

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.45917 of 2015**

Arising Out of PS.Case No. -2148 Year- 2011 Thana -SIWAN COMPLAINT CASE District-  
SIWAN

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Ram Pravesh Rai S/o Late Kamla Rai resident of 19, Patliputra Colony,  
Patna - 800013. .... Petitioner.

Versus

1. The State of Bihar.
  2. Ajit Kumar Sinha S/o Shri Gorakh Nath Sinha resident of Mohalla -  
Nayi Basti Mahadeva, P.S. - Muffasil (Mahadeva), District - Siwan.  
..... Opposite Parties.
- =====

**Appearance :**

For the Petitioner/s : Mr. Binod Kumar Singh, Advocate  
Ms. Vagisha Pragya Vacaknavi, Advocate  
Mr. Manu Tripurari, Advocate  
For the Opposite Party/s : Mr. Jagdhar Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA  
JAISWAL**  
ORAL ORDER

2      26-10-2018                      Heard learned counsel for the petitioner and learned  
A.P.P. for the State on this quashing application.

2. This application has preferred under Section 482  
of the Code of Criminal Procedure for quashing the cognizance  
order dated 25.08.2012, passed by Chief Judicial Magistrate,  
Siwan in complaint case No. 2148(C) of 2011 whereby the learned  
Magistrate has taken cognizance under Section 417/418 of the  
Indian Penal Code against the petitioner.

3. It is submitted by learned counsel for the  
petitioner that the opposite party no.2 along with the petitioner and  
13 other persons constituted a partnership firm, namely, M/s R.P.  
Roy & Company. Said Company was engaged in the construction



work. Opposite Party no. 2 was having 10% share while petitioner 25% share in the said firm. The said Company carried out the construction work of Rs. 11,31,83,673/- and made profit. Subsequently, the said Company was closed in the year 2005 and opposite party no.2 has himself absorbed major chunk of the profit of the Company and is not rendering any account despite demand of the same and filed this false and frivolous case against the petitioner. Earlier opposite party no.2 has also lodged a police case but after investigation of the case the police has submitted final form in the aforesaid matter and recommended for prosecution against the opposite party no.2 under Section 182/211 of the Indian Penal Code. Thereafter, opposite party no.2 filed protest petition before this Court on 25.09.2010 with the same set of facts. There is no allegation in the entire petition regarding deceiving or fraudulently and dishonestly inducing him to enter into a partnership firm and deliver money, hence, no ingredient of cheating is made out against the petitioner and no cognizance could be taken against the petitioner under Section 417/418 IPC. It is absolutely a case of breach of concluded contract amenable to civil liability. Hence, the aforesaid order of taking cognizance is nothing but misuse of the process of the Court and is liable to be quashed.



4. Factual matrix of the case is that the opposite party no.2 lodged Siwan Muffasil P.S. Case No.205 of 2010 against the petitioner and after investigation of the said case, the police submitted final form and recommended for taking action against the opposite party no.2 under Section 182/211 IPC. During pendency of the final form the opposite party no.2 filed a protest petition before the learned Magistrate on 25.09.2010 on the same set of facts with the allegation in succinct that the petitioner and other persons entered into a partnership firm, namely, M/s R.P. Roy and Company to carry out construction work. Opposite party no. 2 was having 10% share while petitioner 25% share in the said business. Petitioner invested Rs.10 lakhs in the said Company and the said Company carried out construction work of Rs.11,31,83,673.00 and it was closed in 2005. But petitioner did not accord the opposite party no. 2 his principle amount Rs. 10,000,00/- and share in the profit to the tune of Rs. 11,000,00/- total Rs. 21,000,00/- despite demand and extended threatening to him.

5. Opposite party no.2 examined himself on S.A. and three witnesses and the learned Magistrate considering the complaint, S.A. of opposite party no. 2 and testimonies of witnesses took cognizance of the offence under Section 417/418



IPC against the petitioner vide order dated 25.08.2012. Being aggrieved and dissatisfied with the aforesaid order of taking cognizance the petitioner has preferred this quashing application.

6. From perusal of the protest petition of opposite party no.2 itself, it appears that there is no allegation of deceiving or fraudulently and dishonestly inducing him to enter into partnership firm and deliver money against the petitioner at the initial stage of entering into the partnership firm. As per the case of opposite party no.2, the petitioner who is one of the partners of the said Company, has refused to accord him his principal amount along with the share in the profit earned by the Company. The said Company stood closed in the year 2005. Thus, it appears to be a case of breach of concluded contract.

7. The Hon'ble Apex Court in **Anil Mahajan Vs. Bhor Industries Limited and another** reported in (2005) 10 Supreme Court Cases 228 has been pleased to hold that fraudulent and dishonest intention must be shown to be existing from the very beginning of transaction. Mere failure of a person to keep up promise subsequently, a culpable intention right at the beginning, that is, when he made the promises cannot be presumed. A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the



intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction. The substance of the complaint is to be seen. Mere use of the expression “cheating” in the complaint is of no consequence. The Hon’ble Apex Court in **Vesa Holdings Private Limited and another vs. State of Kerala and others** reported in (2015) 8 Supreme Court cases 293 has been pleased to hold that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out.

8. In the facts and circumstances of the case, I find



that the impugned order taking cognizance against the petitioner is nothing but misuse of process of court and accordingly it is quashed and this application is allowed.

**(Prakash Chandra Jaiswal, J)**

Trivedi/-

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| CAV DATE          | NA |
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