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**(2018) 07 GAU CK 0034**  
**In the Gauhati High Court**  
**Case No : Criminal Petition No.558 Of 2017**

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|---------------------------|----|------------|
| Pradip Rajkhowa And 2 Os. | Vs | APPELLANT  |
| State Of Assam And Anr.   |    | RESPONDENT |

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**Date of Decision :** 16-07-2018

**Acts Referred:**

Code of Criminal Procedure, 1973 — Section 482, 561A  
Indian Penal Code, 1860 — Section 405, 406, 415, 420

**Citation :** (2018) 07 GAU CK 0034

**Hon'ble Judges :** AJIT BORTHAKUR, J

**Bench :** Single Bench

**Advocate :** J Borah, S A Hussain

**Final Decision :** Disposed Off

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## Judgement

1. This is a petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") seeking to quash the First Information

Report, (for short, "F.I.R."), dated 23.05.2017, whereupon Dispur Police Station Case No. 1297/2017, under Sections 406/420 of the Indian

Penal Code (for short "I.P.C.") is registered.

2. The petitioners' case, in a nut-shell, is that the petitioner No. 1 is a businessman by profession and is one of the Directors of T.I. Automotive

Pvt. Ltd., which is a dealer of Renault Motors and petitioner No. 2, who has not been arrayed by name in the F.I.R., is the Manager of the T.I.

Automotive Pvt. Ltd. and the petitioner No. 3 is one of the employees of T.I. Automotive Pvt. Ltd. On 23.05.2017, the informant/opp. party No. 2

herein, lodged an F.I.R. with the Officer-in-charge of Dispur Police Station alleging, inter-alia, that in the month of May, 2016, he visited the show-

room of T.I. Automotive Pvt. Ltd. at Guwahati and the petitioner No. 3 and other

staff of the show-room apprised him of the advantages of the car

model 'Koleos' of Renault Motors. It was also alleged in the F.I.R. that after they indicated to him that the said car was fit for his requirements

to drive in hilly roads and as such, he decided to buy the said 'Koleos' car, with manual transmission having 4x4 wheel drive. The

informant/opp. party No. 2 further alleged that on 18.05.2016, he made payment of Rs. 27, 65,313/-only vide invoice No. SAL-INV-GUJA-16-000607

and thereafter, a black 'Koleos' car having engine No. M9RV864C002081 was delivered to the opp. party No. 2.

3. It was also alleged in the F.I.R. that after taking delivery of the car, the informant/opp. party No. 2 drove it to his native place at Bomdilla,

Arunachal Pradesh and while driving uphill, he realized that the second gear of the car was not working to its efficiency and the car almost stopped,

while driving up the hill. Thereafter, he reported the same to the show-room at Guwahati and they advised him to get a servicing done. Accordingly,

the opp. party No. 2 drove down the car to Guwahati from Bomdilla and at Guwahati, the car was checked. Upon such checking/inspection, the car

was found to be 'OK', but again when he went back to Bomdilla, the same problem recurred and somehow, he survived a mishap. He met the

petitioner No. 1, who promised that the same shall be replaced, but nothing happened till date. It was further alleged that the petitioners induced him to

buy the said faulty car.

4. Based on the above F.I.R., Dispur Police Station Case No. 1297/2017, under Sections 406/420 of the I.P.C. was registered and investigation is

on. Hence, the instant petition is filed praying for setting aside and quashing of the impugned F.I.R., dated 23.05.2017, registered as Dispur Police

Station Case No. 1297/2017, under Sections 406/420 of the IPC along with all contemplated proceedings pursuant thereto.

5. The informant/respondent No. 2 by filing an affidavit-in-opposition contested the proceeding contending, inter-alia, that the entire issue relates to

sale and purchase of a vehicle, which is manufactured by 'Renault Motors'-a French Automobile multinational company. According to him, the

car, which was sold to him by the petitioner No. 1, the owner/proprietor of the show-room at Guwahati, Assam was brand named 'Koleos'-a

Sports Utility Vehicle. He booked for one such Vehicle, on 18.07.2014, through

the show-room of the petitioner No. 1 at Guwahati, paying a booking amount of Rs. 3,00,000/- only vide cheque No. 848082, drawn on State Bank of India, which was duly acknowledged vide receipt No. NIL, dated 18.07.2014. However, the said booking was subsequently cancelled, on 11.10.2014, due to non-availability of vehicle in the said show-room and on his request, transferred the booking amount to the account of M/s Industrial Farm Equipment so as to enable him to buy one Mahindra â??Scorpioâ?? vehicle and the said fact was recorded in the aforesaid receipt, dated 18.07.2014 itself. He bought the â??Mahindra Scorpioâ?? instead of the â??Koleosâ??, from the Mahindra car show-room. The respondent No. 2 further contended that by virtue of his good relation from before with the petitioner Nos. 1 and 3, the petitioner No. 3 induced him to buy one â??Koleosâ?? car on huge discount and accordingly, although he did not require, got convinced to buy one. He purchased one â??Koleosâ?? car, on 18.05.2016, paying an amount of Rs. 27, 65,313/-. After taking delivery of the car, necessary test drives were undertaken at the nearby hill areas of Guwahati, such as Ninth Mile and USTM Campus and it was realized that the car was not pulling properly and the petitioner No. 3, who was all along with him convinced the same to be a minor glitch or might be due to Fuel tank load problem, which can be set corrected.

6.Â The opp. party No. 2 contended that the petitioner Nos. 2 and 3 obtained his signatures on the Pre-Delivery-Check (PDC) documents, whereby it was undertaken by him to raise any issue at the time of delivery of the car only and thus, defrauded him by delivery of a defective car. After few days of purchase, he along with his family, drove the car to hilly Bomdilla, a place located at a height of about 2,217 m, above the sea level, in Arunachal Pradesh and at a distance of about 400 kms from Guwahati. He realized in course of the journey that while negotiating the uphill terrains, the 2nd gear of the said car did not work properly and the car failed to pick up on 2nd gear. The problem was again reported to the petitioner Nos. 1, 2 and 3, and on their advice brought back the car again to the workshop at Guwahati and the 2nd gear defect got rectified. The opp. party No. 2 also contended that when a high value car, so sold, it fails to perform to its potential, within weeks time of purchasing, it not only crystallizes the inherent problem with the car, but also puts the lives of the occupants of such a car at risk

and such intentional act of the petitioners makes them criminally liable. Hence it is prayed to dismiss the petition.

7.Â Mr. P. K. Goswami, learned Sr. Counsel appearing for the petitioners, submitted that the allegations made in the impugned F.I.R. are purely of

civil in nature, for which the proper forum for relief is the Consumer Disputes Redressal Forum for deficiency of service, if any or the civil court.

According to Mr. Goswami, the allegations made in the F.I.R., even if they are taken at their face value and accepted in their entirety do not prima

facie constitute any cognizable offence as the transaction between the petitioners and the opp. party No. 2 is, in substance, a commercial contract and

any breach of terms of the contract does warrant civil liability, not criminal liability. Mr. Goswami further submitted that the ingredients of

â??cheatingâ??, which is defined in Section 415 of the IPC, are not prima facie satisfied inasmuch as there was no initial deception on the part of the

petitioners since the opp. party No. 2 on addressal of his earlier complaint, dated 25.08.2016, on his car endorsed his â??satisfaction noteâ??, dated

06.09.2016, certifying that all necessary job requests were carried out to his satisfaction.

According to Mr. Goswami, the learned Senior Counsel for the petitioners, the team of engineers of the manufacturing company of the car namely,

Renault Motors inspected the car and assured the Customer Care Service of the T.I. Automotive Pvt. Ltd. that there was no abnormality observed

with the engine torque on 2nd gear and as such, there should not be any apprehension regarding the productâ??s performance. Therefore, Mr.

Goswami submitted that it was never the intention of the petitioners to cheat or deceive the opp. party No. 2 in the clear absence of any

â??dishonestâ?? or â??fraudulentâ?? inducement to buy the car and in regard to anyway entrustment of property as well as so as to liable them

punishable either under Section 406 or 420 of the IPC. Mr. Goswami further submitted that the opp. party No. 2 voluntarily came to the show-room

and after undertaking test- drive, on being satisfied, purchased the car â??Koleosâ?? of Renault Motors. Mr. Goswami has relied on (1) G.V. Rao

Vs. L.H.V. Prasad & Ors, reported in (2000) 3 SCC 693, (2) Hridaya Ranjan Prasad Verma & Others V. State of Bihar & Anr., reported in (2000) 4

SCC 168, (3) R.P. Kapur Vs. State of Punjab, reported in AIR 1960 SC 866, (4)

State Vs. Bhajanlal, reported in 1992 Supp (1) 335, and (5) Indian Oil

Corporation Vs. NEPC India Ltd & ors, reported in (2006) 6 SCC 736 in support of his argument.

8. Per contra, Mr. G.K.Sharma, learned counsel for the opp. party No. 2, submitted that although the entire issue between the parties relates to sale and purchase of a car, the whole transaction, of course, rooted in dishonest inducement of the innocent opp. party No. 2 to buy the said costly car, although he was not inclined to buy initially. Mr. Sharma submitted that the opp. party No. 2, immediately after purchasing the car and undertaking drive to Bomdilla in Arunachal Pradesh, experienced non-performance of the 2 nd gear of the vehicle, which was duly reported to the petitioners and after undertaking some correcting steps by them, returned the car to him certifying the same to be working up to the specified parameters and obtained accordingly from him a satisfaction note. According to Mr. Sharma, learned counsel for the opp. party No. 2, the petitioners repeatedly subjected him to harassment by way of compelling him to approach them at Guwahati from Bomdilla, Arunachal Pradesh for recurred development of defects in the gearbox in the car and for deficiency of service and therefore, their deceitful and fraudulent acts attract the penal provisions under Sections 406 and 420 of the IPC and therefore, their such wrongful acts do not fall within a liability for breach of contract, for which the remedy lies in the civil court or the Consumer's Forum.

9. Mr. T.K. Mishra, learned Addl. Public Prosecutor appearing for the State respondent No. 1, submitted that a bare reading of the F.I.R. in its totality shows that the grievance of the opp. party No. 2 is a civil wrong and prosecution of the petitioners for the criminal offences under Sections 406/420 of the IPC are totally unwarranted as the allegations are apparently based on breach of contract, which cannot give rise to criminal prosecution.

10. Section 405 of the IPC defines "criminal breach of trust" and Section 415 of the IPC defines what is "cheating". In both the said offences dishonest or criminal intention must be proved. In order to sustain an offence under Section 405 of the IPC, the prosecution must prove (1) that there was an entrustment, by one person to another person, of the property or with dominion over property; (2) that such entrustment must be in

trust; (3) that there was a misappropriation or conversion to his own use by the person, who received the property in trust; and (4) that such

conversion, or retention of the property was against or in violation of any direction of law prescribing the mode in which such trust is to be discharged,

or of any legal contract made, in regard to the discharge of such trust. But for cheating, the prosecution must establish (a) that deception was

practiced by the offender; (b) that on account of such deception, the offender dishonestly or fraudulently induced a person, so as to make that person

so deceived to deliver any property or to do something or omit to do something; (c) that by reason of the delivery of the property or the doing of a

thing or the omission to do a thing, thereby causing or likely to cause damage or harm to the person deceived in body, mind, reputation or property.

11. For better appreciation of the difference between Sections 405 and 415 of the IPC, it may relevantly be referred to the para 7 of the judgment

of the Hon'ble Supreme Court rendered in G.V. Rao Vs. L.H.V. Prasad & Ors, (supra), which is herein below extracted;

7. Section 415 has two parts. While in the first part, the person must dishonestly or fraudulently induce the complainant to deliver any

property; in the second part, the person should intentionally induce the complainant to do or omit to do a thing. That is to say, in the first part,

inducement must be dishonest or fraudulent. In the second part, the inducement should be intentional. As observed by this Court in Jaswantrao Manilal

Akhaney v. State of Bombay<sup>1</sup> a guilty intention is an essential ingredient of the offence of cheating. In order, therefore, to secure conviction of a

person for the offence of cheating, mens rea on the part of that person, must be established. It was also observed in Mahadeo Prasad v. State

of W.B.<sup>2</sup> that in order to constitute the offence of cheating, the intention to deceive should be in existence at the time when the inducement was

offered.

12. In Hridaya Ranjan Prasad Verma & Others (supra), the Hon'ble Supreme Court held-

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine

one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent

conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is

shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is

the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making

the promise. From this mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise

cannot be presumed.

13.Â Way back in the case of R.P. Kapur (supra), the Honâ??ble Supreme Court considered the nature and scope of the inherent power of the

High Court under the Section 561 â?"A (old) of the Cr.P.C. and observed in para 6 of the judgment, as extracted herein below:

â??It is well-established that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the

abuse of the process of any court or otherwise to secure the ends of justice. Ordinarily criminal proceedings instituted against an accused person must

be tried under the provisions of the Code, and the High Court would be reluctant to interfere with the said proceedings at an interlocutory stage. It is

not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of this inherent jurisdiction.â??

14.Â In another leading case of Bhajanlal (supra), the Apex Court indicated the illustrative categories, which call for exercise of inherent power

under Section 482 of the Cr.P.C. as follows:-

â??â?!(1)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;

(2)Â 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;

(3)Â 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;

(4) 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;

(5) 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;

(6) 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;

(7) 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.

15. The substance of the allegations made in the F.I.R. against the petitioners is that the informant/opp. party No. 2 herein purchased one

Koleos brand Renault car, which is a Sports Utility Vehicle by visiting the exclusive show-room of the petitioners at Guwahati and being

satisfied with its pre-purchase performance of the manufacturing company's specifications, during test drives on roads including in the outskirts

hilly terrains of Guwahati city and thereafter, drove the car to Bomdilla, Arunachal Pradesh. The car seemed developing fault in 2nd gear as it failed

to move satisfactorily in treacherous hilly roads. Bomdilla is a place in the hill state of Arunachal Pradesh, situated about 2,217 metres above the sea

level and about 400 kms away from Guwahati. The opp. party No. 2 reported the matter to the petitioners/dealer at Guwahati and after necessary

mechanical tests being conducted by an expert technical team of the manufacturing company, it was certified that no abnormality was observed with

the engine torque on 2nd gear and all the parameters were found to be under recommended specifications for Koleos. By a Satisfaction

Note, dated 06.09.2016, the buyer/opp. party No. 2 confirmed that having



checked the car and certify that all necessary job requests have been carried out to my entire satisfaction.â??

16.â? The dispute that developed, thereafter, is essentially pertains to the warranty statement or representation made by the petitionersâ?? dealer of Renault cars at Guwahati, who sold the â??Koleosâ?? car to the buyer opp. party No. 2 herein, as a part of the contract of sale, affirming the quality specified, upon which the opp. party No. 2 relied on in making the purchase. The opp. party No. 2, however, has not impleaded the Renault Motors, which is a French Automobile multinational company, the manufacturer of the car, of which the petitionersâ?? show-room at Guwahati is a sale point only. The opp. party No. 2, on his own volition definitely approached the petitionersâ?? dealership at Guwahati intending to buy the car, which he effectuated after necessary test drives of the car before purchase, to his satisfaction as the carâ??s performance was as per the manufacturerâ??s specifications.

17.â? Is such backdrop of an F.I.R. against a dealer of a car, devoid of the manufacturing company being impleaded does amount to any cognizable offence, exposing its Director, Manager and employee of the show-room, to criminal liability under Sections 406 and 420 of the IPC? The answer to this vital question is certainly negative in the present case, as apparently there cannot be an offence either cheating or criminal breach of trust in the absence of mens rea. Undoubtedly, the question relates to the performance of a vehicle as per the manufacturerâ??s specifications, which is satisfied in the backdrop of facts stated in the F.I.R. If the buyer having found the vehicle/car not working in conformity to the prescribed specifications, after giving due notice, may sue the seller and its manufacturing company, per civil remedy under the appropriate Act.

18.â? In Indian Oil Corporation (supra), the Honâ??ble Supreme Court observed thus-

â??It is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable break down of marriages/families. There is also an impression that if a person

could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which,

do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged. In *G. Sagar Suri v. State*

of UP AIR 2000 SC 754, this Court observed:

“It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut

of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious

matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction

under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.”

19. Thus, taking the facts as they are alleged in the F.I.R. in consonance with the principles of law expounded by the Hon’ble Supreme Court in

a catena of judgments under Section 482 of the Cr.P.C., some of which are extracted hereinabove, this court is of the considered opinion that those

allegations, 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

petitioners-the dealer of the car manufacturing company.

20. In the result, the petition stands allowed and hereby set aside and quash the impugned F.I.R., dated 23.05.2017, registered as Dispur P.S. Case

No. 1297 /2017, under Sections 406/420 of the IPC as prayed for, under Section 482 of the Cr.P.C.

21. The informant/opp. party No. 2 may pursue such other remedy under the civil law as may be available to him.

Petition stands disposed of accordingly.