

**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 4893/2024

Rana Ram S/o Bhera Ram Choudhary, Aged About 41 Years, C/o
A-24, Basni Krishi Mandi, Jodhpur.

----Petitioner

Versus

1. State Of Rajasthan, Through PP
2. Shiv Kumar Mandovra S/o Jamna Lal Mandovra, Shop No.
75, Krishi Upaj Mandi, Subhash Nagar, Bhilwara.

----Respondents

For Petitioner(s)	:	Mr. Mahendra Singh Rajpurohit.
For Respondent(s)	:	Mr. S.S. Rajpurohit, P.P.
For Complainant	:	Ms. Shobha Prabhakar

HON'BLE MR. JUSTICE ARUN MONGA**Order****06/08/2024**

1. Yet another case is before this Court, where the dispute between the parties is though out rightly civil in nature, but in misuse of powers by rather over compliant police officials, obviously to help the complainant, an FIR has been registered for alleged offences under Sections 420 and 406 of IPC, giving the entire case a color of criminal culpability, where none exists. No preliminary enquiry of any kind was carried out. Complaint received in the police station was simply converted into an FIR. More of it later.

2. Briefly speaking, shorn of unnecessary details, the relevant facts of the case leading to the institution of the present petition, are as under:-

2.1. An FIR No.319/2024 dated 20.06.2024 was registered at Police Station Subhash Nagar, Bhilwara on the report lodged by the



respondent No. 2/complainant Shiv Kumar Mandovra against Ram Kishore Jhanwar and Narendra Jhanwar for alleged offences under Sections 406 and 420 IPC. Gist of his allegations is that they purchased goods (*Guar Gum*) and did not pay for the same despite delivery.

2.2. Investigation ensued. During the investigation police seized the goods namely *Guar Gum* stated to be weighing a total of about 47,815 Kgs. valued at a total amount of Rs.25,54,807/-. It transpires that during investigation of the case, the goods in question were seized/recovered from the premises of the present petitioner. The same are now in the possession of the police.

2.3. The petitioner is before this Court seeking release of the said goods, which is a perishable commodity. He states that he is a bonafide purchaser of the goods and paid price thereof against written receipt issued by one Mr. Narendra Jhanwar (co-accused in the FIR).

3. I have heard learned counsel for the petitioner, learned counsel for the complainant as well as learned Public Prosecutor and also perused the case file, in particular the contents of the FIR.

4. Before advertng to the merits of the case and expressing my opinion thereon, it is deemed appropriate that contents of the FIR be seen. Translated version thereof is as below:-

To,

SHO, Police Station-Subhash Nagar, Bhilwara

Complainant- Shiv Kumar Mandowara

Subject -Regarding lodging a report and taking legal action.

Sir,

I, the complainant, submit this FIR and state the following:

I am engaged in the business of grains under the name and style of Sanwariya Traders. The accused, Ram Kishore Jhanwar and his son Narendra Jhanwar, frequently visited my shop as brokers, and their firm operates under the name M/s. Ramkishore Jhanwar and Company,



Anaj Mandi, Basni, Jodhpur. Accused Ram Kishore is a resident of Beawar and often visited Bhilwara, gaining my trust over time.

On 21/05/2024, the accused inquired about the price of grains and guar over the phone, to which I quoted Rs. 5,421 per ton. Following this, they instructed me to load the goods under the name of Saran Brothers, Jodhpur, and send it. Acting on their instructions, I arranged for 26,035 kg. of guar, worth Rs. 14,11,357/-, to be loaded onto vehicle number RJ-19-GB-9556. The goods were sent along with the weighing slip (bilti) and bill of lading, which the accused received and unloaded, with a promise of prompt payment.

Subsequently, the accused requested another load of goods in the name of Aman Enterprises, Jodhpur, and instructed that a bill of lading be made. Accordingly, on 12/06/2024, I loaded 21,780 kgs of goods valued at Rs. 11,43,450/-, at a rate of Rs. 5,250/- per kg. into vehicle number RJ-19-GD-8641 and sent them with the bill of lading. The goods were unloaded at Om Product Warehouse, F-176, Boranada, belonging to Arjun Ji Rathi.

I requested payment for the total amount of Rs. 25,54,807/- for both transactions. However, instead of paying the due amount, the accused blocked my phone number. Concerned, my son and I travelled to Jodhpur, where we discovered that the accused had fraudulent intentions from the beginning. They aimed to cheat me by purchasing goods in the name of another firm and storing them at a separate location to conceal the whereabouts of the goods. Accused Ram Kishore Jhanwar openly threatened me, stating, "We planned to defraud you from the beginning, and we have successfully done so. You cannot harm us; we will gradually sell your goods from the warehouse to other parties and squander the money."

If immediate action is not taken, the accused could cause me significant financial loss. The accused, through a pre-planned conspiracy, have acquired goods worth Rs. 25,54,807/-.

Therefore, I request that a case be registered, the accused be arrested, and my goods in their possession be recovered. Additionally, I request strict legal action against them to prevent such crimes from being repeated."

5. Learned counsel for the petitioner would argue on the lines similar to the grounds taken in the petition, which, inter alia, are as under:-

5.1. The petitioner has made the full and final payment to Narendra Jhanwar. Any dispute between Narendra Jhanwar and the complainant is solely their concern, and the petitioner bears no liability.

5.2. The petitioner has no knowledge of any dispute between Narendra Jhanwar and the complainant.



5.3. If Narendra Jhanwar or his family members have committed any cheating or breach of trust involving the complainant, the petitioner is not responsible, having already made the full and final payment for the said Guar Gum. A sale receipt was issued by Narendra Kumar Jhanwar in favor of the petitioner on 14.06.2024, confirming the transaction.

5.4. The police have seized the material, which is currently stored at the Bhilwara police station. The recovered material is no longer needed for investigation or trial and is being kept in conditions that risk deterioration. If goods are not released on Supurdginama, the petitioner will suffer irreparable loss.

6. Per contra, learned counsel for the complainant would submit that the said goods belong to complainant (A), which were sold to accused (B), namely Narendra Kumar Jhanwar, and the accused (C), i.e. Rana Ram, the petitioner herein, who is equally complicit. Petitioner (C) is claiming the same without paying the sale proceeds to the original seller, i.e., the complainant (A).

7. The present petition is for release of *Guar Gum* on *supurdari*. At the very outset, I am of the view that, in any case, the goods are perishable and it will not serve anybody's purpose to keep the same in police custody. Not only they will deteriorate over the passage of time, but even otherwise given the large quantity thereof, humongous space is required for storage by the police. However, instead of releasing the same on *supurdari* on usual terms of furnishing bonds to the satisfaction of the court below, I am of the opinion that, for the reasons stated hereinafter, it is a fit case to exercise inherent jurisdiction vested with this Court under Section 482 CrPC beyond the prayer in the petition, to prevent abuse of the process of law and to secure the ends of justice.



8. As noted above, the petitioner's assertion is that he paid full and final amount of the said *Guar Gum* for which a sale receipt was issued by Narendra Kumar Jhanwar in favour of the petitioner on 14.06.2024.

8.1. Having gone through the contents of the FIR and considered the factual position stated therein, I am of the view that it has been registered in complete abuse of police powers. Ex-facie, the contents of the FIR do not disclose the commission of any offence requiring investigation by the police and/or criminal trial at the expense of the State exchequer. In my opinion, the dispute is civil in nature amongst private parties, i.e., (A) original seller, (B) buyer and (C) subsequent buyer.

9. Conceded statement made by the complainant in the FIR is that for years, (A) and (B) have had commercial transactions with each other. It transpires that there has been inter-se debit-credit remittances between them. It so appears that qua the commercial transaction in question herein i.e. the payment of the goods i.e. *Guar Gum* was not made by (B) to the satisfaction of the complainant for whatever reason. It may be either because there was some money dispute or the quality of the goods was not up to mark or both or otherwise. But before the inter se dispute could be settled, (B) sold the goods to (C) on receipt of the consideration.

10. Reference may be had to the principles of quashing of the FIRs in the given cases, where it is so warranted, as enunciated by the Supreme Court in the case of **State of Haryana And Ors vs Bhajan Lal And Ors.**¹ For ready reference, the same are reproduced hereinbelow:-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent

¹ AIR 1992 SC 604





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 guide- i7 myriad kinds of cases wherein such power should be exercised:

(a) 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;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;

(c) 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;

(d) 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;

(e) 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;

(f) 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;

(g) 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.”

11. At this stage, reference may also be had to **Lalita Kumari Vs. Government of Uttar Pradesh & Ors.**². The judgment/ratio therein seems to have been misconstrued rampantly by the police officials in the State of Rajasthan in registering FIRs in a routine manner by acting as mere post offices. This Court is inundated every other day with filing of petitions to seek quashing of frivolous FIRs before even the ink dries

² (2014)2 SCC 1





upon its registration. Reasons are not far to seek i.e. unless they approach this Court to seek quashing, they have to seek bail apprehending arrest resulting in delay of the entire process of their release. For the education of the police officials, relevant part of the judgment rendered in the case of Lalita Kumari (supra) by the Supreme Court is reproduced hereinbelow:-

"119. *Therefore, in view of various counter claims regarding registration or non-registration, what is necessary is only that the information given to the police must disclose the commission of a cognizable offence. In such a situation, registration of an FIR is mandatory. However, if no cognizable offence is made out in the information given, then the FIR need not be registered immediately and perhaps the police can conduct a sort of preliminary verification or inquiry for the limited purpose of ascertaining as to whether a cognizable offence has been committed. But, if the information given clearly mentions the commission of a cognizable offence, there is no other option but to register an FIR forthwith. Other considerations are not relevant at the stage of registration of FIR, such as, whether the information is falsely given, whether the information is genuine, whether the information is credible etc. These are the issues that have to be verified during the investigation of the FIR. At the stage of registration of FIR, what is to be seen is merely whether the information given ex facie discloses the commission of a cognizable offence. If, after investigation, the information given is found to be false, there is always an option to prosecute the complainant for filing a false FIR.*

Conclusion/Directions:

120. *In view of the aforesaid discussion, we hold:*

120.1. *Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation.*

120.2. *If the information received does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.*

120.3. *If the inquiry discloses the commission of a cognizable offence, the FIR must be registered. In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further.*

120.4. *The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence.*

120.5. *The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.*

120.6. *As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.*





The category of cases in which preliminary inquiry may be made are as under:

- a) *Matrimonial disputes/ family disputes*
- b) *Commercial offences*
- c) *Medical negligence cases*
- d) *Corruption cases*
- e) *Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay.*

The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

120.7. *While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry.*

120.8. *Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above.”*

12. It appears that in the instant case, the aforesaid principles have been given a complete short shrift by the police officials. Perhaps, in their over willingness to help the complainant (A) to act as a recovery agent on his behalf to recover the money from his debtor.

13. To be noted here that the petitioner is not named in the FIR. Even otherwise, there is nothing worth a whisper stated in the FIR by the complainant as to what is the role attributed to the petitioner, who is contending that he is a bona fide purchaser.

14. Section 405 of IPC defines the offence of criminal breach of trust, punishable under section 406 IPC, thus :-

“405. Criminal breach of trust.-

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits “Criminal breach of trust.”



Aforesaid Section 405 has been retained as it is, in verbatim as Section 316(1) in the Bhartiya Nyaya Sanhita, 2023 and reads as under:-

“316. Criminal breach of trust. –

(1) Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits criminal breach of trust.”

15. Let us break down the ingredients of the section as below for its better understanding :-

(a). Entrustment :

The individual must be entrusted with property or some dominion over the property. This entrustment can be explicit (direct) or implied through legal agreement or duties.

(b). Dishonest Misappropriation or Use :

The individual must dishonestly misappropriate, convert, or use the entrusted property for their own benefit. This includes any form of misuse that is contrary to law, the terms of the trust or agreement.

(c). Violation of Directions or Contracts:

The misuse must be in violation of specific directions of law that outline how the trust is to be executed or contrary to any legal contract—whether express (clearly stated) or implied (understood without direct expression).

(d). Wilful Suffering:

If the individual knowingly allows another person to misuse the property in violation of the trust, this also constitutes a breach.

15.1. It would be seen that the sine qua non for the applicability of the section, supra, is that the beneficial interest in the property in respect



of which the offence is alleged to have been committed, continues to vest in the person by whom the entrustment was made i.e. in same person and not the accused. Examples of Criminal Breach of Trust are :

- An employee entrusted with company funds who uses them for personal expenses.
- A trustee of a property who sells the property against the terms of the trust.
- A warehouse keeper who disposes of goods stored under his care without the owner's permission.

15.2. The prosecution thus must prove the elements of entrustment and dishonest breach of terms of entrustment to secure a conviction. This is essential for discharge of fiduciary responsibilities and ensuring that entrusted property is handled as per law and intended by the terms of the trust or legal agreement.

16. Allegations in the instant FIR show that the complainant had sold goods to Ram Kishore Jhanwar and/or his son Narendra Jhanwar. This is further clear from the complainant's allegations in the FIR that when he requested payment for the total amount of Rs. 25,54,807/- for both transactions, instead of paying the due amount, the accused blocked (obviously Ram Kishore Jhanwar and/or his son Narendra Jhanwar) his phone number.

17. These allegations leveled by the complainant himself in the FIR run contrary to and demolish the submission of his learned counsel that the complainant had also sold the said goods to Rana Ram, the petitioner herein. Thus, the petitioner is equally complicit as he is claiming the same without paying the sale proceeds to the original seller i.e. the complainant. It is rather intriguing that a very contradictory stand has been taken by the petitioner in the FIR vis-à-vis submissions made in the Court.





18. Either way, it seems to be a simple commercial transaction of sale of goods by the complainant to Narendra Kumar Jhanwar. At the time of sale itself, the property (ownership) in the sold goods had passed on to the purchaser (Narendra Kumar Jhanwar) and no longer remained with the complainant or in some person other than Narendra Kumar Jhanwar accused.

19. To my mind, the allegations in the FIR herein, taken at their face value, do not disclose the commission of offence of criminal breach of trust defined in section 405 of IPC punishable under section 406 IPC.

20. As found above, it was a simple commercial transaction of sale-purchase of goods; at the time of sale itself, the property/beneficial interest in the sold goods had passed on to the purchaser (*Narendra Jhanwar*) and no longer remained with the complainant or in some person other than the accused. The present petitioner has asserted that he had purchased the goods from said *Narendra Jhanwar*, had made the full and final payment for the said Guar Gum and, a sale receipt was issued by Narendra Kumar Jhanwar in favor of the petitioner on 14.06.2024 confirming the transaction.

21. Adverting now to section 420 IPC, a sine qua non for attracting criminal liability there under is the element of cheating and, thereby, dishonestly inducing the person deceived to deliver any property to any person. The present case being a simple sale of goods and its delivery by the complainant to Narendra Jhanwar, it cannot be said that the complainant was cheated and thereby dishonestly induced by the accused to deliver the goods to the latter. In my opinion, the allegations in the FIR also do not even disclose the commission of an offence under section 420 IPC.

22. There is yet another aspect of the case. The offences under Section 405 IPC and section 420 IPC are mutually anti-thetical and



cannot stand together. In the case of Section 405 IPC, the property is delivered by the owner in trust to the accused and there is no element of dishonesty on the part of the accused at the inception i.e. before or time of entrustment of the property to him, but the element of dishonesty of the accused develops/arises subsequent to the entrustment of the property to him. As against this, for applicability of section 420, it is necessary to show that element of dishonesty of the accused existed prior to and/or at the time of the delivery of the property to him i.e., at the inception itself.

22.1. Both Sections 405 and 420 of the IPC operate in distinctly different domains i.e. entrustment versus inducement. Section 405 deals with entrustment, where the victim places trust in the accused by entrusting property, and any breach of this trust by the accused directly hurts the victim. In contrast, Section 420 pertains to inducement, where the accused actively approaches the victim, often through misrepresentation or deception, leading the victim to mistakenly believe in his honesty and part with their property under false pretenses/inducement. Therefore, entrustment centers on a breach of existing trust, while inducement involves deceit from the outset.

22.2. For ready reference, Section 420 IPC is also reproduced hereinbelow:-

"S. 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."



Aforesaid Section 420 IPC has been retained as it is, in verbatim, as section 318 (4) in the Bhartiya Nyaya Sanhita, 2023 and reads as under:-

“318. Cheating. –

(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.”

22.3. The provision, *ibid*, thus envisages that the act of cheating where a person deceives someone ought to be such, whereby the deceived person is induced to:

- Deliver any property to another person.
- Make, alter, or destroy the whole or any part of a valuable security.
- Modify or destroy anything signed, sealed, and capable of being converted into a valuable security.

The provision thus highlights the serious consequences of using deceit to manipulate others into parting with property or altering valuable documents.

23. In the aforesaid backdrop, it is obvious that the report lodged with the police does not disclose the commission of the offences either under section 406 or 420 IPC or any other cognizable offence.

24. Moreover, before registering the FIR, the conditions/parameters laid down either in the case of Lalita Kumari (*supra*) were not complied with. Firstly, the allegations in report lodged with the police, taken at their face value, did not disclose the commission of an offence of criminal breach of trust defined in section 405 of IPC punishable under section 406 IPC and section 420 IPC or any other cognizable offence. Secondly, the alleged offences arose out of purely commercial



transactions of sale and purchase of goods. Yet, before registering an FIR, any preliminary inquiry was not at all conducted, to ascertain whether or not a cognizable offence was disclosed. Had the needful been done, obviously the result would have been different.

25. Be that as it may, it is for the complainant to institute appropriate civil proceedings for recovering his claimed money from the debtor and not for the police officials to substitute themselves as his civil recovery agents under the garb of doing the investigation by misusing their khaki uniform.

26. Before parting, to sum up the discussion, it is considered imperative to direct the police officials in respondent State of Rajasthan that, before they register FIRs in matters of alleged offences under sections 405/406 and 420 of IPC [corresponding Sections 316 and 318 of Bhartiya Nyaya Sanhita (BNS) 2023], where the transaction is purely commercial, such as sale-purchase of goods or even immovable property, and the interest/title in the goods/property has passed to the purchaser, to conduct a mandatory preliminary enquiry. Unless the report thereof shows that there is prima facie material suggestive of commission of offence, FIR ought not to be registered. The preliminary enquiry must be conducted with certain alacrity (a week or 10 days at the most) so as to not let the alleged offender gain advantage to either destroy the evidence or to abscond or otherwise take any other advantage during the PE.

27. Reverting to the case in hand, in the light of detailed discussion in the preceding part coupled with the totality of the facts and circumstances, I am of the opinion that continuance of investigation into the FIR in question and/or criminal trial arising there from, if any, depending upon the outcome of the investigation, would cause undue harassment and unnecessary ordeal to the petitioner and the other co-



[2024:RJ-JD:33404]

(15 of 15)

[CRLMP-4893/2024]

accused persons. In order to prevent abuse of the process of Court and to secure the ends of justice, I consider it a fit case for exercise of powers vested in this Court to quash the FIR and the consequential proceedings.

28. Accordingly, the FIR No.319/2024 dated 20.06.2024 registered with Police Station Subhash Nagar, Bhilwara for offence under Sections 406 and 420 IPC and the consequential proceedings are quashed. Petition is allowed in above terms. Consequences to follow.

(ARUN MONGA),J

90-a.asopa/-

Whether fit for reporting : Yes / No