IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.261 of 2024

Arising Out of PS. Case No.-549 Year-2019 Thana- RUPASPUR District- Patna

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1. Avinash Gopal Gautam, S/O Sh. Gopal Pandey, R/O Village-Amathu, Post-Durgadih, Amathu, Durgadi, Rohtas, Vikramganj, Bihar-802212
2. Sujit Kumar, S/O. Sh. Anil Kumar, R/O 463a, Main Road, North Side, Phuro, Post-Phusro Bazar, P.S.-Bermo, Phusro, Bokaro, Jharkhand-829144
3. Hare Ram Tiwary, S/O Sh. Bhagwan Tiwari, R/O Kujhi, Rohtas Bihar-802219

... ... Petitioner/s

Versus

1. The State of Bihar, through Addl. Chief Secretary Home Department, Bihar Bihar
2. The Director General of Police, Bihar, Patna, Bihar
3. The Senior Superintendent of Police, Patna, Patna.
4. The Officer-In-Charge of Police Station Rupaspur, District-Patna
5. Kumar Tushar Singh, S/o Arun Kumar, R/o C-202, Rajnath Singh Residency Apartmet, Rukanpura, P.S.-Rupaspur, Patna.

... ... Respondent/s

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with

Criminal Writ Jurisdiction Case No. 313 of 2020

Arising Out of PS. Case No.-549 Year-2019 Thana- RUPASPUR District- Patna

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1. Amrendra Pandey @ Amrendra Kumar Pandey, Son of Mr. Gopal Pandey, Resident of Village-Amathu, Post-Durgadih, Amathu, Durgadi, Rohtas, Bihar-802212.
2. Gopal Pandey, S/o Late Chandrahansh Pandey, Resident of Village-Amathu, Post-Durgadih, Amathu, Durgadi, Rohtas, Bihar-802212.

... ... Petitioner/s

Versus

1. The State Of Bihar Through Addl. Chief Secretary Home Department, Bihar
2. The Director General of Police, Bihar, Patna
3. The Senior Superintendent of Police, Patna
4. The Officer-In-charge of Police Station Rupaspur, District-Patna
5. Kumar Tushar Singh, S/o Arun Kumar, R/o C-202, Rajnath Singh Residency Apartment, Rukanpura, P.S.-Rupaspur, Patna.

... ... Respondent/s

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Appearance :

(In Criminal Writ Jurisdiction Case No. 261 of 2024)

For the Petitioner/s	:	Mr.Dhanajay Kumar, Advocate Mr. Anish Kumar, Advocate
For the Respondent/s	:	Mr. Sarvesh Kumar AAG 13
For the O.P. No. 5	:	Mr. Raghvendra Kumar, Advocate Mr. Amarnath Kumar, Advocate

(In Criminal Writ Jurisdiction Case No. 313 of 2020)

For the Petitioner/s	:	Mr. Anish Kumar, Advocate
For the Respondent/s	:	Mr. Md. Nadim Seraj, Advocate Mr. Iqbal Asif Niazi, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI

ORAL ORDER

12 23-01-2025 1. Both the above-mentioned writ petitions are taken up together for adjudication by a composite order as in both the writ petitions, the following reliefs have been prayed:

> *"i. For that appropriate writ or writs in the nature of certiorari for setting aside/quashing of the first information report in connection with Rupaspur P.S Case No. 549 of 2019 dated 28.12.2019 registered under section 420/406/34 of the IPC and all other consequential proceeding thereafter, registered against the petitioner and other co accused persons.*
>
> *ii. For that any other relief or reliefs may be granted as Your Lordships may deem fit and proper in the facts and circumstances of this case.*
>
> *2. That the issues of seminal importance in this case are as follows:-*
>
> *i. Whether the respondent authorities have not acted illegally and arbitrarily by lodging the present FIR in civil dispute?*
>
> *ii. Whether the informant has misused the criminal process by lodging FIR for recovery of money in partnership business?*
>
> *iii. Whether FIR is fit to be quashed?*
>
> *iv. Whether the dispute is of civil*

nature or having criminal intention?"

2. While in Cr. W.J.C. No. 261 of 2024, one Kumar Tushar Singh is the Private Respondent No. 5, in Cr. W.J.C. No. 313 of 2020, the brothers and father of the Avinash Gopal Gautam are the petitioners. All of them have prayed for issuance of a writ in the nature of Certiorari, quashing the FIR lodged by the informant / Respondent No. 5 against them.

3. Briefly stated, it is alleged by the informant by filing FIR on 28th of December, 2019, stating, inter alia, that on being insisted by one Gopal Pandey, he issued a bank guarantee in favour of Trycon Company on 18th of July, 2016. On the strength of the said bank guarantee, Tricon Company used to deliver goods for sale to Avinash Gopal Gautam, petitioner herein. Since Avinash Gopal Gautam failed to make payment of the consideration price to Tricon Company, the company released the said bank guarantee on 17th of July, 2017. On being requested by Gopal Pandey, the informant again paid a sum of Rs. 5 Lakhs 80 Thousands through IMPS to the bank account of Avinash Gopal Gautam. However, Avinash Gopal Gautam and other accused persons failed to make payment of the aforesaid amount apart from a sum of Rs. 2 Lakhs 32 Thousands. When the informant asked Avinash Gopal Gautam that he would take legal action for non-payment of the said amount, he was abused

and threatened by one Hareram Tiwari and employed goon of the petitioner with dire consequence. Thus, it is alleged that the petitioners have misappropriated the amount of bank guarantee and subsequent amount which was sent to Avinash Gopal Gautam by IMPS and committed cheating in respect of the said amount. It is further contended by the informant that the petitioner took money to start a business with which the informant had no connection.

4. The learned Advocate on behalf of the petitioners, at the outset, submits that there was an agreement between the informant and present petitioners that they would start a business jointly under partnership. It was decided that the informant would pay money adequate for the business while the petitioners would look after the business with infrastructure and logistic. With this understanding, the petitioners and the informant started a business under the name and style of Digital Voice Enterprise under partnership.

5. The learned Advocate on behalf of the informant has vehemently objected to such submission made on behalf of the petitioners. It is submitted by him that this is a case out and out of criminal misappropriation and cheating because on the basis of initial talk, a private limited company under the name

and style of Stag Pharmaceuticals Private Limited was incorporated, of which both the informant and the petitioner of Cr. W.J.C. No. 261 of 2024 were made Directors. No agreement with regard to joint venture by way of partnership business of Digital Voice Enterprise was entered into by and between the parties. The informant paid money towards bank guarantee and with the said money, bank guarantee was purchased in the name of Tricon Company. Petitioner has no manner of stake in the Digital Voice Enterprise. The money deposited in Stag Pharmaceuticals Pvt. Ltd. was used by the petitioner of Cr. W.J.C. No. 261 of 2024 to run Digital Voice Enterprise without the knowledge of the informant.

6. In reply, it is contended on behalf of the petitioners that the petitioners already paid a sum of Rs. 2 Lakhs 32 Thousands to the informant which goes to suggest that there was business transaction between Avinash Gopal Gautam and the informant. As there is contractual relationship between the parties on the basis of which money was paid, there cannot be any case under Sections 406 / 420 of the IPC for failure on the part of one of the partners to make payment to the other.

7. Having heard the learned counsels for the parties and on careful perusal of the entire materials on record, it is

found that no partnership agreement was executed by and between the parties to run a Digital Voice Enterprise. On the other hand, a Private Limited Company was incorporated showing both the informant and the petitioner Avinash Gopal Gautam as Directors of Stag Pharmaceuticals Pvt. Ltd. There is no record produced before the Court to show that Stag Pharmaceuticals Pvt. Ltd. started any business till date.

8. This Court has no hesitation to hold that it was a fake company incorporated for the reason based known to the petitioner.

9. This Court has already recorded that there is a thin difference between a contractual obligation and criminal misappropriation. When someone makes payment of money in consideration of some act or business on the basis of a contract between the two, non-payment of amount in terms of contract may result in violation of contractual obligation, raising a civil dispute.

10. However, in ***CBI v. Duncans Agro Industries Ltd.***, reported in ***(1996) 5 SCC 591***, it is recorded in paragraph no. 27 as hereunder:-

> ***"27.*** *In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an*

offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee."

11. This judgement is followed in a very recent

judgement by Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. & Ors. v. State of U.P., & Anr.*** reported in ***(2024) 10 SCC 690.***

12. Coming to the instant case, it is ascertained that the informant paid money of Rs. 5 Lakhs initially to Avinash Gopal Gautam to start a business. In order to start a business, a company was incorporated. However, money was deposited in the bank guarantee by Tricon Company so the money accepted by the petitioner from the informant was kept for the benefit of Tricon Company who is a third party in the instant case and with whom there is no privity of contract with the informant.

13. For the reasons stated above, prima facie case under Section 405 of the IPC is established against accused Avinash Gopal Gautam. Similarly, the money was dishonestly and fraudulently transferred in the bank guarantee of Tricon Company, meaning thereby the offence of cheating is complete when the said money was transferred in favour of third party for the benefit of the petitioner only.

14. However, at this stage, I am not unmindful to note that except Avinash Gopal Gautam, there was no transaction with other accused persons. They were implicated in the case because they are respectively father and brothers of Avinash

Gopal Gautam. A person cannot be made an accused only because of his relationship with the offender.

15. Therefore, this Court holds that the FIR was rightly filed and investigation shall continue against Avinash Gopal Gautam.

16. However, criminal case against remaining accused persons, i.e., petitioners of Cr. W.J.C. No. 313 of 2020 is quashed.

17. Accordingly, Cr. W.J.C. No. 261 of 2024 is dismissed as against Avinash Gopal Gautam and Cr. W.J.C. No. 313 of 2020 is allowed.

(Bibek Chaudhuri, J)

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