



**IN THE SUPREME COURT OF INDIA**  
**CRIMINAL APPELLATE JURISDICTION**  
**CRIMINAL APPEAL NO. 3467 OF 2025**  
**[ARISING OUT OF SLP (CrI.) NO. 1577 OF 2022]**

**SUNIL SHARMA**

**...APPELLANT**

**VERSUS**

**M/S HERO FINCORP LIMITED & ANOTHER**

**...RESPONDENTS**

**J U D G M E N T**

**DIPANKAR DATTA, J.**

- 1.** Leave granted.
- 2.** The appellant takes exception to the judgment and order dated 04.01.2022<sup>1</sup> of the High Court of Delhi, passed on a petition filed by the first respondent<sup>2</sup> under Section 482 of Code of Criminal Procedure,

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<sup>1</sup> impugned order

<sup>2</sup> Hero

1973<sup>3</sup>. In the impugned order, the High Court considered the decision of a Constitution Bench of this Court in ***Lalita Kumari v. State of Uttar Pradesh***<sup>4</sup>, more particularly paragraphs 49, 50 and 53 to 56, and held as follows:

“24. Applying the law to the facts of this case, undisputedly loans have been taken by the respondent No.2 for purchase of machineries. The machineries have not been purchased and the money, which had been taken for purchase of machinery, has been misappropriated for the use of respondent No.2. The facts on the face of it prima facie discloses a cognizable offence. The learned CMM and the learned PDJ have erred in not directing the registration of the FIR as the offence alleged of directly comes within the four corners of the Constitution Bench Judgment of Lalita Kumari vs. State of U.P. (supra). The complaint of the Petitioner discloses a cognizable offence i.e. criminal breach of trust in respect of the terms of contract that was agreed upon, which requires to be investigated by the police despite taking into account the fact that borrowed amounts stand repaid to the Petitioner or the fact that proceedings before the arbitral tribunal are ongoing. Therefore, this Court is of the opinion that a cognizable offence has been alleged against respondent No.2 and the same should be investigated after the registration of an FIR.

25. This Court directs the Economic Offences Wing to register an FIR against the respondent No.2 under the appropriate Sections.”

**3. Facts are not in dispute.**

a. The appellant happened to be a Director of M/s. Benlon India Ltd.<sup>5</sup>.

Benlon had availed financial assistance for purchasing machineries from Hero *vide* three separate loan transactions, viz. Rs.12.25 crore on 24.10.2014; Rs.10 crore on 06.02.2015 and Rs.15 crore on 10.02.2016, followed by several agreements including execution of personal guarantees and mortgage of movable and immovable properties of Benlon and the appellant. Machines were purchased in

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<sup>3</sup> Cr. PC

<sup>4</sup> (2014) 2 SCC 1

<sup>5</sup> Benlon

pursuance of the first two loan agreements; however, an incident of fire which ravaged the plant of Benlon on 02.03.2016 resulted in destruction of machinery worth Rs.180 crore. The police were informed whereupon an FIR was registered. Contrary to the conditions of the Sanction Letter dated 10.02.2016, the loan of Rs.15 crore, which was disbursed on 25.02.2016, was converted into unsecured loan and not for purchase of machineries. No objection was, however, raised by Hero after disbursement of Rs.15 crore on 25.02.2016 till May 2018, i.e., when instalments against all the said three loans were duly paid by Benlon and which was also admitted by Hero (as reflected in a Status Report of the Investigating Officer dated 28.08.2019).

- b. In May 2018, a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016<sup>6</sup> was filed against Benlon by a creditor before the National Company Law Tribunal, New Delhi<sup>7</sup>. By that time, Benlon had paid Rs.26.92 crore against the entire loan amount of Rs.37.25 crore. On 19.12.2018, NCLT allowed the petition under Section 9, IBC and initiated corporate insolvency resolution process. Pursuantly, an interim resolution professional was appointed who proceeded to conduct a forensic audit of the accounts of the company and found no diversion of funds and admitted the entire claim of Rs.23.82 crore of Hero.

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<sup>6</sup> IBC

<sup>7</sup> NCLT

- c. In the meanwhile, however, Hero initiated the following actions against Benlon: (i) a total of 32 complaint cases under Section 138 of the Negotiable Instruments Act, 1881<sup>8</sup>, were lodged against Benlon and the appellant before the court at Saket, New Delhi; (ii) an application before the Delhi High Court<sup>9</sup> under Section 9 of the Arbitration and Conciliation Act, 1996<sup>10</sup>; (iii) a complaint before the Deputy Commissioner of Police, Economic Offences Wing<sup>11</sup>, New Delhi, (iv) arbitration proceedings under the A & C Act before a sole Arbitrator claiming an amount of Rs.24.97 crore together with interest, and (v) steps under Section 13 of the Securitisation and Reconstruction of Financial Assets and Enforcement Of Security Interest Act, 2002<sup>12</sup>, whereupon Hero took possession of the collateral security and sold and appropriated the proceeds received towards part satisfaction of his dues.
- d. NCLT on the recommendation of the Committee of Creditors approved a resolution plan for revival of Benlon by an order dated 20.10.2020.
- e. A second complaint was lodged by Hero before the Special Commissioner of Police, EOW, New Delhi, on 11.07.2019. Close on the heels thereof, Hero lodged a complaint under Section 156(3) of the Cr. PC<sup>13</sup> before the Chief Metropolitan Magistrate, Patiala House

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<sup>8</sup> NI Act

<sup>9</sup> OMP (I) (COMM.) No.423 of 2018

<sup>10</sup> A & C Act

<sup>11</sup> EOW

<sup>12</sup> SARFAESI Act

<sup>13</sup> Complaint Case No.12271 of 2019

Courts<sup>14</sup> on 27.07.2019. On 28.08.2019, EOW submitted a detailed Status Report that no cognizable offence was made out in terms of the decision in ***Lalita Kumari*** (supra) and, therefore, recommended closure of the complaint. The CMM, *vide* order dated 10.11.2020, rejected the application for registration of FIR and posted the matter for pre-summoning evidence (as all the facts and documents were in the possession of Hero, which could be looked into under Section 200, Cr. PC).

- f. The order dated 10.11.2020 of the CMM was challenged in a revisional application<sup>15</sup>, which was dismissed on 22.01.2021 by the District and Sessions Judge, Patiala House Courts, New Delhi.
  - g. The order of the revisional court was laid to challenge before the High Court, which has been allowed by the impugned order.
- 4.** The appellant questioned the impugned order by invoking the jurisdiction of this Court under Article 136 of the Constitution on 25.01.2022, whereupon a coordinate Bench by an order dated 28.02.2022 stayed the impugned order; however, liberty was reserved for Hero to proceed in terms of the order passed by the CMM under Section 202, Cr. PC.
- 5.** During the pendency of this appeal, a couple of developments took place which are relevant and may be noted now. On 04.03.2022, *vide* an assignment agreement, the entire debt of Hero along with other creditors of Benlon were assigned to Prudent ARC Ltd.<sup>16</sup> On 11.08.2023, no

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<sup>14</sup> CMM

<sup>15</sup> C.R. No.369 of 2020

<sup>16</sup> Prudent

objection certificate was issued by Prudent towards satisfaction of the entire dues including that of Hero. In between, on 18.05.2022, the 32 complaints under Section 138 of the NI Act against Benlon and the appellant were withdrawn by Hero.

6. We have heard learned counsel appearing for the appellant, learned counsel for Hero and learned senior counsel for the 2<sup>nd</sup> respondent – State (NCT of Delhi) at some length.
7. The short question that arises for decision is, whether from the complaint under Section 156(3), Cr. PC lodged by Hero, the ingredients of the offence under Section 405, Indian Penal Code, 1860<sup>17</sup> are disclosed which could justify the High Court to direct registration of an FIR under Section 154, Cr. PC against the appellant.
8. What would amount to “criminal breach of trust” is dealt with by Section 405 of the IPC and the punishment for an offence thereunder is provided in Section 406 thereof. Section 405, IPC, reads as follows:

**Section 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 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".

9. It would appear on a bare reading of the above provision that an offence of criminal breach of trust is committed if the accused (i) being entrusted

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<sup>17</sup> IPC

with 'property' or 'dominion over property' (ii) dishonestly misappropriates such property or converts thereof for own use, or, dishonestly uses or disposes of such property (iii) violating any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the accused has made touching the discharge of such trust; or (iv) wilfully suffers any other person to do so.

**10.** It does not admit of any doubt that the term "entrusted" in Section 405, IPC is crucial and governs both "with property" immediately following it as well as "with any dominion over property" occurring thereafter. Since the word "entrusted" is used, the same implies that there is a trust involving an obligation tied to ownership of the property. This means, a confidence is placed in and accepted by the owner - or declared and accepted by him - for the benefit of another person, or for both that person and the owner. Creation of the trust means the person to whom the property is handed over does not become its beneficial owner even when he is not using it according to the given directions at the time of entrustment of the property.

**11.** The underlying idea which we find in Section 405, IPC is undoubtedly this, that the property, which is entrusted, or in respect of which dominion is passed over, to another person does not even become such person's property, even temporarily, for him to use as he wishes. Thus, the section would not normally cover the case of a loan where the lender advances money to the borrower who intends to use or utilise the money, for the time being, till he is in possession of it, although he may have to

return an equivalent amount later on to the lender with or without interest or compensation for the use thereof. The position could be otherwise if a different intention appears in the relevant loan agreement.

**12.** Next, when a loan is advanced, a relationship of creditor and debtor is created and the money lent is generally to be utilised by the borrower for the purpose it is handed over. If, however, a breach of the direction as to how the money is to be utilised appearing from the relevant loan agreement occasions not because the borrower dishonestly misappropriates the same or converts it for his own use with the intention of causing wrongful gain to himself or wrongful loss to the lender, but because the borrower is forced by circumstances beyond his control to act in violation of the stipulations therein and, violates the same, no offence is committed punishable under Section 406, IPC.

**13.** Also, when a relation of debtor and creditor is created by a loan transaction and the monies are not repaid according to the terms agreed upon, it gives rise to a civil liability. A criminal liability would arise in addition to the civil liability when all the ingredients of Section 405, IPC are satisfied.

**14.** In the present case, upon the facts as they appear from the record, a relation of debtor and creditor was created between the appellant and Hero, respectively. The beneficial ownership in the money so advanced to Benlon was intended to be transferred to it and it was not intended that it was to keep the money intact in its possession and make no use of it at all, whether or not interest was paid on it. In our opinion, on the



plain terms of the loan agreement and the facts that have unfolded, the appellant or, for that matter, Benlon could not be said to have committed any offence.

- 15.** Even if it is assumed that the appellant was entitled in terms of the loan agreement to only utilise the money for the purpose of purchase of machinery and not for any other purpose and that the money lent had to be returned together with interest, the facts on record reveal that breach, if any, of the trust had occasioned because Benlon and its directors were forced by circumstances beyond their control not to purchase the machinery owing to the incident of fire which ravaged the plant within a week of receipt of the loan amount and not because the appellant had any dishonest intention of causing wrongful gain to himself and/or wrongful loss to Hero. So long Hero received the monthly instalments for repayment of the loan on time, i.e., till April/May 2018, it did not even inquire in terms of the loan agreement as to whether the money lent was being used for the stated purpose. It is only when the process under the IBC was set rolling by another creditor resulting in default in payment of the instalments that Hero activated itself and took recourse to all legal remedies – civil and criminal – that were available to it.
- 16.** We cannot be oblivious of the fact that the assertion of the appellant that the machinery loan was converted to a corporate loan immediately after the incident of fire finds support at least from one documentary evidence, i.e., the assignment deed by which the debts owed by Benlon to Hero

were assigned to Prudent. On facts, therefore, dishonest misappropriation or conversion is clearly non-existent.

- 17.** Even otherwise, we find that the High Court fell in error in not truly appreciating the dicta of this Court in ***Lalita Kumari*** (supra). At paragraph '120.6' thereof, one finds enumeration of certain non-exhaustive category of cases in which a preliminary inquiry could be made prior to registration of an FIR based on a complaint that is received in a police station. 'Commercial offences' is one such case where preliminary inquiry being permissible, such an inquiry was in fact conducted by the police whereupon a finding was returned of no cognizable offence having been committed. The impugned order of the High Court did not examine the report to ascertain whether it suffers from any infirmity. Keeping in view such report of inquiry, which did not suffer from any infirmity, we feel that the High Court was not justified in directing the second respondent to register a complaint against the appellant for criminal breach of trust. The order of the relevant Magistrate keeping the option of Hero open to proceed with the complaint under Section 202, Cr. PC did not warrant interdiction by the High Court.
- 18.** For the foregoing reasons, and also having regard to the other mitigating circumstances, in favour of the appellant, we are of the considered opinion that continuance of proceedings before the criminal court now would be an abuse of the process of law. In exercise of the High Court's power under Section 482, Cr. PC, the petition of Hero ought not to have been accepted.

- 19.** The impugned order, accordingly, stands set aside. The appeal is allowed, without any order as to costs.
- 20.** Pending applications, if any, stand disposed of.

.....J.  
(DIPANKAR DATTA)

.....J.  
(AUGUSTINE GEORGE MASIH)

**NEW DELHI.**  
**AUGUST 12, 2025.**