



2026:AHC:18432

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/s 482 No. - 22948 of 2019

Lalit Pundir and 2 others

.....Applicant(s)

Versus

State of U.P. and another

.....Opposite Party(s)

Counsel for Applicant(s)	: Sanjay Mishra
Counsel for Opposite Party(s)	: G.A.

AFR
Reserved on 28.11.2025
Delivered on 28.1.2025

Court No. - 34

HON'BLE VIKRAM D. CHAUHAN, J.

1. The present application under Section 482 Cr.P.C. is preferred by applicants to quash entire proceedings of Case Crime No.1717 of 2017, State Vs. Lalit Pundir, under Sections 406, 504, 506 I.P.C., Police Station Quarsi, District Aligarh pending in court of Chief Judicial Magistrate, Aligarh pursuant to charge sheet dated 23.8.2018 as well as cognizance order dated 13.12.2018.

2. The opposite party no.2-Yogendra Singh is informant, who has lodged first information report on 15.10.017 at Police Station-Quarsi, District-Aligarh, under Sections 406, 504 & 506 I.P.C. against applicants. As per allegations in first information report, it is alleged by informant that informant entered into an agreement for sale of plot with applicant no.1-Lalit Pundir for a sum of Rs.15,00,000/-, out of which, on 1.8.2012 from the account of elder brother of informant, namely,

Oshveer Singh a sum of Rs.3,10,000/- was paid to applicant no.1 by cheque and a further amount of Rs.6,90,000/- was paid by cash.

3. It is also agreed that remaining amount would be paid at time of execution of sale deed. Cash was given in front of Devendra Kumar and Luv Kush in the year 2013. Applicant no.2-Rajesh went to Jaipur and, thereafter, informant asked applicant no.1 and applicant no.3 to execute the sale deed. However, aforesaid persons were delaying execution of sale deed on ground that when applicant no.2 would come from Jaipur they will execute the sale deed. On 23.7.2013 a sum of Rs.49,000/- was paid by cheque by applicants to informant. In January, 2014, when informant asked applicants for execution of sale deed, applicants have stated that same would be executed within 4-6 months. On 31.7.2017, they promise to execute the sale deed. On aforesaid date, when informant went to the house of applicants, the applicants have stated to come to Registry office and when informant reached Registry office and waited for applicants till 7.00 pm, informant went to house of applicants and asked as to why sale deed was not executed, applicants started abusing and threatened that if informant come to house of applicants they would physically assault informant. The applicants are neither returning the amount nor executing the sale deed.

4. In pursuance to aforesaid first informant report, statement of informant was recorded by Investigating Officer, who has supported prosecution story. The Investigating Officer has also recorded statement of witness Devendra Kumar, who has stated that deal was agreed upon for a sum of Rs.15,00,000/-, out of which, Rs.3,10,000/- was given by cheque and Rs.6,90,000/- was given in cash and at the time of execution of sale deed Rs.5,00,000/- is required to be paid. The sale deed was not executed by applicants. The Investigating Officer has further recorded the statement of witness Luv Kush, who has also supported prosecution case. The Investigating Officer thereafter, submitted charge sheet on 23.8.2018 under Sections 406, 504 & 506 I.P.C. against applicants. In pursuance to aforesaid charge sheet, cognizance order has been issued on 13.10.2018 under Sections 406, 504 & 506 I.P.C.

5. This Court on 24.6.2019 issued notice to opposite party no.2-informant and by office report dated 27.9.2023 it is reported that notice has been served on opposite party no.2. On 2.1.2024, no one appears on behalf of opposite party no.2. By order dated 12.11.2025, on account of non-appearance of opposite party no.2, this case was proceeded ex-parte against the opposite party no.2.

6. The prosecution case is to the effect that a sale transaction of a plot was agreed upon between the parties for a sum of Rs.15,00,000/-. Out of which, Rs.3,10,000/- was paid by cheque and Rs.6,90,000/- was paid by cash by informant to applicants. The amount of Rs.5,00,000/- being remaining sale consideration was to be paid at the time of execution of sale deed. It is allegation of informant that sale deed has not been executed by applicants despite the request made by informant.

7. The applicant have been summoned under Sections 406, 504, 506 I.P.C.

8. Section 406 Indian Penal Code provides punishment for offence of breach of trust. The offence for breach of trust has been envisaged under Section 405 I.P.C., which is quoted hereunder:

***“405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, or 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 to do, commits “criminal breach of trust”.*”**

9. Insofar as offence for criminal breach of trust is concerned, ingredients are to the effect that the accused should be entrusted with property or with dominion over property, who dishonestly misappropriates or converts to his own use the property in question or misappropriates or converts in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract.

10. In the present case, it is the case of informant-opposite party no.2 that only an agreement to sale of property was agreed upon between applicants and opposite party no.2 and some amount was extended in advance. The agreement to sale does not confer any title to the property being transferred in favour of applicants. It is also admitted case of informant-opposite party no.2 that neither the property in question was entrusted upon the accused persons or the accused persons were given any dominion over property. It is also not the allegation of informant that aforesaid property was dishonestly misappropriated or converted for his own use. A simple transaction with regard to payment of advance for purchase of property has been termed as a criminal offence. If any person, who has taken advance amount arising out of any agreement to sale and subsequently, fails to execute the sale deed, the remedy lies under the civil jurisdiction.

11. It is to be noted that it is not the the allegation of informant-opposite party no.2 that applicants had mislead at the initial stage of agreement to sale in any manner.

12. The Supreme Court in the case of **Radheyshyam and others Vs. State of Rajasthan and another, 2024 SCC Online SC 2311** has held that mere non-performance of agreement to sale itself does not amount to criminal breach of trust. Relevant paragraph are extracted hereunder:-

“6. As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurize the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no.2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an

Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of I.P.C. are present in the instant case.”

11. For an offence punishable under Section 406 IPC, the following ingredients must exist:

i. The accused was entrusted with property, or entrusted with dominion over property;

ii. The accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

iii. Such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

12. In the present case, the appellants were not entrusted with any property by respondent no.2-complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no.2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.”

13. In view of the aforesaid reasoning mere failure to honour the agreement to sale by the applicants would not constitute an offence under Section 406 I.P.C.

14. The applicants have also been summoned under Section 504 I.P.C. The aforesaid provision of law provides for intentional insult with intent to provoke breach of peace. The aforesaid offence provides that whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be

punished with imprisonment, which may extend to two years or with fine, or with both.

15. In the present case, no description of any insult has been given by the informant in the first information report or in his statement recorded under Section 161 Cr.P.C. Even otherwise, no material particulars have been provided by the informant as to the facts and circumstances which would give provocation to the informant to break public peace or to commit any offence. Once such allegations are not the foundation of the first information report or the statement of the informant recorded under Section 161 Cr.P.C., then the offence under Section 504 I.P.C. would not be made out against the applicants.

16. The applicants have also been summoned under Section 506 I.P.C. Section 506 I.P.C. provides for punishment for criminal intimidation. The offence of intimidation is provided under Section 503 I.P.C., which is quoted hereunder:-

“503. Criminal intimidation.-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

17. As per the prosecution case, the allegation pertains to non-execution of the sale deed in pursuance to the agreement to sale and the payment of advance amount. The allegation in the first information report is that the applicants have abused and have threatened with life. The allegations are wholly vague in nature and neither the nature of the abusive language used by the applicants have been stated by the informant in the first information report nor in his statement recorded under Section 161 Cr.P.C.

18. It is also to be noted that although there is allegation with regard to threatening for life. However, there is no allegation to the effect that the aforesaid threatening was to cause the informant to do any act which

he is not legally bound to do, or to omit to do any act which that person is legally entitled to do. The allegations of criminal intimidation are wholly vague in nature and are not supported by other witnesses.

19. In the present case, a simple case of breach of contract of agreement to sale, which is having civil liability has been converted into a criminal litigation, which is an abuse of process of law. The informant has the civil remedy for enforcement of the contract of agreement to sale or for breach of contract. At this stage, permitting the criminal prosecution of the applicants would be an abuse of process of law.

20. Accordingly, the entire proceedings of the aforesaid case is hereby quashed. The present application is allowed.

(Vikram D. Chauhan,J.)

January 28, 2025

Bhaskar