

# **S.W. Palanitkar & Others V. State of Bihar & Another**

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## **LIST OF ABBREVIATIONS**

| <b>S. No.</b> | <b>ABBREVIATIONS</b> | <b>EXPANSION</b>         |
|---------------|----------------------|--------------------------|
| 1.            | &                    | and                      |
| 2.            | Anr.                 | Another                  |
| 3.            | CrPC                 | Criminal Procedure Code  |
| 4.            | F.I.R.               | First Information Report |
| 5.            | H.C.                 | High Court               |
| 6.            | Hon'ble              | Honourable               |
| 7.            | I.P.C.               | Indian Penal Code        |
| 8.            | Ors.                 | Others                   |
| 9.            | S.                   | Section                  |
| 10.           | S.C.                 | Supreme Court            |
| 11.           | V.                   | versus                   |

## **LIST OF CASES**

| <b>S.No.</b> | <b>CASES</b>  |
|--------------|---|
| 1.           | Debashish Ghoshal v. State of Jharkhand & Ors. 2024 S.C.C. OnLine Jhar 233. |
| 2.           | G.V. Rao v. L.H.V. Prasad (2000) 3 S.C.C. 693.                              |
| 3.           | Hriday Ranjan Prasad Verma v. State of Bihar (2000) 4 S.C.C. 168.           |
| 4.           | Jaswant Singh v. State of Punjab 2021 S.C.C. OnLine S.C. 1007.              |
| 5.           | Jaswantraji Manilal Akhaney v. State of Bombay A.I.R. 1956 S.C. 575.        |
| 6.           | Mahadeo Prasad v. State of West Bengal A.I.R. 1954 S.C. 724.                |
| 7.           | Nirmaljit Singh Hoon v. The State of West Bengal (1973) 3 S.C.C. 753.       |
| 8.           | Rashmi Jain v. State of U.P. (2014) 13 S.C.C. 553.                          |
| 9.           | Trisuns Chemical Industry v. Rajesh Agarwal (1999) 8 S.C.C. 686.            |

## **BACKGROUND OF THE CASE**

The respondent no. 2 was designated as a consignment stockist of the firm subject to specific terms and circumstances under an agreement dated 21.2.1995 between the appellant no. 1 (the company) and the respondent no. 2. This agreement was in effect until February 20, 1996. The same arrangement was

extended up to 31.3.1997 on the same terms and circumstances by a further agreement dated 5.5.1997. Respondent No. 2 (the complainant) issued notice on the company's Manager of Marketing and Regional Manager on 3.10.1997, demanding that they either pay it Rs. 15 lakhs within 15 days or, alternatively, send the disagreements and disputes to arbitration in accordance with paragraph 29 of the agreement. Following this the parties met agreeing that the firm would provide the respondent with ammonium sulphate under specific conditions for the years 1997–1998. Because the terms were unreasonable, the respondent refused the offer. After that, on December 8, 1997, the respondent filed a complaint, claiming that they had violated Sections 406<sup>1</sup> and 420<sup>2</sup> as well as Section 120B<sup>3</sup> of the Indian Penal Code (IPC).

### TRAJECTORY OF THE CASE

**PATNA DISTRICT COURT:** The Chief Judicial magistrate issued summons against the appellants and started the due process by order dated January 06, 1998.

**PATNA HIGH COURT:** The appeal was made to the High Court under Section 482 of CrPC (Criminal Procedure Code).<sup>4</sup> The appellants demanded the CJM's (Chief Judicial Magistrate) order to be quashed. The Patna High Court dismissed the said petition through impugned order.

**SUPREME COURT:** Therefore, the appeal before the hon'ble Supreme Court.

### BRIEF FACTS

The respondent alleged the appellants on the following grounds-

The accused individuals used the complainant unfairly, cheated them through fraud, and acted fraudulently against them. By doing these things, they violated the law, violated the complainant's trust, caused the complainant to suffer unjustified loss, and gained unjustly. They did this with the aim of unscrupulously extracting money or satisfaction from the complainant. Along with using the complainant's office and godown premises fraudulently and without paying anything for such expensive and valuable property, the accused individuals also deceived the complainant, committing a crime of breach of trust, fraud, and cheating that resulted in a loss of fifteen lakhs.

### ISSUES IN THE CASE

**[ISSUE 1]:** Are the appellants guilty under section 405, 415 and 120B of the IPC.

**[ISSUE 2]:** The High Court and CJM erred in rejecting the petition and issuing the process respectively?

### ARGUMENTS IN THE CASE

#### APPELLANT'S ARGUMENT

1. The appellants' learned senior counsel, Shri Dushyant Dave, argued that the High Court should have exercised its authority under Section 482 Cr.P.C. in light of the case's facts and circumstances in order to prevent abuse of the legal system and/or to ensure the ends of justice; that the disputes

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<sup>1</sup> The Indian Penal Code, 1860 , No. 45, Acts of Parliament, 1860 (India).

<sup>2</sup> The Indian Penal Code, 1860 , No. 45, Acts of Parliament, 1860 (India).

<sup>3</sup> The Indian Penal Code, 1860 , No. 45, Acts of Parliament, 1860 (India).

<sup>4</sup> The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India).

between the appellants and respondent no. 2 were purely civil in nature, arising from a contractual relationship relating to commercial transaction.

2. And that, even in light of the sworn statements, terms of the agreement, and the notice dated 3.10.1997, no case is made out to proceed against the appellants on a criminal basis, despite the fact that the appellants' actions does not fulfil the requirements of Section 405 IPC.
3. Since the appellants were not given any property or dominion over any property, they also did not meet the requirements for the offences under Sections 415 and 120-B of the Indian Penal Code.
4. He claimed that the learned Magistrate had issued the process incorrectly, and that the High Court, which had jurisdiction under Section 482 of the Cr.P.C., had also neglected to make the necessary corrections. Finally, he offered an alternative: in any case, he said, there is no evidence against appellants 1-6 and 8. Therefore, instituting a procedure against them is obviously unjustifiable and unlawful.

### RESPONDENT'S ARGUMENTS

1. Respondent No. 2's experienced counsel, Shri L.K. Bajla, presented arguments in favour of the challenged High Court ruling and in favour of the decision made by the learned Magistrate to issue the process. He essentially restated the arguments presented to the High Court. The complaint's accusations and the sworn statements make it abundantly evident that the respondent no. 2 and the appellant no. 1 corporation came to an agreement on certain terms and circumstances.
2. It is claimed that appellant number 7 travelled to Patna, hired respondent number 2, and persuaded him to sign a contract promising him enormous financial gain.

### RATIO DECIDENDI

#### CRIMINAL BREACH OF TRUST:

A criminal breach of trust cannot be committed for any breach of trust unless there is proof of a deliberate act of fraudulent misappropriation. A breach of trust with *mens rea* gives rise to a criminal prosecution as well, but an act of breach of trust with *mens rea* entails a civil wrong for which the person aggrieved may seek relief for damages in a civil court. A criminal breach of trust must include the following elements:

- (i) granting someone property or dominion over property; (ii) if the person receiving the trust does any of the following: (a) dishonestly misappropriates or converts the property to his own use; or (b) dishonestly uses or disposes of the property, or willfully permits another person to do so, in violation of (i) any legal directive specifying how the trust is to be fulfilled; or (iii) any contract made regarding the fulfillment of the trust.

#### CHEATING:

The following constitute the elements of the offence of cheating: (i) a person must be fraudulently or dishonestly tricked into believing something; (ii) the person must be tricked into believing something to be true; (iii) the person must be purposefully tricked into believing something to be true; and (iv) in situations covered by (ii) (b), the act of omission must be one that causes or is likely to cause damage or harm to the person in question in terms of body, mind, reputation, or property.

**CASES RELIED UPON:****1. Hridaya Ranjan Prasad Verma v. State of Bihar<sup>5</sup>**

“It is important to remember that there is a narrow line that separates the crime of cheating from simple breach of contract while answering the question. It depends on the accused's intention at the time of incitement, which might be assessed by his actions later on, albeit this is not the only criterion. Cheating charges cannot be brought against someone for a simple breach of contract unless there is clear evidence of fraud or dishonesty from the outset of the transaction, at which point the offence is considered to have been committed. Consequently, the essence of the offence is the intention.”

**2. G.V. Rao v. L.H.V. Prasad<sup>6</sup>**

415 consists of two parts. While the complainant must be "dishonestly" or "fraudulently" persuaded to deliver any property in the first component, the second section requires the individual to purposefully persuade the complainant to do something or not do anything. That is to say, the inducement must be deceptive or dishonest in the first section. Intentionality (*mens rea*) is required for the inducement in the second step. The same was also held in the case of Mahadeo Prasad v. State of West Bengal<sup>7</sup> and Jaswantrao Manilal Akhaney v. State of Bombay.<sup>8</sup>

**3. Trisuns Chemical Industry v. Rajesh Agarwal<sup>9</sup>**

Regarding the impact of an arbitration clause in a contract on the possibility of criminal prosecution based on the theory that civil proceedings are also maintainable, this Court has ruled that the ability to quash a F.I.R. (First Information Report) or complaint filed under Section 482 Cr.P.C. should be restricted to extremely rare circumstances. An act's civil profile does not automatically prevent criminal action. Furthermore, it is decided that when the contested act involves a criminal offence, the agreement's clause designating arbitration as a dispute resolution process is ineffective as a stand-in for a criminal prosecution.

**4. Nirmaljit Singh Hoon v. The State of West Bengal<sup>10</sup>**

The section does not say that a regular trial of adjudging truth or otherwise of the person complained against should take place at that stage, for such a person can be called upon to answer the accusation made against him only when a process has been issued and he is on trial- the court explained, referring to the scheme of Sections 200-203 of the Cr. P.C. The materials the Magistrate must take into consideration are outlined in the first part of S. 203, and the second part states that he may reject the complaint if, upon reviewing the materials, he determines there is not enough justification to move forward.

**Applying the Law and the Precedents to the Case in Hand:**

In the present case, neither the complainant's sworn statements, and nor the statements of the three witnesses contain no information indicating that any property was entrusted to any of the appellants or that they had domain over any of respondent no. 2's properties, which they dishonestly converted to their own use in order to meet the requirements of Section 405 IPC, which is punishable under Section 406

<sup>5</sup> Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 S.C.C. 168.

<sup>6</sup> G.V. Rao v. L.H.V. Prasad (2000) 3 S.C.C. 693.

<sup>7</sup> Mahadeo Prasad v. State of West Bengal A.I.R. 1954 S.C. 724.

<sup>8</sup> Jaswantrao Manilal Akhaney v. State of Bombay A.I.R. 1956 S.C. 575.

<sup>9</sup> Trisuns Chemical Industry v. Rajesh Agarwal (1999) 8 S.C.C. 686.

<sup>10</sup> Nirmaljit Singh Hoon v. The State of West Bengal (1973) 3 S.C.C. 753.

IPC. Additionally, the agreement did not call for giving the appellants any property. Given the complaint and witness testimony in their current form, it is not even possible to conclude, even on the basis of a presumptive investigation, that the appellants committed any crimes covered by Section 406 IPC because the requirements for such offence were not met.

It is not true that there was no supply of commodities at all; records show that 400 tonnes of fertilizer were available, though perhaps significantly less than what was needed. Aside from appellant number. 7, the accusations made against the other appellants are blatantly false and extremely ambiguous. It is impossible to conclude, even on the basis of the evidence presented to the magistrate, that appellant No. 7 and the other appellants conspired or colluded. In the event that the appellants have violated the terms of the agreement, respondent no. 2 may pursue remedies in a court of competent jurisdiction to obtain damages, if permitted by law.

### JUDGMENT (HELD)

1. The learned magistrate in this court's view has erred in issuing the process against the Appellants 1 to 6 and 8. No offence was found against any of the other appellants in this instance because the elements of the charges claimed against them were not met, with the exception of appellant no. 7. Regretfully, when the learned Magistrate issued process against appellants 1-6 and 8, despite the fact that the alleged acts against them did not meet the requirements for an offence, the High Court was unable to exercise its jurisdiction under Section 482 Cr.P.C. to correct the evident error.
2. Processes issued against appellants nos. 1-6 and 8 were quashed, and Amrit Lal Desai @ A.B. Desai, the seventh appellant, is also declared ineligible for prosecution for violations of Sections 406 and 120B. Still, there is a procedural concern against him under Section 420 IPC. Hence, there is a modification of both the learned magistrate's order and the impugned order.

### SIGNIFICANCE OF THE CASE

The case of S.W. Palanitkar has been a significant case law in understanding the Offence of Criminal Breach of Trust Offence of Cheating & power of High Court under Section 482 of CrPC. The case has been cited on numerous occasions by the hon'ble Supreme Court of India along with various High Courts. The case contributed to the understanding of the difference between the civil and criminal breach of trust. The bench comprising Hon'ble Justice D.P. Mohapatra and Shivaraj V. Patil explained the necessary ingredients of the criminal breach of trust and cheating. They stated that, instead of going to civil courts with the intention of recovering money as soon as possible, complaints under the Cr.P.C. are frequently filed by parties with oblique motives or for collateral purposes in order to harass, exact revenge, pressurize the accused to come to their own terms, or enforce the obligations arising out of breach of contract touching commercial transactions.

The laudatory mark of the judgment is that it very well illustrated the fact that both civil and criminal liability can arise for some of the offences including misappropriation and defamation. However, the intention (*mens rea*) is the key feature which decides the liability of the wrongdoer. Furthermore, the distinction between the breach of contract and cheating depends entirely upon the intention of the accused at the time of such inducement. A mere failure to not keep up the promise is not to be considered as cheating. Not every contract violation can lead to legal consequences. Considering the case's facts, circumstances, complaint content, and other relevant factors, it is necessary to determine if the accused had *mens rea* in a particular instance. Furthermore, the presence of evil intention should

exist at the time of ‘inducing’. The same was discussed in the case of *Rashmi Jain v. State of U.P.*<sup>11</sup> and *Debashish Ghoshal v. State of Jharkhand & Ors.*<sup>12</sup>

The case in hand was cited in the recent case of *Jaswant Singh v. State of Punjab* by Supreme Court.<sup>13</sup> The emphasis was laid upon the cautious use of High Court’s inherent power under the CrPC. The S.C. reiterated that the inherent power of the High Court under the procedural code is to prevent the abuse & to meet the ends of the justice. Therefore, a pro active approach should be taken by the high courts when appeal come before them and an enhanced study of the reasoning of the district court order should be made so that there is no delay in the justice implementation. It was also held in the case that the mere presence of the ‘arbitration clause’ in the agreement does not restraint for the purpose of criminal prosecution. Thereby, delving in the intricacies of the arbitration and the criminal prosecution is also one of the significant characteristics of this case. It is also pertinent to note that the case has not been dissented on any single occasion.

Henceforth, it can be concluded that the case of S.W. Palatinkar hold a great value while discussing the distinction between civil and criminal liabilities and inherent power of High Courts under section 482 of CrPC. The case is being actively discussed in the recent case also such as *Debashish Ghoshal*<sup>14</sup> and *Jaswant Singh*<sup>15</sup> which points towards its relevance in the modern context.

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<sup>11</sup> *Rashmi Jain v. State of U.P.* (2014) 13 S.C.C. 553.

<sup>12</sup> *Debashish Ghoshal v. State of Jharkhand & Ors.* 2024 S.C.C. OnLine Jhar 233.

<sup>13</sup> *Jaswant Singh v. State of Punjab* 2021 S.C.C. OnLine S.C. 1007.

<sup>14</sup> DEBASHISH, *supra* note 13.

<sup>15</sup> JASWANT, *supra* note 14.