

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.496 of 2024

Arising Out of PS. Case No.-45 Year-2024 Thana- KOTWALI District- Patna

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1. Sarita Bajaj wife of Ajay Kumar Bajaj, Flat No 808, Shanti Vihar Apartment Fraser Road P.S. Kotwali, District- Patna
 2. Ajay Kumar Bajaj, son of Late Purushottam Das, Flat No 808, Shanti Vihar Apartment Fraser Road P.S. Kotwali, District- Patna
 3. Awi Bajaj, son of Ajay Kumar Bajaj Flat No 808, Shanti Vihar Apartment Fraser Road P.S. Kotwali, District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Home Department, Govt. of Bihar, Patna Bihar
2. The Additional Chief Secretary, the Home Department, Govt. of Bihar, Patna Bihar
3. The Senior Superintendent of Police, Bihar Bihar
4. The Station House Officer, Kotwali, Patna Bihar
5. Sushil Kumar Bajaj son of Late Purushottam Das R/o- Flat No-301, Satyam Block Man Sarovar Garden, Sinha Library Road Ps- Kotwali Po- GPO Dist- patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Abhishek Kumar, Advocate
For the Respondent/s	:	Mr. S.C. - 28
For Respondent No. 5	:	Mr. Gopal Jha, Advocate Mr. Shreepal Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 09-05-2025

The Petitioner has invoked Constitutional Writ Jurisdiction of this Court under Article 226 of the Constitution of India for issuance of a writ in the nature of Certiorari for quashing the FIR registered on 16.01.2024 as Kotwali Police Station Case No. 45 of 2024 for the



offences alleged to have been committed under Sections 406, 420, 467, 468 and 471 read with Section 34 of the Indian Penal Code, 1860.

2. For proper appraisal of the dispute, following facts are required to be stated:

On 16.01.2024, Sushil Kumar Bajaj, the brother of Petitioner No. 2, submitted a written complaint to the Station House Officer of Kotwali Police Station, alleging inter alia, that Ajay Kumar Bajaj (son of Late Purshottam Das), Awi Bajaj (son of Ajay Kumar Bajaj), Sarita Bajaj (wife of Ajay Kumar Bajaj), and Asit Baran Paul (Chartered Accountant) were involved in fabricating documents to unlawfully transfer of shares of Bajaj Buildcon Pvt. Ltd., which belonged to him, into the names of Awi Bajaj and Sarita Bajaj. He further alleged that the accused forged a letter to illegally withdraw funds from the account of Kanika Buildcon Pvt. Ltd., and subsequently transferred the money to another company, Mandyati Dealcom Private Limited. The complainant, Sushil Kumar Bajaj, and the 4th accused, Ajay Kumar Bajaj, are full brothers. On 17.02.2021, both parties



entered into a Memorandum of Understanding (MOU) / Family Partition agreement. According to the agreement, it was decided that Bajaj Buildcon Private Limited, along with other associated companies, would be transferred to Ajay Kumar Bajaj. Additionally, the parties agreed to close all existing bank accounts of the respective companies and subsequently will transfer the shares. The terms of the Family Partition clearly indicate that the first party refers to Sushil Kumar Bajaj and his family, while the second party refers to Ajay Kumar Bajaj and his family. Clause 1 of the memorandum outlines the companies that will be transferred to the first party (the informant), and Clause 2 details the companies that will be given to the second party (Ajay Kumar Bajaj) and his family. The informant has acknowledged the existence of this partition deed in his written complaint. Additionally, it has been confirmed that following the transfer of ownership, the shares of the respective companies will also be transferred to the names of the relevant parties and their families. In accordance with the agreed arrangement, Petitioner No. 1, Sarita Bajaj, and Petitioner No. 3, Awi



Bajaj, were appointed as Directors of Bajaj Buildcon Pvt. Ltd. On 27.02.2021, the informant submitted his resignation from the Directorship of Bajaj Buildcon Pvt. Ltd. vide a notice dated 27.02.2021 and executed a formal instrument of transfer as required under Section 56 of the Companies Act, 2013. On the same date, i.e., on 27.02.2021, the informant executed two instruments of transfer. One instrument was executed with Sarita Bajaj, transferring 1,11,800 (One Lakh Eleven Thousand Eight Hundred) shares of Bajaj Buildcon Pvt. Ltd., which belonged to the informant, to her, in strict compliance with the terms of the family partition. It is important to note here that while the informant also resigned from Balaji Electrosteels Limited, as indicated in a notice, dated 30.08.2021, he did not transfer the shares of Balaji Electrosteels Limited, despite being obligated to do so. On 27.02.2021, the informant executed another instrument of transfer, through which he transferred 3,20,000 (Three Lakh Twenty Thousand) shares of Bajaj Buildcon Pvt. Ltd to Awi Bajaj. These share transfers were carried out in full compliance with the provisions of the



Companies Act, and the relevant details were duly communicated to the Registrar of Companies. In fact, the informant formally surrendered the shares to be transferred, and a certificate of transfer was subsequently issued. The instruments of transfer were properly stamped, executed in the presence of witnesses, and have never been contested or disputed previously. It is important to note that on 28.02.2021, a meeting of the Board of Directors of Bajaj Buildcon Pvt. Ltd. was held, during which it was resolved to accept the informant's resignation from the Directorship of the company. Additionally, Ajay Kumar Bajaj was authorized to file DIR-12 and any other required documents with the Registrar of Companies, as per the provisions of the Companies Act. Similarly, another Board meeting of Balaji Electrosteels Limited took place, and through a resolution, dated 31.08.2021, the informant's resignation from the company was formally accepted. On 03.04.2021, another meeting of the Board of Directors of Bajaj Buildcon Pvt. Ltd. was held. The informant claims that he was not notified, informed, or made aware of the meeting.



3. Additionally, the informant has already initiated proceedings before the National Company Law Tribunal, Kolkata Bench, under C.P. No. 250 KB/2022, seeking a declaration that the instruments of transfer, dated 27.02.2021 are forged and illegal, along with other related reliefs.

4. At this point, it is important to note that certain terms of the Memorandum of Family Partition have not been complied with or honoured by the informant.

5. In response, Ajay Kumar Bajaj has filed a suit for partition in the Court of Sub-Judge-1, Patna, which has been registered as Title Suit No. 02 of 2023.

6. Furthermore, the informant alleges that Kanika Buildcon Private Limited took a loan of Rs. 9,13,00,000.00 (Nine Crore Thirteen Lakh) only from Mandyati Dealcom Private Limited for the period between 2010 and 2017. The informant further claims that according to their understanding, the loan does not incur any interest. It is important to note that under the terms of the family partition, Kanika Buildcon was transferred to



the informant, while Mandyati Dealcom was transferred to Ajay Kumar Bajaj. As a result, the rights and liabilities associated with the respective companies were also transferred to the respective parties. Ajay Kumar Bajaj sent a letter under the provisions of the Bankruptcy and Insolvency Code, demanding that Kanika Buildcon Pvt. Ltd. pay an amount of Rs. 18,37,51,400/- (Eighteen Crore Thirty Seven Lakh Fifty One Thousand Four Hundred) only. Additionally, an application has been filed by Mandyati Dealcom Pvt. Ltd. against Kanika Buildcon Pvt. Ltd. before the National Company Law Tribunal, Kolkata Bench, under CP (IB) No. 327/KB/2022, seeking recovery of Rs. 18,37,51,400/- (Eighteen Crore Thirty Seven Lakh Fifty One Thousand Four Hundred) only, which includes both the principal amount of Rs. 1,22,50,000/- and interest of Rs. 17,15,01,400/-.

7. During the proceedings before the National Company Law Tribunal, it was admitted that Kanika Buildcon Pvt. Ltd. owes Rs. 1,22,50,000. On 08.11.2023, the Tribunal admitted the application and initiated the insolvency resolution process for Kanika Buildcon Pvt.



Ltd. Kanika Buildcon Pvt. Ltd. filed an appeal before the National Company Law Appellate Tribunal, Principal Bench, New Delhi, registered as Company Appeal (AT) No. 1540 of 2020. In connection with this, a demand draft for Rs. 1,22,50,000/- was handed over to Mandyati Dealcom Pvt. Ltd., as evident from the order, dated 04.12.2023.

8. While going through the Counter Affidavit, filed by the Respondent No. 5, dated 04.02.2025, this Court finds that the accused individually and unlawfully transferred the share of Respondent No. 5 (the informant) amounting to Rs. 1,98,50,000/- to Awi Bajaj (Petitioner No. 3), and Rs. 69,10,000/- to Sarita Bajaj (Petitioner No. 1). These transfers were made using forged share transfer deeds. The transfer was not authorized by the Board of Directors, nor were the transferees' signatures obtained.

9. Furthermore, although the transfer of shares was recorded with a Board Resolution, dated April 3, 2021, Respondent No. 5 (the informant) was not notified of the meeting, nor were the transferees informed. In collusion with C.A., Asit Baron Paul, the accused parties



falsified the share transfer, and forged documents were submitted, which are now part of the records at the Register of Companies.

10. In regard to the loan amount, being levied on the Kanika Buildcon (which is operated by Respondent No. 5) the Respondent submits that before the partition, both the petitioners and Respondent No. 5 (the informant) jointly handled the company and financially supported each other. As part of this arrangement, Kanika Buildcon managed by Respondent No. 5, took a loan/advance of Rs. 9,13,00,000/- from Mandyati Dealcom, owned by the accused (petitioners), between September, 2010 and April, 2017, which was mostly repaid.

11. However, after the family partition, Mandyati Dealcom unexpectedly demanded Rs. 18,06,20,352/- (eighteen crores, six lakhs, twenty thousand, three hundred and fifty-two), while only Rs. 1,22,50,000/- remained outstanding against the original loan of Rs. 9,13,00,000/-. Later, Respondent No. 5 discovered that Ajay Kumar Bajaj had filed a false case in the Company Court, claiming that, as a Director of



Kanika Buildcon, he had written a letter to Sushil Bajaj (Respondent No. 5/informant), the then Director of Mandyati Dealcom, accepting a loan of Rs. 10,00,00,000/- with interest. For the same, an application was filed under Section 7 of Insolvency and Bankruptcy Code (IBC) by the present Petitioners in December, 2022, claiming an amount of Rs. 18,37,51,400/- which include principal amount of Rs. 1,22,50,000/- and the interest of 17,15,01,400/- till 31.07.2022. Date of default for the same was mentioned as 02.08.2021. In the application under Section 7 of Insolvency and Bankruptcy Code, the Appellant claimed that conditions of loans were set out in writing in letter, dated 20.09.2010, written by Director of the Corporate Debtor Company to the Financial Creditor. The matter was first adjudicated by National Company Law Tribunal, Kolkata Bench and later went in appeal to National Company Law Appellate Tribunal, Principal Bench, New Delhi, which came up with the following findings in paragraph 24 and 30:

“24. Ajay Kumar Bajaj was Director from 12.05.2014 to 26.02.2021 in Kanika



*Buildcon Private Limited' i.e.. the Corporate Debtor. Letter dated 20.09.2010, which is sheet anchor of the Financial Creditor to contend that there was interest component of 12% P.A. clearly becomes unauthorised and unreliable. Ajay Kumar Bajaj was not Director on 20.09.2010 of the Corporate Debtor and could not have written to the Financial Creditor, containing the terms and conditions of loan whereas no loan was ever extended by Financial Creditor to the Corporate Debtor of the terms and conditions as contained in the Letter dated 20.09.2010. **Letter dated 20.09.2010 was impeached and termed as fabricated Letter.**"*

30. The sequence of the event and transaction between the Parties clearly proves that transfer of the amount by Financial Creditor to the Appellant were done by one Family Company to another Family Company and was not by way of loan nor any disbursal for any time value of money has been proved from any material on the record."

12. Perusing the above Judgement passed by



NCLAT, New Delhi, this Court is convinced that the allegation made by the Petitioner for outstanding loan is frivolous as the Learned Court has already adjudicated the matter in detail and has come to its finding.

13. This Court will deal with all the allegations in hierarchy.

14. Section 406 defines criminal breach of trust as the act of a person who, being entrusted with property or entrusted with a dominion over property, dishonestly misappropriates or converts it to their own use, or disposes of it in a way that is inconsistent with the trust. This section applies in situations where a person has been entrusted with the property or goods of another person, but instead of acting in good faith, they misuse or misappropriate those goods for their personal benefit. It's commonly used in cases where fiduciary responsibilities are violated.

15. Key Elements of the Section 406 is:

Entrustment: There must be a clear entrustment of property or goods.

Dishonest Misappropriation: The



person must act dishonestly or fraudulently, misappropriating or converting the property for their own use or benefit.

Breach of Trust: The breach of the trust that was placed on the person is the core of the offence.

16. A clear entrustment of property or goods refers to a situation where one party (the trustor) deliberately and specifically places or gives possession, control, or authority over certain property or goods to another party (the trustee) with the understanding that the trustee will manage, handle, or take care of the property or goods on behalf of the trustor, in accordance with certain terms or conditions. In other words, it is a situation where the owner of the property gives another person the responsibility for managing, safeguarding, or using the property for a specific purpose, and the person receiving it is expected to act in good faith in accordance with the trustor's instructions. The entrustment is usually explicit and based on an agreement or understanding.

17. In the present case, there has been no clear entrustment of property, and therefore, it does not amount



to criminal breach of trust.

18. The next allegation, levelled against the Petitioner is under Section 420 of the IPC. Section 420 of the **Indian Penal Code** deals with the offense of **cheating** and **dishonestly inducing the delivery of property**. It is a criminal offense that applies when someone deceives another person with the intent of dishonestly obtaining property or inducing the delivery of property or money.

19. Key Elements of Section 420 of the Indian Penal Code are:

“Cheating: The person must be guilty of the offense of cheating (under Section 415 IPC), which involves deceiving someone by dishonest means or misrepresentation of facts.

Dishonestly Inducing Delivery: The person must dishonestly induce the victim to deliver property (either real property, money, or anything capable of being converted into a valuable security).

Property or Valuable Security: The property delivered or the act of altering or destroying a valuable security



must be done as a result of the cheating. The property could be tangible (e.g., money, goods) or intangible (e.g., shares, contracts).

Intent to Deceive: The offender must have an intention to deceive and dishonestly induce the other person to act in a particular way that benefits the offender (e.g., part with money or property).”

20. Dishonestly inducing delivery is a key concept in Section 420 of the Indian Penal Code (IPC), and it refers to deliberately misleading or deceiving someone in order to persuade them to hand over property or money (or take an action that they would not have done had they known the truth).

21. Dishonestly means:

The term "dishonestly" refers to an intent to deceive or defraud someone.

In legal terms, it means acting with the knowledge or belief that what you're doing is wrong or fraudulent.



The intention is to gain something unlawfully, or to cause harm to someone through deceit.

22. Inducing means:

"Inducing" refers to convincing or persuading someone to do something, usually by presenting misleading or false information.

It is not just about pressuring or forcing someone; it is about influencing their decision to part with something that they value (e.g., money, property, goods).

23. Delivery means:

“Delivery” refers to the transfer of property or goods from one person to another. This could mean handing over physical property, transferring money, or taking any action that involves the exchange of something of value.

Delivery doesn't have to be physical; it could involve the transfer of ownership or control over property.

24. So, Dishonestly Inducing Delivery means using deceptive, false, or fraudulent means to persuade someone to part with or hand over property or money



(whether directly or indirectly) that they wouldn't have otherwise given, had they known the true facts.

25. In the present case, there has been no clear delivery of property nor there is any inducement to deliver any property and, therefore, it does not amount to cheating.

26. Section 467 of the Indian Penal Code deals with the crime of forgery in relation to valuable securities, wills, or authority. Forgery refers to the act of falsifying documents with the intent to fraudulently deceive someone or to use the forged document for personal gain. This Section specifically addresses the forgery of documents that hold significant legal value, such as valuable securities, wills, and documents of authority. These are documents that are commonly used in financial transactions, property transfers, and legal matters. The punishment for forging such documents is severe due to the potential harm they can cause in legal, financial, or personal matters.

27. Key Elements of Section 467 IPC:



Forgery of a Document:

Forgery involves falsifying a document with the intent to deceive. This can include altering, imitating, or creating a false document that is intended to be passed off as genuine.

The act can involve altering existing documents or creating entirely fake documents.

Intent means: The person who commits forgery must have dishonest intentions. The intent behind forging the document is usually to defraud someone, either by misleading them into accepting the forged document or by using the forged document to gain something illicitly.

28. The writ courts often do not delve deeply into factual disputes and the evidences as to whether the signatures done on Securities Transfer Form (SH-4) was fabricated or not and so the Court can not come to the conclusion as to whether the signature is forged or not but has come across the Judgement of NCLAT, New Delhi where it is seen that the Petitioners were previously capable of producing false document.



29. Section 471 of the IPC deals in **using a forged document as genuine**. Section 471 is closely related to Section 463 (which defines forgery) because it deals with the consequences of using a forged document or electronic record. Forgery involves the making or alteration of a document with intent to deceive, while Section 471 focuses on the use of such forged documents.

30. Forgery (under **Section 463** IPC) and using forged documents (under **Section 471** IPC) are considered **serious offences** with substantial criminal liability. This Court recognize that quashing an FIR for such serious offenses like forgery could undermine the integrity of the legal system and prevent the discovery of the truth. At the stage of the FIR, the Court will not evaluate the merit of the allegations. This Court believes that the police are required to investigate the facts and verify the authenticity of the documents before a final decision is made.

31. In view of the above finding, I have no other alternative but to hold that in the instant case, the F.I.R. being Kotwali P. S. Case No. 45 of 2024, dated 18th



August, 2023, cannot be quashed.

32. The issue involving forgery and a criminal investigation has not been complained of by any instrumentality of the State. The dispute is absolutely private in nature involving two full brothers and their families in respect of partition and subsequent financial irregularity of family-owned companies. Therefore, no writ under Article 226 of the Constitution of India lies.

33. The instant writ petition is, thus, dismissed on contest.

34. There shall, however, be no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	02.05.2025
Uploading Date	
Transmission Date	

