



2024 INSC 1060

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

**SPECIAL LEAVE PETITION (CRIMINAL) NO.980 OF 2024
[@ DIARY NO.85 OF 2024]**

V. D. RAVEESHA**...PETITIONER*****VERSUS*****THE STATE OF KARNATAKA****...RESPONDENT****J U D G M E N T****AHSANUDDIN AMANULLAH, J.**

The present petition impugns the Final Judgment and Order dated 11.10.2023 (hereinafter referred to as the 'Impugned Order') passed by the High Court of Karnataka at Bengaluru (hereinafter referred to as the 'High Court') in Criminal Revision Petition No.653/2020, whereby the High Court confirmed the Judgment and Order dated 25.08.2020 passed in Criminal Appeal No.29/2018 by the learned VI Additional District and Sessions Judge, Tumakuru (hereinafter referred to as the 'Appellate Court') which had affirmed the conviction recorded and sentence

awarded to the petitioner, by the learned Additional Senior Civil Judge and Chief Judicial Magistrate, Tumakuru (hereinafter referred to as the 'Trial Court') *vide* Judgment and Order dated 26.04.2018 in C.C.No.1218/2012.

FACTUAL OVERVIEW:

2. The petitioner (hereinafter also referred to as the 'accused') had purchased a vehicle bearing Registration No.KA-41-2298 by obtaining financial assistance of Rs.3,00,000/- (Rupees Three Lakhs) from M/s Shriram Transport Finance Company Limited (hereinafter referred to as the 'Company'). A Loan-cum-Hypothecation Agreement (hereinafter referred to as the 'Agreement') was entered into between the accused and the Company whereby the above-mentioned vehicle was hypothecated in favour of the Company and the same was duly notified/marked in the Registration Certificate of the said vehicle. Though the accused had paid one or two instalments, but thereafter, he defaulted and despite several requests, the accused did not make further payments. Accordingly, since as per the terms of the Agreement, the vehicle could be seized by the Company, on 18.02.2011, the concerned Branch Manager of the Company seized the vehicle and took it to the police station. At that time, it was revealed that the petitioner, without repaying the loan of Rs.2,95,000/- (Rupees Two Lakhs Ninety-Five

Thousand) had forged and created (i) receipt no. AD 0873936 for having repaid the loan amount; (ii) No-Objection Certificate, and; (iii) Form No.35 purported to have been issued by the Company, by forging the signatures of the authorized signatories and had also sold the vehicle to one Savithramma. In short, it was alleged that the petitioner, without discharging the entire loan liability due towards the Company, sold off the vehicle by producing forged documents before the Regional Transport Office (hereinafter referred to as 'RTO') and getting the hypothecation cleared.

3. On the basis of these allegations, the Company's Branch Manager lodged complaint leading to lodging of First Information Report bearing Crime No.34/2011 on 18.02.2011 under Sections 406¹, 420² and 468³ read with 34⁴ of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). On 16.11.2011, Chargesheet was filed against the petitioner under Sections 406, 468, 420, 465 and 471 of IPC in the case registered as C.C. No.1218/2012 before the Trial Court.

¹ '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.'

² '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.'

³ '468. Forgery for purpose of cheating.—Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

⁴ '34. Acts done by several persons in furtherance of common intention.—When a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.'

4. Before the Trial Court, the prosecution examined PW1 to PW13 and got marked Ex. P1 to Ex. P32 and got exhibited one Compact Disc as M.O.1. The petitioner chose not to lead any defence evidence on his behalf, except producing a document marked as Ex. D1. On a consideration of the materials before it, the Trial Court found the petitioner guilty of offences under Sections 406, 468, 465, 420 and 471 of the IPC and sentenced him to rigorous imprisonment (hereinafter abbreviated to 'R.I. '), simple imprisonment (hereinafter abbreviated to 'S.I. ') and fine(s), as under:

IPC Section	Conviction and Sentence
406	Fine of Rs.5,000/-. In default of payment of fine, to undergo three months' S.I.
468	Two years' R.I. along with fine of Rs.3,000/-. In default of payment of fine, to undergo further three months' S.I.
465	Fine of Rs. 5,000/-. In default of payment of fine, to undergo three months' S.I.
420	Two years' R.I. along with fine of Rs.3,000/-. In default of payment of fine, to undergo further three months' S.I.
471	Fine of Rs.5,000/-. In default of payment of fine, to undergo three months' S.I.

5. Aggrieved by the conviction and sentence awarded *supra*, the petitioner filed Criminal Appeal No.29/2018, which came to be dismissed by the Appellate Court. Thereafter, the petitioner filed Criminal Revision Petition No.653/2020 before the High Court which has also been dismissed *vide* the Impugned Order and the conviction and sentence, imposed and affirmed by the Courts below, has been confirmed.

SUBMISSIONS BY THE PETITIONER:

6. At the outset, learned senior counsel submitted that the High Court as well as the Appellate Court and the Trial Court committed error in convicting the petitioner without considering his case. It was argued that the Courts below failed to appreciate the fact that the petitioner had repaid the loan amount and received the receipt (Ex. P9), No-Objection Certificate (Ex. P8) and Form No.35 (Ex. P10) from the Company, after clearing the loan. It was pointed out that the Company failed to produce any document/ledger/booklet to show that the loan was not repaid by the accused. Even the allegedly-forged Form No.35 was never produced before the Courts.

7. It was argued that the prosecution failed to produce any evidence/material to show how the disputed documents were fabricated and by using which computer/printer. There is also no material placed on

record to connect the accused with the forged signatures. It was submitted that in the absence of such evidence, the petitioner cannot be convicted for the alleged offences in question.

8. It was submitted that Exs. P11 and P12 are said to be the formats of the receipt and No-Objection Certificate, which the Company issues to its customers. A customer entitled to receive Exs. P11 and P12 was not examined before the Trial Court. When the loan pertaining to the said customer is cleared and Exs. P11 and P12 were issued, there was no reason for the Company to retain those documents with it. Therefore, no importance could be attached to the said documents, and it was submitted that the said two exhibits were not produced from proper custody.

9. It was further submitted that all the witnesses were employees of the Company and hence no reliance could be placed on their depositions. It was pointed out that PW4 was the only independent witness and PW13 did not support the case of the prosecution. It was put forth that the prosecution failed to prove its case beyond reasonable doubt and therefore, in the interest of justice, the Impugned Order be set aside by acquitting the petitioner.

SUBMISSIONS BY THE RESPONDENT-STATE:

10. *Per contra*, learned counsel for the State of Karnataka submitted that Courts below have rightly convicted and sentenced the accused based on cogent grounds and the same does not call for any interference by this Court. It was submitted that without repaying the loan, the accused has sold the vehicle to PW4 and forged Exs. P8 to P10. The disputed documents were forwarded to a handwriting expert along with the admitted signature and handwritings of the accused. The expert report (Ex. P28) fully supports the case of the prosecution. Further, PW5, the Divisional Manager of the Company, has specifically deposed that he never signed and issued Exs. P8, P9 and P10. It was submitted that the evidence on record sufficiently demonstrates that it is the accused alone who is the author of the forged and fabricated documents. In these circumstances, it was canvassed that the prosecution had proved the case beyond reasonable doubt. On these grounds, learned counsel prayed for dismissal of the instant petition.

ANALYSIS, REASONING & CONCLUSION:

11. We have heard learned counsel for the parties and perused the evidence on record as well as the orders of the Courts below. The issue before us is whether the petitioner is guilty of committing offences under

Sections 406, 420, 468, 465 and 471 IPC, and if so, whether the sentences imposed on him by the Trial Court and confirmed by the Appellate Court and High Court call for interference.

12. The accused has not denied availment of the loan from the Company and the subsequent sale of the vehicle made in favour of Savithramma. However, he has taken the specific defence that he had cleared the loan and closed the account. PW1, the informant who was working as Manager in the Company, has specifically stated in his evidence that the accused had not cleared the loan and got the hypothecation cancelled on the basis of forged documents. He has stated that Exs. P8, P9 and P10 are not issued by the Company and has identified them as forged documents. PW1 has admitted the payment of 2-3 instalments made by the accused. As per the terms of the Agreement, if any customer commits default in payment of 5 instalments, the Company is empowered to seize the vehicle. He has further stated that the Investigating Officer collected the sample writings and signatures of the Divisional Manager of the Company as Exs. P13 and P14. Similarly, the writing of the accused was also collected as Exs. P15 and P16. These documents were sent to the handwriting expert for examination. This witness further stated that Exs. P11 and P12 are the standard sample receipt and No-Objection Certificate which the Company issues to its customers and these documents are prepared in

duplicate and one copy is retained with the Company. It was further deposed that as per the Company's rules, after clearance of the loan, the No-Objection Certificate is to be issued after one week.

13. PW3-Nagabhushana is a Legal Executive in the Company and he has supported the statement of PW1. PW5-Nandakumar is the Divisional Manager of the Company. According to this witness, after the repayment of the entire loan by the customer the concerned branch forwards the file seeking No-Objection Certificate from him (PW5). He has specifically stated that the case-file pertaining to the accused's loan has never come to his office and he had not issued Ex. P10 at any point of time. He has denied the signature on Ex. P10 as being his and deposed that the document is forged.

14. PW8-Venkataramaiah is a Junior Executive in the Company. He has deposed that during the relevant period when the accused is stated to have repaid the loan, he was working as a cashier in the relevant branch. He has specifically stated that being cashier of the Company's branch, he has not issued Ex. P9 and has not received any payments from the accused. This witness has also deposed that the Investigating Officer had obtained the signatures and writings of the accused as also PW5.

15. PW4-the husband of Savithramma has stated that he purchased the vehicle from the accused in the name of his wife. He also stated that the accused on his request brought the Clearance Certificate from the office of the RTO, Nelamangala. PW9-Dinesh Kumar is the Police Sub-Inspector who has deposed about receiving Exs. P9 and 10 from RTO, Nelamangala. He further states that he forwarded the sample handwritings, signatures and Exs. P8 to P10 along with sample documents secured from PW1 being Exs. P11, P12 and P19 to the handwriting expert.

16. PW11-Syed Asgar Imam is a retired Assistant Director of the Forensic Sciences Laboratory, Bangalore. This witness is an expert witness in the case and had submitted an expert report being Ex. P28. This witness has specifically deposed that the signatures found on Exs. P8 and P9 were forged. This witness also specifically stated that it was the accused who had made the D5, D6 and D7 signatures on Ex. P10. It was stated that the signatures found on these documents were not the signatures of PW5, who is the competent person to issue these documents on behalf of the Company.

17. It is undoubtedly true that some of the prosecution witnesses are officials working in the Company, but just for that reason they cannot be termed as interested witnesses. Except a bald allegation, no material

has been placed on record by the accused to show any enmity or ill-will against him by these witnesses, to bolster the argument of false incrimination. As stated earlier, the accused took a specific defence that he had repaid the entire loan amount. However, nothing has been produced to show how the amount was repaid, when it was repaid, and by which mode it was repaid. Having taken a specific defence, it was for the accused to lead evidence and probabalize his defence. In our view, the accused has failed in this regard.

18. In fact, the Court is a little surprised as to how the petitioner, even before this Court, has taken the stand that the documents are genuine and not forged and/or fabricated, when the entire evidence, both oral as well as documentary, clearly reveal to the contrary. Moreover, there is no record, whatsoever, forthcoming to show that the accused had repaid the loan. Obviously, the act of repayment of the loan, had the petitioner actually paid back the loan, could have been demonstrated by bringing before the Courts documents to indicate that money was transferred from his account/source to the financier-Company. This has not been done.

19. At this stage, and subject to what we have stated *infra*, it would suffice to say, that for the purposes of establishing the petitioner's guilt, there was sufficient and reliable material, which rightly the Courts below

have believed and relied upon. Thus, no infirmity in the same having been found, the conviction needs no interference. On the point of sentencing, we find that the Trial Court's view, affirmed by the High Court, may need some tinkering, which we shall deal with in the penultimate paragraph. Needless to state, the sentence(s) awarded to the petitioner shall run concurrently.

20. In ***Delhi Race Club (1940) Limited v State of Uttar Pradesh, (2024) 10 SCC 690***, a recent decision by a Coordinate Bench of this Court, it has been elucidated as under:

'Difference between criminal breach of trust and cheating

35. *This Court in its decision in S.W. Palanitkar v. State of Bihar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under : (SCC p. 246, paras 9-10)*

"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."

36. 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 wilfully 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. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).

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 person 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 [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

37. 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.

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40. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transac-

tion. 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.

41. 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.

42. 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.

43. 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.

55. *It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-à-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other.*

(emphasis supplied)

21. Though, having regard to the afore-enumerated position of law, on an overall conspectus of the factual aspects juxtaposed with the evidence on record, as regards fulfilment of the ingredients of Sections 406 and 420 of the IPC, at first sight, it may appear that the petitioner cannot be convicted both under Sections 406 and 420 of the IPC, but, in the present case, on a proper consideration of the issue in its entirety, there is a fine distinction inasmuch as, there are two different persons against whom the petitioner has committed the respective offences under the Sections *supra*: *first*, the Company and *second*, Mallikarjuna (PW4 and husband of purchaser Savithramma). Thus, in the facts and circumstances of the present case, evidently the petitioner is guilty of offence committed against the Company punishable under Section 406 of the IPC and also, of offence committed against Mallikarjuna (PW4 and husband of purchaser Savithramma) punishable under Section 420 of the IPC.

22. Accordingly, for reasons aforesaid, the criminal Special Leave Petition(s) stands dismissed, upholding the Impugned Order, with the distinguishment of the offences committed *supra* and by, in the interest of justice, reducing the sentence(s) awarded to one year and six months' Simple Imprisonment. From the bail application it transpires that the petitioner has already surrendered and presently is lodged in Central Prison, Parappana Agrahara, Electronic City Post, Bangalore. Thus, he is directed to serve the remaining period of the sentence as per this order. This shall be notwithstanding that vide Record of Proceedings of even date, we had dismissed the matter(s) simpliciter.

23. Registry shall communicate the order to the Superintendent, Central Prison, Parappana Agrahara, Electronic City Post, Bangalore forthwith.

24. We do not propose to make an order as to costs. Pending I.A.s do not subsist for consideration and are closed.

.....J.
[SUDHANSHU DHULIA]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
22nd OCTOBER, 2024