

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 16135 of 2023

Arising Out of PS. Case No.-152 Year-2022 Thana- KOCHADHAMAN District- Kishanganj

Sunil Bhardwaj @ Sunil Kumar Son of Kalyan Sharma R/v- Noorpur
Madhaiya, P.S.- Gulaothi, District- Bulandshahar (U.P) 245408

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 71601 of 2024

Arising Out of PS. Case No.-152 Year-2022 Thana- KOCHADHAMAN District- Kishanganj

Dorjee Phuntso Khrime Son of Nima Tsering Khrime Resident of E-41, Zoo
Road, P.S. - Chimpu, Itanagar, District - Papumpare, Arunachal Pradesh

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 16135 of 2023)

For the Petitioner/s : Mr. Anshumaan Sahni, Adv.
Mr. Ratnakar Pandey, Adv.
Mr. Shivanand Jha, Adv.

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP
(In CRIMINAL MISCELLANEOUS No. 71601 of 2024)

For the Petitioner/s : Mr. Shivanand Singh, Adv.
Mr. Andlib Imrose, Adv.
Mr. Amisha Prakash, Adv.

For the Opposite Party/s : Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
CAV JUDGMENT

Date : 27-06-2025

CR. MISC. No. 16135 of 2023

1. Heard learned counsel appearing on behalf of
the parties.

2. Present petition is being filed on behalf of the



petitioner for quashing of FIR registered in Kochhodamn P.S. Case No. 152 of 2022 dated 23.06.2022, District Kishanganj and further proceedings thereof against petitioner under Sections 420, 467, 468, 471, 120B of IPC and under Sections 30(a), 31, 32, 36, 41(i) of Bihar Prohibition and Excise Act. Presently pending before the court of learned Special Excise Court cum Additional District Judge -II, Kishanganj.

3. Case of prosecution in brief, speaks that the informant, who is posted as SHO of P.S. Kochhodamn, District- Kishanganj, Bihar on 23.06.2022, upon receiving a secret information from liquor prohibition team, Patna, informed to his senior officials wherafter he along with his team started checking vehicles at Moharmari and at about 10.00 hours intercepted a saffron color ten wheelers “Tata Mahindra” and overpowered the driver and co-driver, who upon enquiry revealed their name as Devnath Prajapati and Sittu Ram, respectively. In the presence of eyewitnesses namely, Lal Harijan Deramari and Abid Khan informant along with his team searched the aforesaid ten-wheeler Tata



Mahindra truck, bearing registration no. CG04JD4933 and found english liquor of brand Royal-son Gold whisky total quantity of 7127.280 liters, which was seized. Thereafter, on inquiry driver claimed that they work for Sunil Bhardwaj, owner of M/s Shiva enterprises Arunachal Pradesh.

4. It is submitted by learned counsel for the petitioner that petitioner is the director of M/s KALA AMB Distillery & Brewery Pvt. Ltd., a registered company under Companies Act, 2013, engaged in manufacturing and marketing alcoholic beverages, located in Solan, Himachal Pradesh. It is further submitted that the petitioner's company entered into a lawful manufacturing agreement with M/s Pristine Distilleries, a proprietorship firm based in Arunachal Pradesh. Products manufactured by the petitioner's company was under lawful authority, while the trademark rights are owned by M/s Pristine Distilleries and its associates, which clearly establishes that the petitioner's company acts solely as a manufacturer, with no direct control over trademark ownership or external marketing rights. It is further pointed out by learned counsel that the whisky, in issue, are legally



registered for export to states like Goa and Chandigarh, and for marketing in Arunachal Pradesh, under Rule 245 of the Arunachal Pradesh Excise Rules, 1994 and the sources of supply for these brands are clearly identified as M/s Pristine Distilleries, Hollongi. Further for exporting liquor, the petitioner's partner firm, M/s Pristine Distilleries, was required to obtain an export permit from the office of the Commissioner, Tax & Excise, Itanagar, Arunachal Pradesh and upon obtaining this permit, the partner firm then secures the import permit from the respective importing state, following the payment of requisite excise duties. The consignment is only dispatched post verification by the Tax & Excise Department and the route is pre-determined by the Tax & Excise Department, passing through multiple states including Assam, Bengal, Jharkhand, Uttar Pradesh, Madhya Pradesh, and Maharashtra and this meticulous regulatory oversight further underscores the transparency of the petitioner's business operations. Learned counsel submitted that petitioner is innocent and has committed no offence and the allegations against the petitioner is a clear misuse of the



legal process, aimed at unjustly implicating him despite his adherence to all relevant laws. Learned counsel further pointed out that even if the allegations in the FIR are accepted at their face value, they do not constitute any offence against the petitioner, failing to establish a *prima-facie* case atleast qua cheating and forgery. Petitioner's partner firm, M/s Pristine Distilleries, is solely responsible for obtaining the necessary export and import permits, whereas petitioner's involvement is limited to lawful manufacturing, without any direct role in export procedures, further distancing him from the alleged misconduct. While concluding his argument learned counsel submitted that the FIR appears to have been registered on the mere pretext of the petitioner's brand being seized in Bihar, a jurisdiction outside his direct operational control, reflecting a wrongful and frivolous police action, and the present case against the petitioner is a result of arbitrary police action, lacking any factual basis, and amounts to an abuse of state power, which is wholly unjustified. Learned counsel further submitted that this case represents a gross abuse of the judicial process and



this matter is fit to be quashed/ set aside as to secure the ends of justice in favor of the petitioner.

5. In support of his submission learned counsel relied upon the legal report of the Hon'ble Supreme Court as available through ***Randheer Singh vs. State of Uttar Pradesh and Anr.*** reported in ***(2021) 14 SCC 626***, ***Mariam Fasihuddin and Anr. vs. State by Adu Godi Police Station and Anr.*** reported in ***2024 SCC OnLine SC 58*** and ***Mahmood Ali and Ors. vs. State of Uttar Pradesh and Ors.*** reported in ***(2023) 15 SCC 488***

6. It would be further apposite to reproduce paragraph no. 27 of ***Randheer Singh case (supra)***, which reads as:-

27. *In Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] , this Court held as under :*

“19. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of



ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

24. The term "fraud" is not defined in the Code. The dictionary definition of "fraud" is 'deliberate deception, treachery or cheating intended to gain advantage'. Section 17 of the Contract Act, 1872 defines "fraud" with reference to a party to a contract.

27. The term "fraudulently" is mostly used with the term "dishonestly" which is defined in Section 24 as follows:



24. “Dishonestly”.—Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing “dishonestly”.’

28 [**Ed.** : Para 28 corrected vide Official Corrigendum No. F.3/Ed.B.J./149/2009 dated 6-10-2009.] . To “defraud” or do something fraudulently is not by itself made an offence under the Penal Code, but various acts when done fraudulently (or fraudulently and dishonestly) are made offences. These include:

(i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).

(ii) Fraudulent claim to property to prevent seizure (Section 207).

(iii) Fraudulent suffering or obtaining a decree (Sections 208 and 210).

(iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).

(v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).

(vi) Fraudulent acts relating to stamps (Sections 255 to 261).

(vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).

(viii) Cheating (Sections 415 to 420).

(ix) Fraudulent prevention of debt being available to creditors (Section 422).

(x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).

(xi) Forgery making or executing a false document (Sections 463 to 471 and 474).

(xii) Fraudulent cancellation/destruction of valuable security, etc. (Section 477).

(xiii) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 of the Penal Code

29. The allegations in the complaint do not also make out



the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an “insult with intent to provoke breach of peace”. The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by the first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323IPC.”

7. It would be further apposite to reproduce paragraph nos. 22, 23, 24, 25, 33, 34 and 35 of **Mariam Fasihuddin case (supra)**, which reads as:-

22. *Section 420 IPC provides that 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 valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term ‘cheating’. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as ‘cheating’ if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.*

23. *It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e.,*



(i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.² 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "**intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.**" Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

33. The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

34. There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely : (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery



requires the preparation of a false document with the dishonest intention of causing damage or injury.[3](#)

35. *The offences of 'forgery' and 'cheating' intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of 'cheating' under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2's signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.*

8. It also appears apposite to reproduce paragraph nos. 6.7 and 10 of ***Mahmood Ali case (supra)***, which reads as:-

6.7. *The allegations made in the first information report do not prima facie constitute any offence or make out a case under Sections 420, 467, 468, 471, 342, 386, 504, 506 IPC against the petitioners and thus, the FIR is liable to be quashed. It is pertinent to mention that even after the charge-sheet has been filed, the petition for quashing of an FIR is well within the powers of a court of law [Anand Kumar Mohatta v. State (NCT of Delhi) [Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706 : (2019) 4 SCC (Cri) 288 (2)], SCC paras 14 & 16].*

10. *The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . The parameters are : (SCC pp. 378-79, para*



102)

“102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

We are of the view that the case of the present appellants falls within Parameters 1, 5 and 7, respectively, of Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604].

9. Learned APP for the State while opposing this



quashing petition submitted that Krishna Yadav (alleged receiver of consignment) and the member of his syndicate used forged and fabricated documents in order to sell illegal wine in Bihar and further manipulated the number plate of the vehicle. Since in those seized documents the number of vehicle was mentioned as NL01K0722 whereas, in the seized vehicle registration no. CG04JD4933 was displayed and additional number plate has also been mentioned as seized in the seizure list. Hence, on the account of the use of the forged documents and of the manipulation in the number plate of the truck shows dishonest intention which is the requisite of Sections 420, 467, 468, 471, 120B of IPC, therefore, rightly inserted in the FIR.

10. In view of the aforesaid it would be further apposite to reproduce Sections 30(a), 32, 36 and 41(1) of Bihar Prohibition and Excise Act :-

30. *Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor-*

Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder



-
(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or

32. *Presumption as to commission of offence in certain cases.*

(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.

(2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.

(3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.

36. *Penalty for dealing in spurious liquor-*

Whoever, manufactures, possesses, sells, stores, distributes, bottles, imports, exports, or transports any spurious liquor, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine, which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

41. *Penalty for import, export, manufacture, transport, sale or possession by one person on account of another-*

(1) Where any intoxicant or liquor has been imported, exported, manufactured, transported or sold or is possessed by any person on account of any other person and such other person knows or has reason to believe that such import, export, manufacture, transport or sale was or that such possession is, on his account, the intoxicant or liquor shall, for the purpose of this Act, be deemed to have been imported, exported, transported, sold or manufactured by or to be in possession of such other person who shall be punishable with a term which shall not



*be less than eight years but which may extend to ten years
and with fine which may extend up to ten lakh rupees.*

11. Upon perusal of the aforesaid legal provisions and discussed case laws and further by taking note of materials available on records, and the arguments as canvassed by learned counsel appearing for the parties, it transpires that Section 30(a) and 41 of Excise Act itself made a complete offence regarding the transportation of intoxicant liquor etc. Admittedly, this is not a case of spurious liquor and merely on the grounds of the seizure of some registration plate of another vehicle and expired permit and other documents in cabin of truck it cannot be said that the petitioner was under intention to cheat, therefore, this court finds that cognizance was taken for the offences punishable under Section 36 of Excise Act alongwith Sections 420, 467 and 468 of the IPC *prima-facie* bad in the eyes of law and therefore cognizance qua these offences stands quashed. As far as the rest of the offences i.e., offences punishable under Sections 30(a), 31, 32, 41(1) of Excise Act and 120(B) of IPC are concerned this Court is of the view that there is no infirmity as to proceed further as admittedly vehicle carrying



liquor seized within territory of Bihar, where trade of liquor and its consumption are prohibited. Admittedly, seized liquor was manufactured in factory of petitioner Sunil Bhardwaj (Cr. Misc No. 16135 of 2023) and was transported by the firm of petitioner Dorjee Phuntso Khriem (Cr. Misc. No. 71601 of 2024), which is sufficient to constitute a *prima-facie* case. Rest of the pleas as raised by learned counsel appearing for petitioners cannot be looked into at this stage as same appears defense versions, which can be taken note only during the trial, hence prayer to quash cognizance *qua* offences under Sections 30(a), 31, 32, 41(1) of Excise Act and 120(B) of IPC stands dismissed being devoid of any merit.

12. Accordingly, the present quashing petition stands allowed in part, limited to the extent as specified above.

13. Let a copy of this order be sent to the learned trial court forthwith.

CR. MISC. No. 71601 of 2024

1. Heard learned counsel appearing on behalf of



the parties.

2. Present petition is being filed on behalf of the petitioner for quashing the order of cognizance dated 24.05.2024 passed by the learned ADJ-II cum Special Judge (Excise-1), Kishanganj in the Kochadaman P.S. Case No. 152 of 2022 whereunder and whereby the learned Special Judge has taken cognizance of the offences under Sections 420, 467, 468, 471, 120B of IPC and under Sections 30(a), 31, 32, 36, 41(i) of the Bihar Prohibition and Excise Act against the petitioner also without there being any material.

3. That the prosecution case is that on 23.06.2022 the informant team on surveillance duty received secret information that a truck bearing registration no. CG O4 JD 4933 coming from Kishanganj was carrying illicit liquor. Upon being signaled to stop, the driver of the truck attempted to flee by accelerating the vehicle; however, the truck was subsequently intercepted by the armed forces, and upon search, it was found to be carrying 7127.280 litres of illicit liquor.

4. It is submitted by learned counsel for the



petitioner that the petitioner is not named in the original FIR and his name appears only through a disputed confessional statement connected to another case (Amba P.S. Case No. 34/2021), and also statements of co-accused namely, Krishna Yadav and Shashi Pandit @ Shashi Kumar Jha who have already acquitted. Learned counsel further submitted that the liquor brands involved are from different companies (one in Himachal Pradesh and another in Arunachal Pradesh) that are not owned by the Petitioner. Though he is the proprietor of M/s Pristine Distilleries, duly licensed in the State of Arunachal Pradesh, he denies any association with the seized liquor or any nexus with the co-accused namely, petitioner, Sunil Kumar Bhardwaj. Learned counsel further alleges that the police wrongfully arrested the petitioner and obtained his signature under coercion over a blank paper and falsely linked the petitioner to various cases. He further argues that the charge sheet lacks evidence against the petitioner and the Special court mechanically took cognizance without proper scrutiny. While concluding argument learned counsel further submitted that the continuation of



proceedings against the petitioner would amount to an abuse of the process of law.

5. In support of his submission learned counsel relied upon the legal report of the Hon'ble Supreme Court as available through ***Randheer Singh vs. State of Uttar Pradesh and Anr.*** reported in ***(2021) 14 SCC 626***, ***Mariam Fasihuddin and Anr. vs. State by Adu Godi Police Station and Anr.*** reported in ***2024 SCC OnLine SC 58*** and ***Mahmood Ali and Ors. vs. State of Uttar Pradesh and Ors.*** reported in ***(2023) 15 SCC 488***

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(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of



ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section 415 are not found, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

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23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is, the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

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- (i) Fraudulent removal or concealment of property (Sections 206, 421 and 424).
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- (iv) Fraudulent possession/delivery of counterfeit coin (Sections 239, 240, 242 and 243).
- (v) Fraudulent alteration/diminishing weight of coin (Sections 246 to 253).
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- (vii) Fraudulent use of false instrument/weight/measure (Sections 264 to 266).
- (viii) Cheating (Sections 415 to 420).
- (ix) Fraudulent prevention of debt being available to creditors (Section 422).
- (x) Fraudulent execution of deed of transfer containing false statement of consideration (Section 423).
- (xi) Forgery making or executing a false document (Sections 463 to 471 and 474).
- (xii) Fraudulent cancellation/destruction of valuable security, etc. (Section 477).
- (xiii) Fraudulently going through marriage ceremony (Section 496).

It follows therefore that by merely alleging or showing that a person acted fraudulently, it cannot be assumed that he committed an offence punishable under the Code or any other law, unless that fraudulent act is specified to be an offence under the Code or other law.

Section 504 of the Penal Code

29. The allegations in the complaint do not also make out



the ingredients of an offence under Section 504 of the Penal Code. Section 504 refers to intentional insult with intent to provoke breach of peace. The allegation of the complainant is that when he enquired with Accused 1 and 2 about the sale deeds, they asserted that they will obtain possession of land under the sale deeds and he can do whatever he wants. The statement attributed to Appellants 1 and 2, it cannot be said to amount to an “insult with intent to provoke breach of peace”. The statement attributed to the accused, even if it was true, was merely a statement referring to the consequence of execution of the sale deeds by the first appellant in favour of the second appellant.

Conclusion

30. The averments in the complaint if assumed to be true, do not make out any offence under Sections 420, 467, 471 and 504 of the Code, but may technically show the ingredients of offences of wrongful restraint under Section 341 and causing hurt under Section 323IPC.”

7. It would be further apposite to reproduce paragraph nos. 22, 23, 24, 25, 33, 34 and 35 of **Mariam Fasihuddin case (supra)**, which reads as:-

22. *Section 420 IPC provides that 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 valuable security, or anything, which is signed or sealed, and which is capable of being converted into a valuable security, shall be liable to be punished for a term which may extend to seven years and shall also be liable to fine. Further, Section 415 IPC distinctly defines the term ‘cheating’. The provision elucidates that an act marked by fraudulent or dishonest intentions will be categorised as ‘cheating’ if it is intended to induce the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, causing damage or harm to that person.*

23. *It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. There are, thus, three components of this offence, i.e.,*



(i) the deception of any person, (ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and (iii) mens rea or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

24. It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss.² 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.

25. The term 'property' employed in Section 420 IPC has a well-defined connotation. Every species of valuable right or interest that is subject to ownership and has an exchangeable value - is ordinarily understood as 'property'. It also describes one's exclusive right to possess, use and dispose of a thing. The IPC itself defines the term 'moveable property' as, "**intended to include corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth.**" Whereas immoveable property is generally understood to mean land, benefits arising out of land and things attached or permanently fastened to the earth.

33. The offence of 'forgery' under Section 468 IPC postulates that whoever commits forgery, intending that the document or electronic document forged, shall be used for the purpose of cheating, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine. Whereas Section 471 IPC states that whoever fraudulently or dishonestly uses as genuine any documents which he knows or has reason to believe it to be a forged document, shall be punished in the same manner as if he had forged such document.

34. There are two primary components that need to be fulfilled in order to establish the offence of 'forgery', namely : (i) that the accused has fabricated an instrument; and (ii) it was done with the intention that the forged document would be used for the purpose of cheating. Simply put, the offence of forgery



*requires the preparation of a false document with the dishonest intention of causing damage or injury.*³

35. *The offences of ‘forgery’ and ‘cheating’ intersect and converge, as the act of forgery is committed with the intent to deceive or cheat an individual. Having extensively addressed the aspect of dishonest intent in the context of ‘cheating’ under Section 420 IPC, it stands established that no dishonest intent can be made out against the Appellants. Our focus therefore will now be confined, for the sake of brevity, to the first element, i.e., the preparation of a false document. The determination of whether the Appellants prepared a false document, by forging Respondent No. 2’s signature, however, cannot be even prima facie ascertained at this juncture. Considering the primary ingredient of dishonest intention itself could not be established against the Appellants, the offence of forgery too, has no legs to stand. It is also significant to highlight that the proceedings as against the concerned Passport Officer, who was implicated as Accused No. 4, already stand quashed. In such like situation and coupled with the nature of allegations, we are unable to appreciate as to why the Appellants be subjected to the ordeal of trial.*

8. It also appears apposite to reproduce paragraph nos. 6.7 and 10 of ***Mahmood Ali case (supra)***, which reads as:-

6.7. *The allegations made in the first information report do not prima facie constitute any offence or make out a case under Sections 420, 467, 468, 471, 342, 386, 504, 506IPC against the petitioners and thus, the FIR is liable to be quashed. It is pertinent to mention that even after the charge-sheet has been filed, the petition for quashing of an FIR is well within the powers of a court of law [Anand Kumar Mohatta v. State (NCT of Delhi) [Anand Kumar Mohatta v. State (NCT of Delhi), (2019) 11 SCC 706 : (2019) 4 SCC (Cri) 288 (2)] , SCC paras 14 & 16].*

10. *The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] . The parameters are : (SCC pp. 378-79, para*



102)

“102. ... (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

We are of the view that the case of the present appellants falls within Parameters 1, 5 and 7, respectively, of Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604].

9. Learned APP for the State has endorsed the submission of learned A.P.P., who appeared in Cr. Misc. No.



16135 of 2023, in the same manner.

10. In view of the aforesaid it would be apposite to reproduce Sections 30(a), 32, 36 and 41(1) of Bihar Prohibition and Excise Act :-

30. *Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor-*

Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder

(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or

32. *Presumption as to commission of offence in certain cases.*

(1) In prosecution of an offence under this Act, the accused person would have to account for the possession of any liquor, intoxicant, material, utensil, implement or apparatus involved in manufacture or storage of such liquor.

(2) In the event of a failure to offer a satisfactory explanation, there shall be a presumption that the accused person is guilty of the commission of such offence, unless proved otherwise.

(3) Where any equipment, machinery, animal, vessel, cart, vehicle, conveyance or any premises are used in the commission of an offence under this Act, and are liable to confiscation and/or liable to be sealed, the owner or occupier thereof would need to account satisfactorily, and in the absence of a satisfactory explanation the presumption that accused person committed the offence shall arise, unless proved otherwise.

36. *Penalty for dealing in spurious liquor-*

Whoever, manufactures, possesses, sells, stores, distributes, bottles, imports, exports, or transports any



spurious liquor, shall be punishable with imprisonment for a term which shall not be less than ten years but which may extend to imprisonment for life and with fine, which shall not be less than one lakh rupees but which may extend to ten lakh rupees.

41. *Penalty for import, export, manufacture, transport, sale or possession by one person on account of another-*

(1) *Where any intoxicant or liquor has been imported, exported, manufactured, transported or sold or is possessed by any person on account of any other person and such other person knows or has reason to believe that such import, export, manufacture, transport or sale was or that such possession is, on his account, the intoxicant or liquor shall, for the purpose of this Act, be deemed to have been imported, exported, transported, sold or manufactured by or to be in possession of such other person who shall be punishable with a term which shall not be less than eight years but which may extend to ten years and with fine which may extend up to ten lakh rupees.*

11. Upon perusal of the aforesaid legal provisions and discussed case laws and further by taking note of materials available on records, and the arguments as canvassed by learned counsel appearing for the parties, it transpires that Section 30(a) and 41 of Excise Act itself made a complete offence regarding the transportation of intoxicant liquor etc. Admittedly, this is not a case of spurious liquor and merely on the grounds of the seizure of some registration plate of another vehicle and expired permit and other documents in cabin of truck it cannot be said that the petitioner was under intention to cheat, therefore, this court



finds that cognizance was taken for the offences punishable under Section 36 of Excise Act alongwith Sections 420, 467 and 468 of the IPC *prima-facie* bad in the eyes of law and therefore cognizance qua these offences stands quashed. As far as the rest of the offences i.e., offences punishable under Sections 30(a), 31, 32, 41(1) of Excise Act and 120(B) of IPC are concerned this Court is of the view that there is no infirmity as to proceed further as admittedly vehicle carrying liquor seized within territory of Bihar, where trade of liquor and its consumption are prohibited. Admittedly, seized liquor was manufactured in factory of petitioner Sunil Bhardwaj (Cr. Misc No. 16135 of 2023) and was transported by the firm of petitioner Dorjee Phuntso Khriem (Cr. Misc. No. 71601 of 2024), which is sufficient to constitute a *prima-facie* case. Rest of the pleas as raised by learned counsel appearing for petitioners cannot be looked into at this stage as same appears defense versions, which can be taken note only during the trial, hence prayer to quash cognizance *qua* offences under Sections 30(a), 31, 32, 41(1) of Excise Act and 120(B) of IPC stands dismissed being devoid of any



merit.

12. Accordingly, the present quashing petition stands allowed in part, limited to the extent as specified above.

13. Let a copy of this order be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	29.04.2025
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Transmission Date	28.06.2025

