

Reserved on : 23.01.2026
Pronounced on : 21.02.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 21ST DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

CRIMINAL PETITION No.10707 OF 2024

BETWEEN:

WINZO GAMES PRIVATE LIMITED
HAVING ITS REGISTERED OFFICE AT
SUITE NO.106, FIRST FLOOR,
COPIA CORPORATE SUITES,
BUILDING NO. 9,
DDA DISTRICT CENTRE JASOLA,
NEW DELHI – 110 025.

REPRESENTED BY ITS
AUTHORISED REPRESENTATIVE,
MS. SAUMYA SINGH RATHORE,
DIRECTOR,
AGED ABOUT 37 YEARS,
D/O. MR. ARUN PRATHAP SINGH,
AT:SUITE NO. 106, FIRST FLOOR,
COPIA CORPORATE SUITES,
BUILDING NO. 9,
DDA DISTRICT CENTRE JASOLA,
NEW DELHI – 110 025.

... PETITIONER

(BY SRI SAJAN POOVAYYA, SR.ADVOCATE FOR
SRI AMITH NAYAK, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
BY THE POLICE OF CENTRAL CEN P.S.,
HALSURGATE SUB-DIVISION
BENGALURU CITY.
REPRESENTED BY
THE STATE PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.

- 2 . AASTHA SOOD
W/O. HIMANSHU TEWARY,
AGED ABOUT 38 YEARS,
R/AT NO. 103, TULIP BLOCK,
PRESTIGE EXOTICA,
CUNNINGHAM CRESCENT ROAD,
VASANTH NAGAR,
BENGALURU – 560 051.

... RESPONDENTS

(BY SRI B.N.JAGADEESHA, ADDL.SPP FOR R-1;
R-2 SERVED AND UNREPRESENTED)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 528 OF
BNSS, 2023, PRAYING TO PASS AN ORDER AND QUASH THE FIR IN
CRIME NO.413/2024 DATED 04.07.2024 OF CENTRAL CEN P.S.,
PENDING ON THE FILE OF THE LEARNED 45th ACMM NRUPATUNGA
ROAD, BENGALURU CITY REGISTERED FOR THE OFFENCES P/U/S
420 OF IPC 1860 AND UNDER SECTION 66C, 66D OF INFORMATION
TECHNOLOGY ACT, 2008.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 23.01.2026, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner is before this Court calling in question registration of a crime in Crime No.413 of 2024 registered for offences punishable under Section 420 of the IPC and Sections 66C and 66D of the Information Technology Act, 2000 ('the Act' for short).

2. Heard Sri Sajan Poovayya, learned senior counsel appearing for the petitioner and Sri B.N. Jagadeesha, learned Additional State Public Prosecutor appearing for the 1st respondent.

3. Facts in brief, germane, are as follows: -

3.1. The petitioner-Company is a prominent digital entertainment, gaming and technology Company established in the year 2016. It operates a digital gaming platform called 'WinZo'

since February 2017, it is said to be a vernacular entertainment platform providing diverse range of skill-based games including free to play games. WinZo is said to have emerged as a leading gaming platform in India. The complainant alleges that her PAN card details were published online on a digital document platform called www.scribd.com. The PAN details of the complainant are said to have been stolen and misused by certain individuals on the petitioner's platform. Therefore, the complainant seeks the help from the jurisdictional police to ensure that PAN details of the complainant are removed and also to remove the TDS entries in her Form-26AS.

3.2. On 29-06-2024, the complaint comes to be registered before the jurisdictional police. The complainant through an electronic mail shared her details with the petitioner and further details about the incident. The petitioner responds to the complainant via e-mail and seeks to rectify after a formal complaint with the Competent Authority. The complainant also shares a screen shot of the cyber complaint filed by her against the misuse of the PAN card. On 04-07-2024, the crime in Crime No.413 of

2024 comes to be registered based on the complaint of the complainant. The petitioner then communicates an e-mail to the competent authority informing about the incident as well as steps taken to rectify as sought by the complainant. By then, the crime had been registered against the petitioner and Scribd. Registration of the crime drove the petitioner to this Court in the subject petition. On 26-11-2024, this Court grants an interim order of stay and when the matter was again listed on 07-01-2026 investigation was permitted to be conducted and the matter is heard thereafter.

4. The learned senior counsel Sri Sajan Poovayya appearing for the petitioner would vehemently contend that the issue is about loss of ₹1200/- on the alleged misuse of PAN card of the complainant. Beyond this there is no allegation against the petitioner. PAN card is said to have been published on a public platform called 'scribd'. The petitioner has not published on its website, but certain perpetrators are said to have used it on the petitioner's website. It is the petitioner who first brought to the notice of the complainant with regard to the potential misuse of PAN and rectified the problem. It cannot be said that the petitioner

can be held guilty or directed to face the rigmarole of investigation for having done nothing by it. Therefore, the offences under Section 420 of the IPC or Sections 66C and 66D of the Act cannot be laid against the petitioner.

5. Per contra, the learned Additional State Public Prosecutor Sri B. N. Jagadeesha appearing for the 1st respondent would submit that the petitioner has not cooperated with the investigation and it is only now it has cooperated, which has revealed that misuse of PAN card was by three persons who are in Uttar Pradesh. Therefore, steps would be taken against those persons. If only the petitioner cooperated, the things would have been different. He would further contend that ₹1200/- is only tip of the iceberg. These gaming apps have hoodwinked several innocent people. So, the petitioner cannot be left off at the stage of investigation. He would seek dismissal of the petition and continuance of investigation.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

7. The 2nd respondent who is the complainant, registers a complaint before the Cyber Crime Police Station on 04-07-2024.

The complaint so registered reads as follows:

"To,
Police Inspector,
CEN Police Station,
Central Division,
Bangalore City.

From: Aastha Sood

Name: Aastha Sood
HUSBAND NAME: Himanshu Tewary
AGE: 38 Years
GENDER: Female
ADDRESS: 103, Tulip Block, Prestige Exotica,
Cunningham Crescent Road, Vasanth nagar,
Bangalore- 560051.
MOBILE NO:9920553096
OCCUPATION: Director, Jupiter Money.
RELIGION: Hindu
CASTE: ARORA-KHATRI
EMAIL ID: AASTHA.SOOD1@GMAIL.COM

Dear Sir, Madam,

SUBJECT: PAN THEFT AND MISUSE ON GAMING APPS

My PAN No. (XXXXXXXXXX) has been published online in a data leak on www.scribd.com and has been misused by criminals on two gaming apps, WINZO and REAL 11.

I found out about this through unknown TDS entries in my form 26AS on June 29, 2024. The unauthorized use of my PAN has happened from September 2023 onwards.

I have raised a complaint to the Income Tax Department and the two gaming apps but the gaming apps (WINZO and REAL 11) are not agreeing to help without police

intervention. Please help me to Investigate this and ask for my pan to be removed

**Regards
Aastha**

Please take necessary action against the following:

- 1. www.scribd.com: For PAN Leak**
- 2. WINZO APP: For misuse of PAN without Verification**
- 3. REAL 11: For misuse of PAN without Verification”**

It is the case of the complainant that her PAN card has been published online in a data leak on scribd platform which has been misused by criminals on two gaming apps WinZo and REAL-11. So, one factor is clear that the petitioner has not got anything do with the misuse. It is by criminals who published on scribd using the petitioner’s gaming platform. Prior to the registration of crime on 30-06-2024 the petitioner communicates to Aastha Sood, the complainant. The mail trail is as follows:

“Aastha Sood <aastha.sood1@gmail.com>
Sun, Jun 30, 2024 at 9:47 AM
To: Saumya Singh Rathore <saumya@winzogames.com>
Cc: Legal Team <legal@winzogames.com>, Paavan Nanda
<paavan@winzogames.com> Shaswat Shekhar
<shaswat.shekhar@winzogames.com>

Hi,

Please reach out to me on 9920553096.

On Sat, Jun 29, 2024, 11:06 PM Saumya Singh Rathore <saumya@winzogames.com> wrote:

Hi Aastha,

Came to my attention that your personal Identification data has been compromised and misused on multiple platforms including ours. It's a very serious concern for us and would like to be in touch with you immediately to work with you to report this breach and fraud conducted. May I please request for your number where we can reach you.

**Regards,
Saumya"**

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Re: Resolution of Issue with PAN Details

1 message

Mon, Jul 8, 2024 at 10:34 PM

Aastha Sood <aastha.sood1@gmail.com>
To: Legal Team <legal@winzogames.com>

Can you please confirm if the screenshot of the cyber crime complaint is what you needed and the process for removal of these TDS transactions has been initiated from your end?

On Thu, Jul 4, 2024 at 7:41 PM Aastha Sood <aastha.sood1@gmail.com> wrote:

Here you go, please confirm if this is what you need. This complaint has been forwarded to Bangalore Central Cyber Crime Police station, so they will contact you for assistance in their investigation.

Secondly, please find a screenshot of your own email on the non-requirement of KYC for deducting TDS. I don't wish to engage on this matter further, but I hope this gives you clarity.

Please keep me posted on the status of the TDS transactions removal.

Cyber Crime Incident

Complaint/Incident Details

Acknowledgement Number: 21006240030666
 Category of complaint Online and Social Media Related Crime
 Sub-Category of complaint Fake/impersonating Profile
 Approximate Date: 2023-09-30 HH:11 MM: N/A AM

is there any delay in reporting No

Supporting Evidence:

Description	Text Information	Supporting Evidence
Mobile App	Winzo and Real11	Evidence202406301549225722812 pdf

Please provide any additional information about the incident:

Someone has misused my PAN number to register on two gaming apps, Winzo and Real11. I have never visited these apps but there are TDS entries in my Form 26AS from these apps. This is a case of fax Identity theft, I have attached my Form 26AS as proof. Please investigate this as I am not sure if my PAN is being misused on other platforms too.

Suspect Details

Suspect Name	ID Type	Country Code	ID Number
N/A	N/A	N/A	N/A

Please Upload Any Photograph of Suspect's: N/A

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On Mon, Jul 1, 2024 at 4:35 PM Aastha Sood <aastha.sood1@gmail.com> wrote:

Hi,

Here's the cyber crime cell complaint number:
21606240030666.

On your response to pt.3, how do you credit winnings to a user's bank account? This is a monetary transaction, even if you're not a fintech, you must have a partner / PG that does the money transfer for you. Is there no first party check done before transferring the money? If you do not, there is always this gap in your process and the same issue can easily repeat in the future.

Lastly, please explain to me how this is not a 'Tax Identity Fraud' situation - **I have clearly mentioned that someone (not WinZO) has misused my PAN number and that WinZO and Real11 have a gap in KYC processes because of not matching the user and the PAN. In fact, you are trying to defend your situation by saying you do not do KYC before transferring money and the same thing can happen in the future. The idea of my post is also to alert others in my network to a case of tax identity fraud by perpetrators so that they can check their own Forms 26 AS. I have not said or suggested that WinZO is the perpetrator.**

Please explain to me what is factually incorrect about my post and I will be happy to take it down once I understand.

Also, if you do need to call me, please coordinate a time over email. I appreciate your prompt response but at this moment, it seems like you haven't yet taken any action to rectify the situation. I was told by Saumya."

The complainant also clearly indicates that she has nowhere stated that WinZo is the perpetrator. Notwithstanding the aforesaid communications, as observed hereinabove, the aforesaid complaint

comes to be registered, which becomes a crime in Crime No.413 of 2024. A notice comes to be issued on 09-07-2024 to the petitioner under Section 35(3) of the BNSS and the petitioner submits a detailed reply to the jurisdictional police on 15-07-2024. It reads as follows:

"To

CEN PS CENTRAL DIVISION BENGALURU CITY
No-55, Abhaya Bhavana 4th Floor,
Risaldar Road, Sheshadripuram
Bangalore City-560020
E-mail id-cenpscentralbcp@ksp.gov.in

Attention: Police Inspector, CEN Police Station

Subject: Information regarding FIR No. 413 of 2024 in response to Police Notice dated 09 July 2024 under section 35(3), BNSS issued to WinZO Games Pvt. Ltd.

Respected Sirs:

We write in response to your notice dated 09.07.2024 issued under Section 35(3) of the Bharatiya Nagarik Suraksha Sanhita (Notice) received by WinZO Games Pvt. Ltd. ("**Company**") and state us under:

1. At the outset I humbly apologize that I could not be present before you personally as I am indisposed and suffering from viral fever. The Company manages all its operations from New Delhi and has no office or physical presence in Bengaluru or Karnataka. I request you to dispense with my personal appearance for today and permit me to have my reply on behalf of the Company along with the documents submitted through our legal counsel.

2. The Company is a prominent digital entertainment, gaming, and technology company that was established in 2016. It operates a digital gaming platform called 'WinZO' since February 2017, which serves as a vernacular entertainment platform. WinZO provides a diverse range of skill-based games including free to play games and has emerged as a leading gaming platform in India.
3. The present matter relates to alleged theft of PAN Card details of one Ms Aastha Sood ("**Complainant**") by certain individuals and misuse of such PAN details on the Company's online skill gaming platform, WinZO. WinZO asks for user's PAN Card details for the purpose of generating TDS certificates. While WinZO asks for PAN submission, if the users do not submit their PAN details, or submit incorrect PAN, WinZO deems it as non-submission of PAN under law and proceeds to deduct the applicable TDS. A user is contractually and legally bound to submit the correct PAN, therefore under law, the onus to submit correct PAN solely lies upon the user.
4. **It appears that certain users submitted the Complainant's PAN details on WinZO, resulting in TDS entries from WinZO reflecting on the Complainant's Form 26AS. Pursuant to receiving a complaint from the Complainant, we discovered that her PAN was available publicly and is retrievable from <https://www.scribd.com/document/724970386/Pan-Cards-500-New-1>. This was promptly communicated to the Complainant for appropriate action on her behalf and the incorrect TDS entries in the Complainant's Form 26AS were sent for rectification.**
5. **We have also identified the following user accounts through which the incorrect PAN details were submitted on the WinZO platform. The details of such accounts are as follows:**
 - i. **User Id-121513557, Phone number-8440894951, Name at Bank (as shared by payment gateway)- Shah Mohammed**

Khan, Geolocation and IP based location-West Bengal

- ii. **User Id-133335593, Phone number-9908903165, Name at Bank (as shared by payment gateway)- Bhairab Mahato, Geolocation and IP based location-West Bengal**
- iii. **User Id-145360950, Phone number-6395625684, Name at Bank (as shared by payment gateway)- Rajni, Geolocation and IP based location -Uttar Pradesh**

6. The Company has no role or involvement in this matter and as such, the Company has been incorrectly named as an accused in the FIR No. 413 of 2024. We also seek to submit the following facts which may be relevant for effective closure of this investigation qua the Company:

- a) The Company has been throughout cooperating with the Complainant in resolving the issue. In fact, the Complainant never reached out to the Company to address her concerns and posted the issue of misuse of her PAN Card on the LinkedIn platform. It was our Company's representatives who proactively contacted the Complainant upon learning of her LinkedIn post on June 29, 2024. At 12:09 AM on June 30, 2024, the Company representatives sent an email to the Complainant requesting her to share her PAN card details while assuring her of Company's full cooperation.
- b) **The Company made multiple efforts to reach out to the Complainant through telephone to resolve the issue expeditiously, however the Complainant refused to entertain the calls. On the Complainant's specific queries regarding details of the user(s) involved and internal processes of the Company, on July 1, 2024 we recommended the Complainant to follow the due procedure and requested as follows:**

- **Regarding removal of transactions: It was communicated that the Company is ready to assist in rectifying the TDS records provided that a copy of the complaint/ report as filed with the relevant authority is submitted to the Company.**
 - **Regarding identification of the perpetrator: It was communicated that such personal Information of users could only be disclosed upon receiving a formal request from a competent authority, such as the police or a regulatory body. We encouraged the Complainant to lodge a cybercrime complaint/ FIR for theft of her PAN and conveyed our intent to fully cooperate with the authorities during the investigation.**
 - **Regarding internal processes of the Company: It was highlighted that the misuse of the Complainant's PAN has no connection with the Company's operations. The Complainant's PAN was available in the public domain and was seemingly also used on another platform. We recommended the Complainant to take all necessary precautions to keep her personal documents secure to prevent any potential misuse.**
- c) In her email dated July 1, 2024, the Complainant shared an acknowledgement number of her cyber complaint without sharing the complaint copy. The Complainant further levelled several unfounded allegations against the Company with respect to its internal processes.

- d) The email dated July 1, 2024 was duly responded to on behalf of the Company on July 2, 2024, adequately addressing each of the allegations raised by the Complainant. It was communicated to the Complainant that TDS is deducted based on the information provided by the user. If the Complainant's PAN has been compromised and used fraudulently, it is a matter of an external data breach and does not involve the Company.
- e) On July 4, 2024, the Company once again requested the Complainant to share the complete copy of her complaint so that the TDS entries could be rectified. The Complainant was yet again informed that the Company's internal processes are in full compliance with the applicable rules and regulations.
- f) **The Complainant finally shared a redacted/incomplete copy of her cyber-complaint bearing acknowledgment number 21606240030666 with the Company on July 4, 2024. Acting upon the same, the Company initiated the process of rectification of her TDS records. On July 9, 2024, the Company itself raised the matter to Cyber Cell, Bengaluru notifying them that while we have not received any request for information from the authorities, we are proceeding with the rectification of the TDS records on the basis of the information provided by the Complainant herein. The Complainant was also copied on this communication. A copy of this email is enclosed herewith as Enclosure A.**
- g) As evident from the foregoing facts, the Complainant has fully cooperated with the Complainant and at all times and encouraged her to file a complaint against the theft and misuse of her PAN. However, we are shocked that an FIR has been filed against the Company itself by the Complainant. We are further surprised that the Company has been named as an accused in this

FIR without any prior inquiries being made from the Company. This approach appears unreasonable and unwarranted, especially given the Company's proactive efforts to assist in resolving the issue.

7. In view of the above, it is humbly requested that the name of WinZO Games Pvt. Ltd. be removed from the list of accused persons in the FIR since there is no cause for initiation of any criminal proceedings against the Company.
8. We will provide you with all the necessary documents that you may require and assure you of our full cooperation with the investigation. We request that the information being shared as part of this response is treated as full compliance with the requisitions made in the Notice.

Needless to say, we remain committed to fully cooperate on the matter.

Yours sincerely,

Saumya Singh Rathore

WinZO Games Private Limited

Enclosure:

1. Email dated July 9, 2024 sent by WinZO Games Pvt. Ltd. to the Cyber Cell, Bengaluru

Copy to:

Director-General & Inspector General of Police,
Karnataka State Police Headquarters, No.2.
Nrupathunga Road,
Bangalore 560-001, Karnataka
Email: police@ksp.gov.in igpksrp@ksp.gov.in

At paragraph 5 therein, the names of those alleged criminals who had misused the PAN card of the complainant are also indicated and prior to the afore-quoted reply to the notice under Section 35(3) of the BNSS, a communication is also sent to spctroid@ksp.gov.in by the petitioner on 09-07-2024, which reads as follows:

"Respected Sirs:

We write on behalf of WinZO Games Pvt. Ltd (Company). The Company owns and operates an online skill gaming, platform called WinZO and has its registered office in New Delhi.

We refer to the attached cyber complaint filed by Ms. Aastha Sood (Complainant) bearing acknowledgment number 21606240030666. The Complainant has shared with us a copy of her Complaint requesting the Company to rectify her TDS records.

We understand that the Complainant's PAN has been compromised and the details of her PAN have been submitted on the WinZO Platform by a user. We have taken note of this external data breach and the cyber complaint filed by Ms. Aastha Sood.

While we have not received any request for information from your good offices, we are proceeding with the rectification of the records on the basis of the information provided by the Complainant herein.

This is for your kind information.

Regards,
WinZO Games Pvt. Ltd."

(Emphasis added at each instance)

Notwithstanding all these, the crime is now registered and investigated into against the petitioner. There is no complaint against the petitioner that the petitioner has misused the PAN card of the complainant. It is the clear case of the complainant herself that she has not stated anywhere that the petitioner is the perpetrator of the crime, it is certain individuals and the names of those individuals are now available with the prosecution pursuant to investigation. Therefore, in a case of this nature, the submission of the prosecution that investigation must be permitted on the score that this is only a tip of the iceberg and all other things have to be investigated into, is unacceptable.

8. In the case at hand, the offence of cheating punishable under Section 420 of the IPC is alleged against the petitioner. Section 420 has its ingredients under Section 415 of the IPC. The Apex Court, in the case of **INDER CHAND BAGRI v. JAGADISH PRASAD BAGRI**¹, while elucidating on the ingredients of the offence punishable under Section 420, has held as follows:

"...."

¹ 2025 SCC OnLine SC 2529

17. The contents of the complaint would have to be read in light of the ingredients of Sections 406 and 420 of the IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 19.09.2013, it is noted that the complainant/respondent No. 1 has filed the said complaint invoking Sections 406/420 of the IPC. For ease of reference, the aforesaid Sections are extracted as under:

"406. Punishment for criminal breach of trust.—

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

xxx

420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

18. In *Inder Mohan Goswami v. State of Uttaranchal*, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259 ("*Inder Mohan Goswami*"), while dealing with Section 420 of the IPC, this Court observed thus:

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time

of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

19. In light of the facts and circumstances of the present case, we find that the complainant/respondent No. 1 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 of the IPC. We fail to understand as to how the allegations against the appellant-accused herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the complaint, we do not find that the offence of cheating as defined under Section 420 of the IPC is made out at all and we do not find that there is any cheating and dishonest inducement to deliver any property of a valuable security involved in the instant case.

20. It is settled law that for establishing the offence of cheating, the complainant/respondent No. 1 was required to show that the appellant-accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the partnership agreement. Such a culpable intention right at the beginning cannot be presumed but has to be made out with cogent facts. In the facts of the present case, there is a clear absence of material on record to attribute any dishonest and fraudulent intention to the appellant-accused at the time of creation of partnership agreement. **We must hasten to add that there is no allegation in the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant-accused right from the time of formation of the partnership deed. Nothing has been said on what the misrepresentations were and how the appellant-accused intentionally deceived the complainant/respondent No. 1. Mere allegations that the appellant-accused dishonestly induced the complainant/respondent No. 1 to part with the property of the partnership firm and subsequently sold the property to a third party does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 of the IPC.**

.... ..

23. Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 1 that the offence of criminal breach of trust as defined under Section 405 of the IPC, punishable under Section 406 of the 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 in Section 415, punishable under Section 420 of the IPC. This Court in *Delhi Race Club (1940) Limited v. State of Uttar Pradesh*, (2024) 10 SCC 690 : (2025) 1 SCC (Cri) 281 observed that there is a distinction between criminal breach of trust and cheating. **For cheating, criminal intention is necessary at the time of making 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 a property.** In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot coexist simultaneously in the same set of facts as they are antithetical to each other.

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25. Furthermore, in *Inder Mohan Goswami*, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant-accused herein would cause undue harassment to him because as observed hereinabove, no *prima facie* case for the offence under Sections 406 or 420 of the IPC is made out.

26. In this regard, it would be apposite to rely on the judgment in the case of *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 ("Bhajan Lal") with

particular reference to paragraph 102 therein, where this Court observed:

"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."

27. On a careful consideration of the aforementioned judicial dicta, we find that none of the offences alleged against the appellant-accused herein is made out. In fact, we find that the allegations of criminal intent and other allegations against the appellant-accused herein have been made with a *mala-fide* intent and therefore, the judgment of this Court in the case of *Bhajan Lal* extracted above, squarely applies to the facts of these cases. It is neither expedient nor in the interest of justice to permit the present prosecution to continue."

(Emphasis supplied)

If the law laid down by the Apex Court in the afore-quoted judgment is pitted against the facts of the case at hand, what would unmistakably emerge is, the offence of cheating is not brought out from the allegations in the complaint *qua* the petitioner. When there is no transaction between the complainant and the petitioner, it is understandable as to how the petitioner can even lure the

complainant into a transaction, with dishonest intention from the inception. Therefore, the offence punishable under Section 420 of the IPC tumbles down.

9. If there are other instances against the petitioner directly or trail leads to the petitioner, there would be some semblance of the statement that investigation must be permitted. Here it is a case where the complainant has never complained against the petitioner. It is the complainant's case that somebody else has misused her PAN card. That somebody else is now known. It is for the investigating agency to go in search of those people and investigate. For investigating those people, the petitioner against whom nothing is found cannot be permitted to undergo the rigmarole of investigation. In this regard, it becomes apposite to refer to the judgment of the Apex Court in the case of **STATE OF HARYANA v. BHAJAN LAL**², wherein it is held 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

² **1992 Supp (1) SCC 335**

226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give 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.”

(Emphasis supplied)

The Apex Court holds that if the alleged offence cannot be relatable to the petitioner or inherently improbable, it cannot be said that investigation must be permitted in such a case.

10. The offences punishable under Section 66C and 66D of the Act flows from Section 420 of the IPC or ingredients under Section 415 of the IPC. Therefore, the very registration of the crime against the petitioner for the afore-quoted offences, would tumble down *qua* the petitioner.

11. For the aforesaid reasons, the following:

ORDER

- (i) Criminal Petition is ***allowed.***
- (ii) FIR in Crime No.413 of 2024 registered against the petitioner at the Central CEN Crime police station on 4-07-2024 and pending before the 45th Additional Chief Metropolitan Magistrate, Bangalore stands quashed *qua* the petitioner.
- (iii) It is made clear that the quashment of proceedings in the impugned crime will not come in the way of any other proceedings against any other accused.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

Bkp
CT:MJ