

**Post-dated cheques not issued as an inducement to secure the funds but given later to discharge an existing liability of investor who agreed to share profit in a movie's release, while potentially give rise to an action under Section 138 of the Negotiable Instruments Act, 1881, does not ipso facto constitute cheating**

The **Supreme Court** in the case of **V. Ganesan vs State [Criminal Appeal No. 1470 of 2026] dated March 19, 2026**, has held that a mere breach of contract or the failure to fulfil a promise, especially in a high-risk commercial venture, does not automatically give rise to a criminal offence of cheating under Section 420 of the IPC. For an offence of cheating to be established, it is imperative for the complainant to demonstrate that the accused possessed a fraudulent or dishonest intention at the very inception of the transaction when the inducement was made.

The Apex Court ruled that the subsequent dishonour of a post-dated cheque, issued to discharge a pre-existing liability rather than as an initial inducement, is insufficient in itself to prove the existence of such dishonest intention from the beginning. Where the facts of a case primarily disclose a civil dispute, criminal proceedings should not be sustained, and the High Court ought to exercise its inherent powers to quash them to prevent an abuse of the process of law.

The Court concurred with the High Court's finding that no offence under Section 406 IPC was made out because the essential element of 'entrustment' of property was absent in the transaction between the parties. On cheating and dishonest intention, the Court reiterated that a crucial ingredient for the offence of cheating is the existence of a fraudulent or dishonest intention at the time of making the promise or inducement.

A mere subsequent failure to keep a promise cannot be the sole basis to infer that such dishonest intention existed from the very beginning, added the Court, while emphasising that every breach of contract does not amount to cheating; it becomes cheating only if deception was played at the very inception of the transaction.

On the nature of the business transaction, the Court observed that the High Court had overlooked the fundamental nature of the transaction. Movie-making is an inherently high-risk business where returns are not guaranteed. When an individual agrees to invest in a movie for a share of the profits, they are knowingly taking the risk of a possible zero return. This commercial risk is a vital factor in determining whether the dispute is civil or criminal in nature.

On the fulfilment of the promise, the Court noted that the appellant did not make a false promise to make a movie, as the movie was, in fact, completed and released. Regarding the promise of sharing profits, the prosecution made no allegation that the movie actually generated any profits. Therefore, the failure to share profits, in this context, does not prove an initial dishonest intention.

On the dishonour of post-dated cheques, the Court clarified that the two post-dated cheques were not issued as an inducement to secure the funds but were given later to discharge an existing liability after the complainant objected to the movie's release. The dishonour of such

post-dated cheques, while potentially giving rise to an action under Section 138 of the Negotiable Instruments Act, 1881, does not ipso facto constitute cheating. This is because a post-dated cheque does not represent that there are sufficient funds at the time of issuance, and for cheating, the dishonest intention must be present from the very beginning.