



Cheating and Criminal Breach of Trust: Can They Coexist? Analysis in Light of Delhi Race Club (1940) Ltd. v. State of U.P. [2024 INSC 626]

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Abstract

This article explores whether the offences of cheating (Section 420 IPC) and criminal breach of trust (Section 406 IPC) can simultaneously arise from the same set of facts. The Article intends to highlight the conceptual differences between the offence of 'cheating' vis-à-vis 'criminal breach of trust' based on the various judicial pronouncements and the recent decision of the Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd. v. State of U.P. (2024)**. The article highlights that both offences are conceptually distinct and typically cannot coexist unless their specific legal ingredients are independently satisfied. The article further critiques the misuse of criminal process in civil disputes and examines the broader implications for legal practice and jurisprudence.

Introduction

The intersection of civil and criminal liability often creates legal uncertainty, particularly in commercial and contractual relationships. A common misstep is the invocation of criminal law notably Sections 406 and 420 IPC to recover dues or enforce agreements.

The Hon'ble Supreme Court in the Delhi Race Club (*supra*) has observed the increasing simultaneous invocation of offences under Section 406 i.e., Criminal Breach of Trust¹ and Section 420 i.e., Cheating². Further, the Hon'ble Court observed that these provisions have become a tool to convert the civil disputes into criminal prosecutions.

This is not the first time that the Hon'ble Supreme Court has distinguished the nature of the offence and ingredients constituting criminal breach of trust vis-a-vis the offence of cheating. The Hon'ble Supreme Court in **State of Gujarat v. Jaswantlal Nathalal**³ confirmed that entrustment is mandatory for breach of trust. The Hon'ble Court in **Hari Prasad Chamaria v. Bishun Kumar Surekha**⁴, had observed that no offence of cheating is made out if the intent to deceive was not present at inception, even if the promise was later broken. Thereafter, the Hon'ble Court in **S.W. Palanitkar v. State of Bihar**⁵ held that both sections are mutually exclusive unless the facts satisfy each independently.

¹ Section 316 of The Bhartiya Nyaya Sanhita, 2023

² Section 318 of The Bhartiya Nyaya Sanhita, 2023

³ (1968) 2 SCR 408

⁴ (1973) 2 SCC 823

⁵ (2002) 1 SCC 241



Factual Background

The case arose from a commercial relationship where the complainant, Vipin Kumar Agarwal, had been supplying horse feed to the appellant—Delhi Race Club—since 1990. In 1995, on the Club's direction, invoices were raised in the name of the Delhi Horse Trainers Association. This arrangement continued until 2017, when an amount of ₹9,11,434 remained unpaid. Alleging conspiracy and intentional non-payment, the complainant filed a criminal complaint under Sections 406, 420, and 120B of the IPC.

The Magistrate took cognizance under Section 406 and issued process. An application under Section 482 CrPC to quash the summoning order was dismissed by the Hon'ble High Court of Allahabad. The matter was then carried to the Supreme Court.

Issues

- i. Whether the facts disclosed commission of a cognizable criminal offence under Section 406 IPC.
- ii. Whether the complaint was, in essence, a civil dispute veiled as a criminal allegation.
- iii. Whether the Magistrate and the High Court applied proper judicial reasoning.
- iv. Whether vicarious liability could be attributed to company officials absent statutory backing.

Analysis

1. Ingredients of Criminal Breach of Trust and Cheating

The Court reiterated the ingredients for Section 406 i.e. Cheating, as follows:

- i. Entrustment of property.
- ii. Dishonest misappropriation or use of such property.

For Section 420 IPC, the ingredients are:

- i. Fraudulent or dishonest inducement.
- ii. Such inducement must exist at the inception of the transaction.

Further, vicarious liability of directors or officials cannot be presumed and must be statutorily provided for.

2. Mutual Exclusivity of Sections 406 and 420 IPC

A key observation of the Court was the mutual exclusivity of the offences:

An offence of 'criminal breach of trust' involves lawful possession turning into dishonest misappropriation, usually in a fiduciary context whereas the offence of 'cheating' involves fraudulent inducement right from the outset, i.e., prior to any transaction.



This distinction makes simultaneous application of both sections legally untenable unless each is independently established on distinct factual bases.

Observations and Judgment:

The Hon'ble Court while allowing the Appeal and quashing the summoning order dated 28.02.2023 primarily observed as follows:

- i. The transaction was a commercial sale, not a fiduciary entrustment.
- ii. There was no prima facie evidence of fraudulent inducement at inception.
- iii. The Magistrate's issuance of summons was mechanical, lacking adequate judicial scrutiny.
- iv. The High Court erred in upholding criminal proceedings in what was, in substance, a civil claim for unpaid dues.
- v. The Court underscored the misuse of criminal law as a tool for coercing payment, cautioning that such trends compromise the sanctity of criminal justice.

The Hon'ble Court further held that:

- i. No offence under Section 406 IPC was made out;
- ii. Even Section 420 IPC could not be sustained due to absence of initial fraudulent intent;
- iii. The complaint was a civil dispute cloaked in criminal allegations, constituting abuse of process.

Significance and Implications of the Judgment:

The Hon'ble Supreme Court vide the Judgment reaffirmed the doctrinal boundaries between civil and criminal liability. The Hon'ble Court further emphasized the requirement of judicial application of mind at the pre-summoning stage. The judgment distinguishes disputes of commercial nature from criminal nature.

Conclusion

The offences of cheating and criminal breach of trust are not interchangeable. They rest on fundamentally different legal theories and factual predicates. The Courts must ensure that allegations are not duplicated across offences without independent foundation and the criminal process is not misused to coerce settlement of civil liabilities.

Further, the judgment also clarifies that the directors or officers are not held vicariously liable without specific allegations of personal complicity.
