# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.38514 of 2015**

Arising Out of PS.Case No. -21 Year- 2012 Thana -PIRPAINTI District- BHAGALPUR

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1. Md. Sobil Son of late Kitab Ali Resident of Village- Pirpainti bazar,Police Station -Pirpainti,District Bhagalpur.

.... .... Petitioner/s

Versus

1. The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Anamul Haque, Adv. |
| For the Opposite Party/s | : | Mr. Anuradha Singh, APP |

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 01-08-2016**

By way of the present application filed under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks quashing of the order dated 19th June, 2015 passed by the learned Judicial Magistrate 1st Class, Bhagalpur in Pirpainti P.S.Case No. 21 of 2012, whereby the application preferred under Section 239 of the CrPC for discharge has been dismissed.

2. The First Information Report (for short 'FIR') was instituted on the basis of a written report submitted by one Manju Tulsyan on 21st February, 2012 to the Officer-in-Charge, Pirpainti Police Station, Bhagalpur. It is stated by the informant in her written report that the petitioner had purchased one Mahindra Jeep on 19th January, 2002 after taking loan from the State Bank of India, Pirpainti. The husband of the informant stood as guarantor to the said

loan account of the petitioner. When the petitioner did not repay the loan amount, the Bank issued notice to her husband. Despite several requests made by her husband, the petitioner failed to repay the amount to the Bank. Thereafter, the Bank realized Rs.81,000/- from the joint account of her husband and son on 6th January, 2009 by transferring the money to the loan account of the petitioner. It is further stated that her husband repeatedly demanded the money realized by the Bank from his account from the petitioner, but he did not pay back the amount. It is alleged that it would be clear from the conduct of the petitioner that he has no intention to compensate the loss suffered by her husband, as he became surety for him.

3. On the basis of the said allegations, Pirpainti P.S. Case No. 21 of 2012 was registered on 6th February, 2012 under Sections 420 and 406 of the Indian Penal Code (for short 'IPC') against the petitioner and investigation was taken up. On completion of investigation, the Investigating Officer submitted charge-sheet on 31st July, 2012 under Section 406 of the IPC against the petitioner.

4. On perusal of the FIR, the police report submitted under Section 173(2) of the CrPC and statement of the witnesses recorded under Section 161(3) of the CrPC, the learned Chief Judicial Magistrate, Bhagalpur took cognizance of the offence punishable under Section 406 of the IPC.

5. At the stage of framing of charge, when an application

was filed under Section 239 of the CrPC before the jurisdictional Magistrate seeking discharge from the case, the learned jurisdictional Magistrate not only dismissed the said application vide order dated 19th June, 2015, but also observed that from the materials available on record ingredients of the offences punishable under Sections 406 and 420 of the IPC are attracted.

6. It is submitted by the learned counsel for the petitioner that the impugned order dated 19th June, 2015, whereby the application for discharge under Section 239 of the CrPC has been dismissed, is bad in the eye of law. The allegations made in the complaint do not attract the ingredients of either Section 406 or Section 420 of the IPC. At best, it is a case of civil liability but the court below has rejected the application in a cryptic manner without application of judicial mind.

7. On the other hand, learned counsel for the informant has submitted that there is no illegality in the impugned order passed by the jurisdictional Magistrate. The petitioner had purchased one Mahindra Jeep after taking loan from the Bank and the husband of the informant had stood as a surety against the loan account. Due to the default caused in repaying the loan amount, Rs.81,000/- was realized by the Bank from the joint account of the husband of the informant and her son. Apparently, the petitioner has committed an offence of criminal breach of trust and cheating and, thus, the court has rightly

rejected the application filed under Section 239 of the CrPC.

8. I have heard the parties and perused the record.

9. It is to be seen whether or not the averments made in the FIR taken at its face value make out the ingredients of criminal offence punishable under Sections 406 and 420 of the IPC.

10. Section 405 of the IPC deals with the offence of criminal breach of trust, which reads as under :-

> "**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**"."

11. Section 406 IPC prescribes punishment for the offence of criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, the prosecution must prove:-

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

12. The gist of the offence under Section 406 IPC is misappropriation done in a dishonest manner. There are two distinct

parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

13. Section 420 IPC deals with cheating which reads as under:-

> "420. Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

14. The essential ingredients of Section 420 IPC are:-

(i) cheating as defined under Section 415 of the IPC;

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) *mens rea* of the accused at the time of making the inducement.

15. In the present case, looking at the allegations made in the FIR, the ingredients of Section 405 IPC are not attracted at all. There is nothing on the basis of which it can be said that the petitioner had dishonest intention at the time of taking loan when the husband of the

informant became surety for the loan account. Likewise, there are no allegations as to cheating or the dishonest intention of the petitioner in retaining the money in order to have wrongful gain to himself or causing wrongful loss to the husband of the informant. Excepting the bald allegation that the petitioner did not return the money realized by the Bank from the joint account of the husband and son of the informant, there is no iota of allegation as to the dishonest intention in misappropriating any amount. It is well settled that to make out a case of criminal breach of trust or cheating, it is not sufficient to show that the money has been retained by the accused. It must be shown that the accused dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the accused did not pay the money to the husband of the informant or he could not repay the amount to the Bank does not amount to criminal breach of trust or cheating.

16. I have already noticed the relevant allegations made by the informant and on perusal of the FIR it would be evident that no such dishonest intention can be seen or inferred inasmuch as the entire dispute pertains to mutual understanding on the basis of which the husband of the informant stood as guarantor to the loan account of the petitioner.

17. Since the very ingredients of sections 406 and 420 IPC are not attracted, the learned Magistrate ought to have discharged the

petitioner from the case. It has rightly been submitted by the learned counsel for the petitioner that the offence alleged, at best, would make out a civil liability against the petitioner and launching a criminal prosecution for the same is certainly an abuse of the process of the Court.

18. In view of the discussions made hereinabove, the impugned order dated 19th June, 2015 passed by the learned Judicial Magistrate 1st Class, Bhagalpur in Pirpainti P.S. Case No.21 of 2012 cannot be sustained.

19. Accordingly, it is set aside. As a consequence thereof, the entire proceedings pending in the court of Judicial Magistrate 1st Class, Bhagalpur, arising out of Pirpainti P.S.Case No. 21 of 2012, are hereby quashed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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