



2025 INSC 512

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. OF 2025
(arising out of SLP(Crl.) No.8592 of 2024)

RIKHAB BIRANI & ANR.

..... APPELLANT(S)

VERSUS

STATE OF UTTAR PRADESH & ANR.

..... RESPONDENT(S)

O R D E R

Leave granted.

The appellants, Rikhab Birani and Sadhna Birani, had entered into an oral agreement to sell Roti Godown No. 28/27, Birhana Road, Kanpur, Uttar Pradesh, to respondent No.2, Shilpi Gupta, for a consideration of ₹1,35,00,000/- (Rupees one crore thirty five lakhs only) in June, 2020.

Respondent No.2, Shilpi Gupta, and her husband claimed that they had paid an amount of ₹19,00,000/- (Rupees nineteen lakhs only) towards part-sale consideration between June and September, 2020.

It is the case of the appellants, Rikhab Birani and Sadhna Birani, that respondent No.2, Shilpi Gupta, had to pay 25 per cent of the total sale consideration amount as advance on or before 15.09.2020. However, she was unable to pay the same. In fact, a cheque of ₹10,00,000/- (Rupees ten lakhs only) given by respondent No.2, Shilpi Gupta, bounced due to insufficient funds. The appellants, Rikhab Birani and Sadhna Birani, relied upon some

WhatsApp messages and other communications *inter se* them and respondent No.2, Shilpi Gupta, and her husband, whereby the latter was asked to pay the unpaid amount and complete the sale transaction by execution of a registered document. This was not done.

After about one year, on 03.09.2021, the appellants, Rikhab Birani and Sadhna Birani, sold the aforesaid property by way of registered sale deed dated 03.09.2021 at the lower price of ₹90,00,000/- (Rupees ninety lakhs only) statedly due to changed circumstances.

It is the case of the appellants, Rikhab Birani and Sadhna Birani, that they had suffered losses of ₹45,00,000/- (Rupees forty five lakhs only) on account of the failure of respondent No. 2, Shilpi Gupta, and her husband, in paying the sale consideration amount and abiding by the oral agreement; hence, they are not liable to refund or pay any amount to respondent No.2, Shilpi Gupta.

It is the accepted position that neither the appellants, Rikhab Birani and Sadhna Birani, nor respondent No. 2, Shilpi Gupta, initiated any civil proceedings. On the other hand, respondent No.2, Shilpi Gupta, approached the Court of the Metropolitan Magistrate, Kanpur Nagar, for registration of a First Information Report¹ by taking recourse to the provisions of Section 156(3) of the Code of Criminal Procedure, 1973.² However, by the detailed and reasoned order dated 26.04.2022, the Metropolitan Magistrate, Kanpur Nagar, dismissed the application³ under Section 156(3) of the Cr.P.C.,

¹ For short, "FIR".

² For short, "Cr.P.C.".

³ Misc. Case No. 4732/2021.

holding that this is a civil matter and no criminal offence is made out.

Respondent No.2, Shilpi Gupta, thereupon filed another criminal complaint⁴ on 14.06.2022 before the Court of the Metropolitan Magistrate, Kanpur Nagar. The Metropolitan Magistrate had, thereupon, called the Station House Officer of the Police Station - Harbans Mohal, District - Kanpur Nagar, Uttar Pradesh, to submit a report under Section 202 of the Cr.P.C. After receiving the report, the Metropolitan Magistrate, Kanpur Nagar, vide judgment dated 14.07.2023, dismissed the criminal complaint, holding that the matter is of civil nature.

Notwithstanding the two orders passed by the Metropolitan Magistrate, referred to above, respondent No.2, Shilpi Gupta, directly approached the Police Station - Harbans Mohal, District - Kanpur Nagar, Uttar Pradesh, and registered FIR No. 78/2023 dated 22.07.2023 for the offence(s) punishable under Sections 420, 406, 354, 504 and 506 of the Indian Penal Code, 1860.⁵

Aggrieved thereby and apprehending their arrest, the appellants, Rikhab Birani and Sadhna Birani, filed an application for grant of anticipatory bail, which was granted to them till the filing of the chargesheet.

The investigating officer, on 12.09.2023, filed a chargesheet in the aforesaid FIR No.78/2023. We shall subsequently refer to the contents of the chargesheet.

On the aforesaid chargesheet being filed, the Metropolitan

⁴ Complaint Case No. 90180/2022.

⁵ For short, "IPC".

Magistrate, Kanpur Nagar, notwithstanding the two earlier orders, passed on the same allegations, dismissing the criminal complaints of respondent No.2, Shilpi Gupta, passed order dated 17.01.2024 taking cognizance and summoning the appellants, Rikhab Birani and Sadhna Birani.

Thereupon, the appellants, Rikhab Birani and Sadhna Birani, preferred a petition under Section 482 of the Cr.P.C. before the High Court,⁶ which was dismissed by the High Court, vide the impugned order dated 09.05.2024, notwithstanding the aforesaid facts, stating that at that stage, only a *prima facie* case was to be seen in the light of the law laid down by this Court.

We are constrained to pass this detailed speaking order, as it is noticed that, notwithstanding the law clearly laid down by this Court on the difference between a breach of contract and the criminal offence of cheating, we are continuously flooded with cases where the police register an FIR, conduct investigation and even file chargesheet(s) in undeserving cases.

During the last couple of months, a number of judgments/orders have been pronounced by this Court, especially in cases arising from the State of Uttar Pradesh, deprecating the stance of the police as well as the courts in failing to distinguish between a civil wrong in the form of a breach of contract, non-payment of money or disregard to and violation of contractual terms; and a criminal offence under Sections 420 and 406 of the IPC, the ingredients of which are quite different and requires *mens rea* at the time when the contract is

⁶ A482 No. 7415/2024.

entered into itself to not abide by the terms thereof.

In *Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another*,⁷ this Court quoted an earlier decision in *Mohammed Ibrahim and Others v. State of Bihar and Another*,⁸ wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."

Reference was also made to the decision in *V.Y. Jose and Another v. State of Gujarat and Another*⁹ and it was observed:

"7. Similar elucidation by this Court in "*V.Y. Jose v. State of Gujarat*", explicitly states that a contractual dispute or breach of contract *per se* should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should

⁷ 2024 SCC Online SC 171.

⁸ (2009) 8 SCC 751.

⁹ (2009) 3 SCC 78.

not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in *V.Y. Jose (supra)* placed reliance on several earlier decisions in "*Hira Lal Hari Lal Bhagwati v. CBI*", "*Indian Oil Corporation v. NEPC India Ltd.*", "*Vir Prakash Sharma v. Anil Kumar Agarwal*" and "*All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*".

This Court, in *Delhi Race Club (1940) Limited and Others v. State of Uttar Pradesh and Another*,¹⁰ highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.

In *Kunti and Another v. State of Uttar Pradesh and Another*,¹¹ this Court referred to *Sarabjit Kaur v. State of Punjab and Another*¹² wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of

¹⁰ (2024) 10 SCC 690.

¹¹ (2023) 6 SCC 109.

¹² (2023) 5 SCC 360.

cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.

It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature.¹³ The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure.¹⁴ Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.

In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh,¹⁵ this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are *ex facie* outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in *Thermax Limited and Others v. K.M. Johny and Others*,¹⁶ which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of

¹³ *G. Sagar Suri and Another v. State of U.P. and Others*, (2000) 2 SCC 636.

¹⁴ *Vijay Kumar Ghai and Others v. State of West Bengal and Others*, (2022) 7 SCC 124.

¹⁵ *Deepak Gaba and Others v. State of Uttar Pradesh and Another*, (2023) 3 SCC 423.

¹⁶ (2011) 13 SCC 412.

mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.

Lastly, we would refer to another detailed judgment of this Court in *Sharif Ahmed and Another v. State of Uttar Pradesh and Another*,¹⁷ which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:

"36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so

¹⁷ 2024 SCC OnLine SC 726.

induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially : to compel or deter by or as if by threats. The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in *Manik Taneja v. State of Karnataka*, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threatening another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."

Significantly, this Court in *Sharif Ahmed (supra)* cautioned courts to check such attempts of making out a criminal case on the basis of vague and *ex facie* false assertions.

Further, *Sharif Ahmed (supra)* exposits the legal position relating to the ingredients and contents of a chargesheet, drawing upon several earlier judgments of this Court which elucidate the contents of a police report under Section 173(2) of the Cr.P.C. It also clarifies the course of action to be adopted by the Magistrate when the chargesheet is found to be incomplete or vague in content. In this context, reference may be made to Sections 190 and 204 of the Cr.P.C., as well as Sections 211 to 213 and 218 of the Cr.P.C., which collectively govern the framing and contents of a charge. Some of the portions of this judgment are reproduced below:

"13. The question of the required details being complete must be understood in a way which gives effect to the true intent of the chargesheet under Section 173(2) of the Code. The requirement of "further evidence" or a "supplementary chargesheet" as referred to under Section 173(8) of the Code, is to make additions to a complete chargesheet,⁸ and not to make up or reparate for a chargesheet which does not fulfil requirements of Section 173(2) of the Code. The chargesheet is complete when it refers to material and evidence sufficient to take cognizance and for the trial. The nature and standard of evidence to be elucidated in a chargesheet should *prima facie* show that an offence is established if the material and evidence is proven. The chargesheet is complete where a case is not exclusively dependent on further evidence. The trial can proceed on the basis of evidence and material placed on record with the chargesheet. This standard is not overly technical or fool-proof, but a pragmatic balance to protect the innocent from harassment due to delay as well as prolonged incarceration, and yet not curtail the right of the prosecution to forward further evidence in support of the charges.

16. This Court in *Bhushan Kumar v. State (NCT of Delhi)* while referring to Sections 190 and 204 of the Code has observed that the expression "cognisance" in Section 190 merely means "becoming aware of", and when used with reference to a court or a judge it connotes "to take notice of judicially". It indicates the juncture at which the court or Magistrate takes judicial notice of the offence with a view to initiate proceedings in respect of such an offence. This is different from initiation of proceedings. Rather, it is a condition precedent to the initiation of proceedings by a Magistrate or judge. At this stage, the Magistrate has to keep in mind the averments in the complaint or the police report, and has to evaluate whether there is sufficient ground for initiation of proceedings. This is not the same as the consideration of sufficient grounds for conviction, as whether evidence is sufficient for supporting the conviction or not, can be determined only at the stage of trial, and not at the stage of cognisance. This aspect is important and will be subsequently referred to when we examine the decision of this Court in *K. Veeraswami v. Union of India*, and the observations therein which have been referred to on several occasions in other judgments.

17. Section 204 of the Code does not mandate the Magistrate to explicitly state the reasons for issue of summons and this is not a prerequisite for deciding the validity of the summons. Nevertheless, the requirement of the Code is that the summons is issued when it appears to the Magistrate that there is sufficient ground for proceeding against the accused. Summons is issued to the person against whom the legal proceedings have commenced. Wilful disobedience is liable to be punished under Section 174 of the Penal Code, 1860. As a sequitur, keeping in mind both the language of Section 204 of the Code and the penal consequences, the Magistrate is mandated to form an opinion as to whether there exists sufficient ground for summons to be issued. While deciding whether summons is to be issued to a person, the Magistrate can take into consideration any *prima facie* improbabilities arising in the case. The parameters on which a summoning order can be interfered with are well settled by the decision of this court in *Bhushan Kumar* (supra). The Magistrate in terms of Section 204 of the Code is required to exercise his judicial

discretion with a degree of caution, even when he is not required to record reasons, on whether there is sufficient ground for proceeding. Proceedings initiated by a criminal court are generally not interfered with by High Courts, unless necessary to secure the ends of justice.

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19. Sections 211 to 213 and Section 218 of the Code deal with the contents of the charge. The object and purpose of these provisions is to bring the nature of allegations against the accused to his notice. These allegations have to be proved and established by leading evidence. The accused should not be taken by surprise or be unbeknownst so as to cause prejudice to him. The provisions of the Code also prescribe how to interpret the words used in the charge in terms of Section 214 of the Code, the effect of defects in the charge in terms of Section 215 of the Code, the power of the court to alter the charge and recall of the witnesses when a charge is altered in terms of Sections 216 and 217 of the Code.

20. There is an inherent connect between the chargesheet submitted under Section 173(2) of the Code, cognisance which is taken under Section 190 of the Code, issue of process and summoning of the accused under Section 204 of the Code, and thereupon issue of notice under Section 251 of the Code, or the charge in terms of Chapter XVII of the Code. The details set out in the chargesheet have a substantial impact on the efficacy of procedure at the subsequent stages. The chargesheet is integral to the process of taking cognisance, the issue of notice and framing of charge, being the only investigative document and evidence available to the court till that stage. Substantiated reasons and grounds for an offence being made in the chargesheet are a key resource for a Magistrate to evaluate whether there are sufficient grounds for taking cognisance, initiating proceedings, and then issuing notice, framing charges etc.

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26. The object and purpose of the police investigation is manyfold. It includes the need to ensure transparent and free investigation to ascertain the facts, examine whether or not an offence is committed, identify the offender if an offence is committed, and to lay before the court

the evidence which has been collected, the truth and correctness of which is thereupon decided by the court.

27. In H.N. Rishbud and Inder Singh v. State of Delhi²¹, this Court notes that the process of investigation generally consists of : 1) proceeding to the concerned spot, 2) ascertainment of facts and circumstances, 3) discovery and arrest, 4) collection of evidence which includes examination of various persons, search of places and seizure of things, and 5) formation of an opinion on whether an offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the culmination of several stages that an investigation goes through. This Court in its decision in Abhinandan Jha v. Dinesh Mishra²² states that the submission of the chargesheet or the final report is dependent on the nature of opinion formed, which is the final step in the investigation.

28. The final report has to be prepared with these aspects in mind and should show with sufficient particularity and clarity, the contravention of the law which is alleged. When the report complies with the said requirements, the court concerned should apply its mind whether or not to take cognisance and also proceed by issuing summons to the accused. While doing so, the court will take into account the statement of witnesses recorded under Section 161 of the Code and the documents placed on record by the investigating officer.

29. In case of any doubts or ambiguity arising in ascertaining the facts and evidence, the Magistrate can, before taking cognisance, call upon the investigating officer to clarify and give better particulars, order further investigation, or even record statements in terms of Section 202 of the Code.

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The chargesheet in the present case is bereft of particulars and details required and mandated in terms of Section 173(2) of the Cr.P.C. It merely reproduces the contents of the FIR which makes reference to the payments made as well as the allegation that in the

revenue records, the godown in question was recorded in the name of Rakesh Birani, the son of the appellant, Rikhab Birani. It is noted that the appellant, Rikhab Birani, informed the complainant that Rakesh Birani had expired. The complainant had then requested refund of money, etc. However, the FIR does not state the material and evidence available and collected during the course of the investigation to establish the offences under Sections 420, 406, 354, 504 and 506 of the IPC. Clearly, the ingredients of the aforesaid are not established and made out.

In view of the aforesaid discussion, we set aside the impugned judgment/order and allow the present appeal quashing the FIR and the resultant proceedings, including the chargesheet.

We clarify that the present appeal only deals with the question of criminal offence. We have not commented or made any observations on the civil rights of complainant-respondent No.2.

We are also constrained to impose costs of ₹50,000/- (Rupees fifty thousand only) on the State of Uttar Pradesh as, in spite of repeated judgments/orders of this Court, we are being flooded with cases of civil wrongs being made the subject matter of criminal proceedings by filing chargesheets, etc.

These costs will be paid by the State of Uttar Pradesh within a period of six weeks from the date of receipt of a copy of this order. It will be open to the State of Uttar Pradesh to conduct internal enquiries and collect this amount from the delinquent and responsible officers. Registry is directed to communicate a copy of this order to the Chief Secretary of the State of Uttar Pradesh who shall be responsible for ensuring the payment of costs.

We would have imposed costs on the complainant-respondent No.2 also but are refraining from doing so on account of the possibility that she was persuaded and guided by wrong legal advice.

Pending applications, if any, shall stand disposed of.

.....CJI.
(SANJIV KHANNA)

.....J.
(SANJAY KUMAR)

NEW DELHI;
APRIL 16, 2025.