, without more, would not satisfy the ingredients of Section 405 unless accompanied by material indicating dishonest misappropriation.

16. The Explanations appended to Section 405 create statutory deeming fictions in specific situations involving employers deducting employees' contributions towards Provident Fund and Employees' State Insurance. In such cases the law deems the employer to have been entrusted with the deducted amounts and treats default in remittance as dishonest use in violation of law. These explanations demonstrate that where the legislature intended to expand the ordinary meaning of "entrustment," it has done so expressly by legal fiction.

17. Thus, the settled legal position remains that, for constituting an offence of criminal breach of trust, mere breach of contract or non payment of dues is insufficient unless the foundational requirement of entrustment coupled with dishonest

misappropriation is made out.

18. The first requirement for criminal breach of trust is entrustment. Unless the property is shown to have been entrusted to the accused in such manner that he was under a duty to deal with it for the benefit of the complainant or in a particular legal manner, Section 405 cannot be brought in. The law does not permit every failure in payment or every broken promise in a commercial transaction to be called criminal breach of trust. The facts must show that the accused was in a position of trust and that he dishonestly misappropriated or converted the property. That element is missing here or at least not shown with such clarity as would justify criminal prosecution.

19. The statement of respondent No. 2 and his supplementary statement certainly allege that jewellery was delivered to the petitioner for sale. But the material placed before the Court shows that the dealings were in the nature of business transactions between two traders. The invoices relied upon by the complainant are said to be unsigned by the purchaser. That circumstance goes to the proof of the transaction itself. The invoices are also relied upon with a mention of VAT payment, yet no investigation of any real VAT payment is shown to have been carried out. When the foundation documents themselves are not free from doubt, the Court cannot lightly infer entrustment of property in the criminal sense. The case may still give rise to a claim for money. It does not automatically become a case of criminal breach of trust.

20. The judgment in *Delhi Race Club (1940) Limited and others* clearly supports the petitioner on this aspect. The principle is states that in a sale transaction, once goods are delivered and property passes, the relationship does not remain one of entrustment unless some special arrangement is shown. Here, the complainant himself says that jewellery was handed over for sale. That description does not prove entrustment in the sense required by Section 405. If the transaction was one of sale or supply of goods and if the petitioner had already paid a large part of the amount through bank, then the dispute more naturally falls within the civil nature. The criminal law cannot be used to recover what may be payable in accounts.

21. The reliance placed by the petitioner on *Vir Prakash Sharma* is also well-founded. The Supreme Court has made it clear that dishonour of cheques, non-payment, or short payment of consideration, without more, does not constitute cheating or criminal breach of trust. The present case, on the material shown, appears to stand on that same footing. There are allegations of unpaid balance. There are allegations of dishonoured cheques. There are also clear assertions that payments of Rs.59,20,000/- were already made. Once such payments appear from the record, the dispute becomes one of accounts. It may be large. But size alone does not create criminality.

22. The submission of the complainant that jewellery worth Rs.60,66,606/- was obtained from him and neither price was paid nor goods were returned cannot be accepted as sufficient by itself to complete the offence. For criminal breach of trust, it must be

shown that the petitioner held the property for the complainant and then dishonestly misused it. There must be some material to show a clear breach of trust and dishonest conversion. In the present case, the material only shows that the petitioner was involved in transactions of jewellery and payments were moving from time to time. A businessman receiving goods and making part payments is not a trustee of the goods in criminal law. The complainant has not shown any material which would take the case beyond a commercial liability.

23. The offence under Section 420 also does not stand on firmer ground. For cheating, the dishonest intention must exist at the very beginning of the transaction. A later failure to pay does not by itself prove cheating. The present record does not show that the petitioner induced the complainant from the very start with a dishonest design. On the contrary the record reflects ongoing business relations earlier payments and later dispute over outstanding amounts. If the intention was dishonest from inception, one would expect stronger material. That material is not there. Mere breach of promise after a commercial deal is not enough.

24. I also find substance in the petitioner's submission that a substantial amount had already been paid between 10 April 2014 and 7 November 2014. This fact takes away force of the allegation of a dishonest intention. If the petitioner had intended from the beginning not to pay anything, such part payments would not have been made in the ordinary course of business. These payments do not wipe out the entire controversy, but they certainly indicate that

the matter was moving as a running commercial account. Such a dispute cannot be allowed to be converted into a criminal prosecution.

25. The Court must also keep in mind that criminal process is a serious matter. It cannot be used as a pressure tactic in a business dispute. If the basic facts themselves show a commercial transaction, part payments, disputed invoices, and an unresolved balance, the lawful course is to leave the parties to their civil remedies. Criminal law should not be permitted to become a weapon for recovery of money.

26. For these reasons, I find that the essential ingredients of criminal breach of trust are not made out. Entrustment in the legal sense is not established. Dishonest misappropriation is also not shown. The allegations, even if read as they are, disclose at best a monetary dispute arising out of business dealings. No clear initial dishonest intention is made out from the record. The continuation of the criminal case, therefore, would amount to an abuse of the process of law.

27. Accordingly, the writ petition deserves to succeed. The impugned FIR and the proceedings arising therefrom are liable to be quashed, as the matter does not disclose the commission of offences punishable under Sections 406 and 420 of the Indian Penal Code on the material placed before this Court.

28. In view of the discussion made hereinabove, the following order is passed:

(i) The writ petition is allowed;

(ii) Rule is made absolute in terms of prayer clause (a);

(iii) It is hereby declared that the allegations contained in the impugned First Information Report, even if taken at their face value and accepted in entirety, do not disclose the commission of offences punishable under Sections 406 and 420 of the Indian Penal Code;

(iv) Consequently, Crime Register No.231 of 2014 registered with L.T. Marg Police Station, Mumbai, and Case No. 491/PW/16 arising therefrom, together with all consequential proceedings thereto, stand quashed and set aside;

(v) It is, however, clarified that this order shall not preclude respondent No. 2 from pursuing such civil remedies as may be available in law for recovery of the alleged outstanding amount, if so advised;

(vi) In the facts and circumstances of the case, there shall be no order as to costs;

(vii) Pending interim applications, if any, shall stand disposed of accordingly.

29. At this stage, learned Advocate for respondent No.2 seeks stay of this judgment and order for a period of four weeks from today. However, for the reasons recorded above, the request for stay is rejected.

(AMIT BORKAR, J.)