

Bhawani Shankar vs State Of Rajasthan (2025:Rj-Jd:12223) on 25 February, 2025

Author: Farjand Ali

Bench: Farjand Ali

[2025:RJ-JD:12223]

HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JODHPUR

S.B. Criminal Misc(Pet.) No. 1308/2025

Sukhdev Chayal S/o Shri Fusaram, Aged About 47 Years, R/o
Sethiya Gali, Bikaner,raj.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Dharmendra Purohit S/o Durga Dutt, R/o Bhajan Chowk,
P.s. Sadar Bazar, Jodhpur

----Respondents

Connected With

S.B. Criminal Misc(Pet.) No. 1310/2025

Bhawani Shankar S/o Shri Mohanlal, Aged About 61 Years, R/o
Bicchwal, Bikaner,raj.

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Dharmendra Purohit S/o Durga Dutt, R/o Bhajan Chowk,
P.s. Sadar Bazar, Jodhpur

----Respondents

For Petitioner(s)	:	Dr. Sachin Acharya assisted by Mr. Rahul Rajpurohit Mr. Jitendra Chaudhary
For Respondent(s)	:	Mr. Anand Purohit, Senior Advocate Mr. Mayank Roy Mr. Nitin Gokhlani Mr. Nishank Madan Mr. Shri Ram Chaudhary, AGA

HON'BLE MR. JUSTICE FARJAND ALI

Order 25/02/2025

1. The instant misc. petitions have been preferred by the petitioners under Section 528 of Bhartiya Nagrik Suraksha Sanhita, 2023 (hereinafter to be referred as "BNSS") for quashing of the FIR No. 30/2025 at Police Station Bichiwal, District Bikaner [2025:RJ-JD:12223] (2 of 15) [CRLMP-1308/2025] for the offence under Sections 318(4)(Corresponding of Section 420 of IPC), 338 (Corresponding of Section 467 of IPC), 336(3) (Corresponding of Section 468 of IPC), 340(2)(Corresponding of Section 471 of IPC), 316(2)(Corresponding of Section 406 of IPC) and 61(2)(a) (Corresponding of Section 120B of IPC) of the Bhartiya Nyaya Sanhita (hereinafter to be referred as "BNS").

2. Briefly stating the facts of the case are that the complainant, claiming to be an authorized representative of Sahara Prime City Ltd., alleged that Bhawani Shankar (accused and petitioner in S.B. Criminal Misc. Petition No. 1310/2025), Malaram, and Pyarelal, who owned agricultural land in Khasra Nos. 38/19/5, 38/19/2, and 63/19 (totaling 87 bighas), had entered into a "Developer's Agreement" with the company in 2008, transferring ownership rights and registering the agreement with the Sub-Registrar, Bikaner. However, despite this agreement, the landowners subsequently sold portions of the land to Sukhdev Chayal (petitioner in S.B. Criminal Misc. petition No. 1308/2025) through registered sale deeds. The complainant further stated that this sale was illegal as the landowners had no authority to sell without canceling the Developer's Agreement, thereby alleging criminal offenses.

3. The counsel for the petitioner submitted that he is a bona fide purchaser who legally acquired the land in 2024 through valid registered sale deeds. Furthermore, he argues that the Developer's Agreement itself is void ab initio as it purportedly transferred rights over agricultural land belonging to members of [2025:RJ-JD:12223] (3 of 15) [CRLMP-1308/2025] the Scheduled Caste community, which is legally impermissible. Additionally, the petitioner contends that the complainant lacks proper authorization to initiate criminal proceedings and that the dispute is purely civil in nature, being wrongfully given a criminal color. The petitioner submits that the impugned FIR is a gross abuse of the process of law, registered with a vindictive motive to harass and pressurize him. Consequently, no legal right, title, or interest was ever created in favor of the complainant's company. The complainant also lacks the authority and locus standi to initiate the FIR. Moreover, a civil suit regarding the same subject matter is already pending before the Learned Additional Civil Judge, demonstrating that the present FIR is merely an attempt to give a civil dispute a criminal color. The petitioner being aggrieved by the false and frivolous allegations has filed the present petition under Section 528 of the B.N.S., seeking for the quashing of the FIR.

4. Learned public prosecutor and counsel appearing for the complainant has opposed the submissions advanced by the counsel of the petitioner. Learned public prosecutor has placed on record the factual report dated 11.02.2025 for the perusal of this Court.

5. Heard learned counsel for the petitioner as well as learned Public Prosecutor for the State and perused the FIR impugned and factual report alongwith other material made available to this Court.

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6. After perusing the record and pondering upon the submissions and materials made available to the Court, prima facie, it is revealed that the matter relates to a land resale involving an accused named Bhawani Shankar, who allegedly sold land to the petitioner through two sale deeds dated 31.12.2024, despite an existing irrevocable development agreement with Sahara Prime City Ltd. since 11.06.2008. This agreement, which also involved financial transactions amounting to 1,40,26,000/-, legally bound Bhawani Shankar from selling or transferring ownership. However, in a criminal conspiracy with the petitioner and witnesses Vimal Sain and Abid Hussain, fraudulent sale deeds were registered on 09.01.2025 and 02.01.2025 with the Sub- Registrar, Bikaner, misrepresenting ownership and violating the legal agreements. This Court is of the view that prima facie, certain elements of cheating and criminal breach of trust appear to be present in the case. However, this is not the Court's final determination on the matter. Given the complexities involved, the Court believes that a thorough and impartial investigation is necessary to bring greater clarity to the facts before reaching a conclusive opinion. Although, these actions lead to financial loss to Sahara Prime City Ltd. and consequently, complainant, representing Sahara Prime City Ltd., has filed a complaint requesting an FIR registration and legal action against the accused. It underscores a deliberate attempt to misappropriate land and financial assets through illegal means, warranting immediate investigation and prosecution.

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7. Here, the question for adjudication before this Court comes that whether the act alleged by the complainant in the FIR is sufficient enough to constitute an offence under Sections 318(4), 316(2), 336(3), 338, 340(2) and 61(2)(a) of the BNS, is a question to be considered by this Court and on the aforesaid ground, a petition for quashing of the FIR and stifle of the investigation can be maintained or not, is to be examined.

8. First, this Court has to examine whether the offence under Sections 318(4), 316(2), 336(3), 338, 340(2) and 61(2)(a) of the BNS are made out or not. For ready reference Sections 318(4), 316(2), 336(3), 338, 340(2) and 61(2)(a) of BNS are reproduced as under: -

Section 318(4):-

(4) 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.

Section 316(2):-

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

Section 336(3):-

(3) 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.

Section 338:- Forgery of valuable security, will, etc. Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give [2025:RJ-JD:12223] (6 of 15) [CRLMP-1308/2025] authority to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Section 340(2):-

(2) Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record.

Section 61 (2) (a):-

(2) Whoever is a party to a criminal conspiracy,--

(a) to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Sanhita for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence;

9. To start with, it is manifesting from the plain reading of Section 318(4) of the BNS that it deals with the act of cheating and dishonestly inducing the person so 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 capable of being converted into a valuable security. A plain reading of the provision is also reflecting that cheating is an essential element of the charge under Section 318 of the BNS. So, it would require to examine the definition of cheating. Section 318 of the BNS defines Cheating. For ready reference Section 318 of the BNS is reproduced as under: -

[2025:RJ-JD:12223] (7 of 15) [CRLMP-1308/2025] Section 318 BNS: Cheating (1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act

or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to cheat.

Explanation.--A dishonest concealment of facts is a deception within the meaning of this section.

10. In the case of, Inder Mohan Goswami & Another vs. State of Uttaranchal, reported in AIR 2008 SC 251, Hon'ble the Supreme Court observed that to establish the offence under Section 420 IPC, there should be some essentials which should be at place. For Section 420 IPC which states cheating and dishonestly inducing delivery of property to be put in motion, the essentials of the offence have to be met and the essentials of "cheating" as mentioned in Section 415 of the IPC also comes into play as from then and there only Section 420 of the IPC comes out, so here are the essential ingredients of Section 415 and they are as follows-

i. To deceive a person by misleading representation or by making any false representation also includes dishonest concealment or by any other act or by the way of omission of an act, ii. Dishonestly and fraudulently inducing any person and giving him either and or options relating to either deliver the [2025:RJ-JD:12223] (8 of 15) [CRLMP-1308/2025] property or else consent to the retention thereof by any person or with the intention of inducing that person to deceive or to omit something he would have not done if not deceived by the other person, iii. This kind of act of omission and act of deceiving is likely to cause the harm and damage to the body, mind and also property of that person.

There are two categories which are mentioned in this Section, firstly an inducement to deliver the property to any person fraudulently or dishonestly and secondly, the acts done or omitted by a person deceived would not have done if not deceived by the other person. The basic difference between these two is about intention. In the first category we see that it is fraudulent and dishonest and in the second category we see it is intentional but need not be fraudulent and dishonest. For cheating it would be must to show that there has been a fraudulent and dishonest intention.

11. In the case of Md. Ibrahim & Ors. v. State of Bihar & Anr., reported in 2010 AIR SCW 405, Hon'ble the Supreme Court had stated about the essential ingredients to constitute an offence under Section 420 of the IPC and for that purpose, cheating is the main ingredient but not the only one so as to constitute the same offence. Beside presence of cheating as defined under Section 415 these further things should be followed- [2025:RJ-JD:12223] (9 of 15) [CRLMP-1308/2025] i. There should be dishonest inducement of a person who is deceived to deliver any property to any person, or ii. Make, alter or destroy the whole or part of any valuable security and also includes anything sealed and signed and also capable of being converted into a valuable security.

12. In the case of Alpica Finance Ltd. vs. P Sadasivan and Ors., reported in AIR 2001 SC 1226, Hon'ble the Supreme Court observed that to deceive someone is to basically induce someone to actually believe about a thing which on the prima facie will look true but when looked properly it actually is false and the one who is deceiving also knows that the thing is false and it should also be with a dishonest and fraudulent intention while committing the offence. In the case of Vijay Kumar Ghai and Ors. vs. The State of West Bengal and Ors., reported in (2022) 7 SCC 124, Hon'ble the

Supreme Court observed in detail every essential ingredient of Section 406 and Section 420 of the IPC read with Section 405 and Section 415 of the IPC.

13. A guilty intention or "mens rea" is the essential ingredient of the offence of cheating. In *Hari Prasad Chamaria vs. Bishun Kumar Surekha & Ors.*, as reported in AIR 1974 SC 30, it was held that unless the complainant shows the dishonest or fraudulent intention at the time complainant parted with money, it would not amount to the offence of cheating under Section 420 of the IPC and will only be a breach of contract.

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14. In *Hira Lal Hari Lal Bhagwati v. CBI*, reported in AIR 2003 SC 2545, it has been observed that for establishing the offence of cheating, it is required to show that there was fraudulent or dishonest intention of the accused at the time of making the promise or entering into the transaction or making any representation.

15. In the case of *Harmanpreet Singh Ahluwalia and Ors. vs. State of Punjab and Ors.*, reported in (2009) 7 SCC 712, it is propounded that from the bare perusal of the provision it is evident that the ingredients and elements of any fraudulent or wrongful or dishonest intention should exist from the very inception of the contract.

16. In the case of *A.M. Mohan vs. The State represented by SHO and Ors.*, reported in Criminal Appeal No. 1716 of 2024, Decided On: 20.03.2024, Hon'ble the Supreme Court observed that to attract the provision of Section 420 of the IPC, the FIR must show the ingredients of Section 415 of the IPC. Specifically, it should demonstrate that a person has deceived someone, fraudulently or dishonestly induced that person to deliver property to any person, and that there was a dishonest intention at the time of making the inducement. The dishonest inducement is sine qua non to attract the provisions of Section 415 and Section 420 of the IPC. If the essentials are lacking in the FIR, then continuation of the criminal proceedings would be an abuse of process of law.

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17. In the case of *State of Uttar Pradesh and Ors. vs. Akhil Sharda and Ors.*, reported in [2022] 6 SCR 772, Hon'ble the Supreme Court observed that after considering all the facts and circumstances of the case it does not fall under Section 406 and 420 of the IPC as the essential ingredients of the offences mentioned in the FIR are missing and same are the facts of the present case.

From bare perusal of the relevant legal provisions and judicial precedents established by Hon'ble the Supreme Court regarding the offence of cheating reveals that in the present case, the accused persons, despite being bound by an irrevocable development agreement, proceeded to sell the property. This unequivocally indicates their dishonest intention existed from the very inception of the contract. When fraudulent intent is present at the very inception of an agreement, it satisfies the essential ingredients of the offence of cheating. In light of these circumstances, quashing the FIR would not only be legally unsound but would also amount to a grave miscarriage of justice.

18. Moving on to the offence under Section 316(2) of BNS is made out or not. A perusal of the provision reflects that to establish the offence of criminal breach of trust, certain key elements must be present which includes: (a) fact of entrustment,

(b) dishonest intention and (c) misappropriation or conversion of property for one's own use or disposal of the property. [2025:RJ-JD:12223] (12 of 15) [CRLMP-1308/2025]

19. In the case of Abhishek Saxena vs. The State of Uttar Pradesh and Ors., Criminal Appeal No. 3628 of 2023, Decided On: 28.11.2023, Hon'ble the Supreme Court had stated the ingredients or essentials of Section 406 of IPC which is Punishment for criminal breach of trust. The essentials to establish the offence under Section 406 of the IPC are as follows- i. There should be entrustment of the property or dominion over the property against which the charges are being made. ii. The person dishonestly misused the property in violation of the duties committed to that person and misappropriating or converting it for his own use.

iii. The person dishonestly using or disposing of the property in violation of any direction of law which prescribes the mode in which such trust is to be discharge.

iv. Lastly, Section 405 IPC's elements must be violated. It is mentioned that in absence of these basic ingredients of entrustment and dishonest usage or disposal of any property, an offence of Section 406 of the IPC would not attract.

20. In the case of The State of Gujarat vs. Jaswantlal Nathalal, reported in AIR 1968 SC 700, the meaning of "entrustment" is explained that the person who had transferred any property or transfer it on their behalf remains the property owner of that property as per Section 406 of the IPC. [2025:RJ-JD:12223] (13 of 15) [CRLMP-1308/2025]

21. In the matter of Usha Chakraborty and Ors. vs. State of West Bengal, reported in AIR 2023 SC 688, Hon'ble the Supreme Court had again considered all the essentials which should be present to invoke the charge under Section 406 of the IPC.

22. It can be understood that entrustment of the property by one person to the other is an essential ingredient for constituting an offence under Section 406 of the IPC. The said section envisages penalty clause for criminal breach of trust, definition of which has been given under Section 405 of the IPC. A plain reading of the provision under Section 405 of the IPC manifests that when any person places his trust in someone for transferring possession of any property, movable or immovable to someone and that someone breaches the trust by retaining the property would come under the ambit of Section 406 of the IPC. Besides the entrustment of property, the individual must have personally misused the property in violation of the duties assigned to that person. In common understanding, a criminal breach of trust would be committed when the accused commits an offence regarding the entrusted property by creating or converting another person's property for his own use. Here, the transferee of the property and transferor establishes a connection in which the transferor retains the ownership of the property with him which would mean that even after the transfer of the property for a certain period; the transferor would have custody or control over the

property only for the another person's benefit or until his [2025:RJ-JD:12223] (14 of 15) [CRLMP-1308/2025] desire. It can be said that even the transfer of property for a limited period to the other person does not imply the loss of ownership over propriety rights of the transferor. Entrustment of property necessitates establishment of fiduciary relationship between them. In cases pertaining to such category, generally, the possession of the property is transferred to other person for a certain period with this promise that whenever the owner would seek return of the property, the retainer shall handover back the same to him. If the transferee, instead of giving back the property to its real owner, uses the same for his own purpose or converts it for his own use then it would amount to misappropriation of the property.

23. In the present case, the accused sold the property to the petitioner and received the payment, thereby fulfilling the essential elements of criminal breach of trust. By dishonestly misappropriating or converting the entrusted property for personal gain, the accused has violated the trust reposed in them, which is a fundamental ingredient of the offense under Section 405 of the IPC. Such an act not only constitutes a breach of legal duty but also carries criminal liability. Given that the necessary ingredients of the offense are clearly present, this Court is not inclined towards dismissing the FIR as baseless.

24. With regard to the provisions of forgery and criminal conspiracy, this Court refrains from making any observations at [2025:RJ-JD:12223] (15 of 15) [CRLMP-1308/2025] this stage, as further detailed investigation is still required in the matter.

25. A plain reading of the factual report would manifest that after conducting thorough investigation; even the investigating officer is of the view that the accused has received money from Sahara Prime City Limited and has a development agreement but by committing cheating, criminal breach of trust and criminal conspiracy transferred the land to the petitioner while the agreement was still in existence and does not allow to sell the land.

26. In view of the discussion made herein above, this Court feels that the allegations in the FIR contain essential ingredients of offenses under Sections 318 and 316 of BNS. Therefore, further investigation is necessary to thoroughly examine the role of the accused and establish the full extent of the alleged cheating and criminal breach of trust. In view of this, the Court does not find it just and proper to quash FIR No. 30/2025 at Police Station Bichiwal, District Bikaner as doing so at this stage would obstruct the due process of law.

27. Accordingly, the instant criminal misc. petitions are dismissed.

28. The stay petitions are disposed of.

(FARJAND ALI),J 45-Mamta/-

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