

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55648 of 2015

Arising Out of PS. Case No.-213 Year-2013 Thana- BAIRIYA District- West Champaran

1. Nasima Khatoon wife of Late Raisuddin Ansari
2. Md. Sabir Ansari Son of Late Raisuddin Ansari
3. Jainul Ansari Son of Late Inayat Ansari,
All three are resident of Muhalla Noniyar Toli, Bettiah, P.S. Bettiah (T)
District- West Champaran.
4. Umarawati Devi, Wife of Nandu Sah, resident of Village - Bhitaha, P.S.
Bairiya, District - West Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Sambhu Chaudhary Son of Late Bhagarasan Chaudhary resident of Village -
Bhitaha, P.S. Bairiya, District - West Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bimlesh Kumar Pandey, Advocate

For the Opposite Party/s : Mr. A.M.P. Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 15-09-2025

Heard Mr. Bimlesh Kumar Pandey, learned counsel
appearing on behalf of the petitioners and Mr. A.M.P. Mehta,
learned A.P.P. for the State.

2. The petitioners have sought quashing of the order
dated 02.04.2015 passed by learned C.J.M., Bettiah, West
Champaran in Bairiya P.S. Case No. 213 of 2013, Tr. No. 3849
of 2015, whereby and where under, the cognizance for the
offences under Sections 406 and 420 of the Indian Penal Code
was taken against the petitioners.

3. As per the allegation made in the FIR, petitioners



had executed sale-deed for five Katha land in favour of the informant appertaining to Khata No. 574, Khesra No. 1025 after payment of consideration amount of Rs. 2,96,000/-. It has been alleged that when the informant went to take possession of the said land, he came to learn that the said land was not in their possession and Jamabandi was in the name of some other person. The informant demanded his money back but the accused persons had refused to return the money back and had assaulted him and his son.

4. Learned counsel appearing on behalf of the petitioners submitted that opposite party is purchaser and petitioners no. 1 and 2 are vendor. The sale deed, which was executed on 04.02.2012 in respect of the land appertaining to Jamabandi No. 1033, Khata No. 574, Khesra No. 1025 measuring total area convened 5 Kathas. Petitioners have claimed that they had claimed the said land on the basis of sale deed dated 20.03.1991, which was executed in favour of husband of petitioner no. 1 by one Shri Bashistha Mani Pathak, which has been brought on record by way of 'Annexure-2' to the application. Petitioner no. 1 is the wife of deceased, namely, Late Raisuddin Ansari and petitioner no. 2 is the son of deceased, namely, Late Raisuddin Ansari. Learned counsel



further submitted that the informant had lodged the FIR on 16.08.2013, nearly after six months and in the said FIR, there is no reference, as to whether, the informant had approached to get the said land mutated, whereas, he has alleged that the informant never came into possession of the said piece of land. Learned counsel further submitted that from bare perusal of the allegations made in the FIR, it appears that no case under Sections 406 and 420 of the Indian Penal Code is made out against the petitioners. He further submitted that the FIR doesn't disclose that the petitioners' act can be said to have misappropriated or converted property to his own use dishonestly, rather, by executing valid sale-deed, the petitioner had parted with the five kathas of land. Learned counsel submitted that breach of trust as defined under Section 405 of the Indian Penal Code, punishable under Section 406 of the Indian Penal code is committed by an accused, then in the same breath, it cannot be said that the accused has also committed offence of cheating as defined and explained under Section 416 of the Indian Penal Code, punishable under Section 420 of the Indian Penal Code. It is the further case of the petitioner that the informant can avail remedy before the learned District Court to get the sale deed cancelled. In absence of availing appropriate



alternative remedy and considering the allegations purely civil of nature, the entire proceeding arising out of Bairiya P.S. Case No. 213 of 2013, Tr. No. 3849 of 2015, being vexatious is fit to be set aside and quashed.

5. Though the informant has filed his appearance in the present case, but, no one is present today on behalf of the informant.

6. Learned A.P.P. appearing on behalf of the State has vehemently opposed and submitted that the case under Sections 406 and 420 is made out against the petitioners. The petitioners cannot seek quashing of the entire proceeding at the threshold.

7. Heard the parties.

8. It is well settled principle of law that the criminal proceeding and civil proceeding can go side by side, but, if it is shown that the criminal proceeding, which has been lodged, has civil content then in that case, the prosecution set on the basis of FIR or the complaint, must be interfered with. Law in this regard is well settled by the Apex Court in the case of ***Paramjeet Batra v. State of Uttarakhand*** reported in (2013) 11 SCC 673, in which, the Apex Court in paragraph no. 12 has held as follows:

"12. While exercising its jurisdiction



under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

9. The Apex has reiterated the aforesaid preposition in recent judgment of ***S.N.Vijayalakshmi & Ors. vrs. The State of Karnataka and Anr.*** reported in ***(2025) SCC Online SC 1575.***

10. The proposition of law as settled by the Apex Court in the case of ***State of Haryana vs. Bhajan Lal*** reported in ***1992 Supp (1) SCC 335*** in paragraph no. 102 has laid as under:

"102. *In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an*



exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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 concerned Act (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 concerned Act, 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."



11. The ingredients of Section 405 of the Indian Penal Code are as follows:

"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".

Explanation 1.— A person, being an employer of an establishment whether exempted under section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), or not who deducts the employee's contribution from the wages payable to the employee for credit to a Provident Fund or Family Pension Fund established by any law for the time being in force, shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said law, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Explanation 2.— A person, being an employer, who deducts the employees' contribution from the wages payable to the employee for credit to the Employees' State Insurance Fund held and administered by the Employees' State Insurance Corporation established under the Employees' State Insurance Act, 1948 (34 of 1948), shall be deemed to have been entrusted with the amount of the contribution so deducted by him and if he makes default in the payment of such contribution to the said Fund in violation of the said Act, shall be deemed to have dishonestly used the amount of the said contribution in violation of a direction of law as aforesaid.

Illustrations

(a) A, being executor to the will of a deceased person, dishonestly disobeys the law which directs him to divide the effects according to the will, and appropriate them to his own use. A has committed criminal breach of trust.

(b) A is a warehouse-keeper. Z going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.



(c) *A, residing in Calcutta, is agent for Z, residing at Delhi. There is an express or implied contract between A and Z, that all sums remitted by Z to A shall be invested by A, according to Z's direction. Z remits a lakh of rupees to A, with directions to A to invest the same in Company's paper. A dishonestly disobeys the direction and employs the money in his own business. A has committed criminal breach of trust.*

(d) *But if A, in the last illustration, not dishonestly but in good faith, believing that it will be more for Z's advantage to hold shares in the Bank of Bengal, disobeys Z's directions, and buys shares in the Bank of Bengal, for Z, instead of buying Company's paper, here, though Z should suffer loss, and should be entitled to bring a civil action against A, on account of that loss, yet A, not having acted dishonestly, has not committed criminal breach of trust.*

(e) *A, a revenue-officer, is entrusted with public money and is either directed by law, or bound by a contract, express or implied, with the Government, to pay into a certain treasury all the public money which he holds. A dishonestly appropriates the money. A has committed criminal breach of trust.*

(f) *A, a carrier, is entrusted by Z with property to be carried by land or by water. A dishonestly misappropriates the property. A has committed criminal breach of trust."*

12. The ingredients of Section 406 of the Indian

Penal Code are as follows:

"406. Punishment for criminal breach of trust.-

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

13. The ingredients of Section 416 of the Indian

Penal Code are as follows:

"416. Cheating by personation.—

A person is said to "cheat by personation" if he cheats by pretending to be some other person, or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other



person really is.

Explanation.— The offence is committed whether the individual personated is a real or imaginary person.

Illustration

(a) A cheats by pretending to be a certain rich banker of the same name. A cheats by personation.

(b) A cheats by pretending to be B, a person who is deceased. A cheats by personation.

14. The ingredients of Section 420 of the Indian Penal Code are as follows:

"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."

15. The Apex Court while considering the content of ingredients of Sections 406 and 420 of the Indian Penal Code in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024***, after discussing the earlier law laid down in several cases, has observed in paragraphs no. 35, 36 and 37 *inter alia* as follows:

Difference between criminal breach of trust and cheating

35. This Court in its decision in S.W. Palanitkar v. State of Bihar S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the



offence of cheating (Section 420). The relevant observations read as under :

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

36. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:

In order to constitute a criminal breach of trust (Section 406 IPC)

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241.

Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or



by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712.

37. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception."

16. Thereafter, the Apex Court finally concluded in paragraph no. 39 as follows:

"39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha [Hari Prasad Chamaria v. Bishun Kumar Surekha, (1973) 2 SCC 823

"4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the



time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

17. In the present case, from the very perusal of the FIR, I find that the informant has not questioned the very sale-deed that it is a forged or has been obtained fraudulently or in any part of the sale-deed any incorrect information has been given.

18. In view of the discussions made hereinabove and the law as held by the Hon'ble Supreme Court, the FIR relating to Bairiya P.S. Case No. 213 of 2013, as well as, the order taking cognizance dated 02.04.2015 and the entire criminal proceeding are hereby set-aside and quashed.

19. At this stage, learned counsel appearing on behalf of the State submitted that the stage of trial has changed.

20. That will serve no purpose as I have already quashed the FIR relating to Bairiya P.S. Case No. 213 of 2013, as well as, the order taking cognizance dated 02.04.2015 and the entire criminal proceeding.



21. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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