

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27292 of 2025

Arising Out of PS. Case No.-8 Year-2014 Thana- KISHANGANJ District- Kishanganj

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Soma Rani Singha @ Soma Rani Mondal @ Soma Rani Singh W/O Swapan
Kumar Mondal R/O B/4/1/H/6 Rani Rashmoni Garden Lane, VTC Tangra,
P.S.- Tangra, Distt.- Kolkata, West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Ramanand Sah S/O Bhular Sah R/O Ghormara, P.O- Chakla Ghat, P.S.-
Kishanganj, Distt.- Kishanganj.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shekhar Harshvardhan, Advocate

For the Opposite Party/s : Dr. Indihar Kumari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-09-2025

Heard Mr. Shekhar Harshvardhan, learned counsel
appearing on behalf of the petitioner and Dr. Indihar Kumari,
learned A.P.P. for the State.

2. The petitioner has sought quashing of the order
of proclamation under Section 82 of the Code of Criminal
Procedure (Section 84 of the Bharatiya Nagarik Suraksha
Sanhita) in Kishanganj P.S. Case No. 08 of 2014 arising out of
Complaint Case No. 1332 of 2013, passed by learned Chief
Judicial Magistrate, Kishanganj on 10.07.2023, whereby and
were under, learned Chief Judicial Magistrate has taken



cognizance of offence under Sections 420, 406 and 120(B) of the Indian Penal Code and Bihar Protection of Interests of Depositors (in Financial Establishments) Act, 2002 on 29.06.2016, thereafter, petitioner was summoned and without service report of summon, non-bailable warrant, as well as, process under Section 82 of the Code of Criminal Procedure has been issued.

3. As per the prosecution case, the petitioner along with other accused persons, with a common intention, had collected a sum of Rs. 50,00,000/- (Fifty Lakhs) from the opposite party no. 2 and had deposited the same into the State Bank of India, Kishanganj Branch having bank account no. 10825783217 standing in the name of co-accused Subir Mukherjee and in lieu of doubling the money upon maturity, had deposited a sum of Rs. 25,00,000/- (Twenty Five Lakh) into the account of Woods Pharmaceuticals Limited Company having account no. 10302020000638 at Paschimpali Office and the said company stands in the name of co-accused Subir Mukherjee.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner was neither the agent of the said company nor any amount was transferred into her account or has manipulated with an intent to commit fraud of money



amounting to Rs. 75,00,000/- (Seventy Five Lakh). Petitioner was not employed in the said company at the relevant time when the offence was allegedly committed in the month of February, 2011 and the subsequent commission of offence during the period 13.08.2013 till the complaint case was instituted. Learned counsel further submitted that the has given information in paragraph no. 10 of the present quashing application that the petitioner had joined as receptionist in the month of March, 2011 and, thereafter, she got married on 07.03.2013 and had resigned in the month of May, 2013, however, he admits that no supportive evidence has been annexed in support of the pleading made in the present application. Learned counsel further submitted that so far as petitioner is concerned, no offence is made out against her as would appear from the perusal of the complaint, which was later on converted into FIR. Learned counsel further submitted that principle of law is well settled that issuance of summon is a serious matter, therefore, should not be done mechanically and it should be done only upon satisfaction on the ground for proceeding further in the matter against a person concerned based on the materials collected during the inquiry.

5. Learned counsel further submitted that from the



information given by the petitioner, it would appear that to face criminal prosecution for the period during which the offence was committed, the petitioner was not serving the company, nor any amount was transferred in her account and the same will amount to malicious prosecution against the petitioner. No case under Sections 420, 406 and 120(B) of the Indian Penal Code and the Bihar Protection of Interests of Depositors (in Financial Establishments) Act, 2002 is made out against the petitioner. Learned counsel emphatically submitted that the learned Magistrate, in most mechanical manner, has taken cognizance against the petitioner. Learned counsel in this regard has placed reliance upon a recent judgment passed by the Apex Court in the case of *Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024* and contended that relying on its earlier judgment passed in *Hari Prasad Chamaria vs. Bishun Kumar Surekha & Ors.* reported in *(1973) 2 SCC 823*, the Apex Court in paragraphs no. 28 to 31 of the *Delhi Race Club (Supra)* has observed as follows:

"28. 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 & Ors.*, reported in *(1973) 2 SCC 823* as under:

"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 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 Penal Code, 1860. There is nothing in the complaint to show that the respondents 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, 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 on the respondents for the offence of cheating.”

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention,



yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.

31. At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out."

6. *Per contra*, learned counsel appearing on behalf of the State submitted that it will be too early to interfere with the order taking cognizance. In course of trial, the petitioner has every right to reproduce all the relevant documents in her favour to get herself discharged from the offence.

7. Heard the parties.

8. Having considered the rival submissions made on behalf of the parties, as well as, the allegations made in the FIR and going by the information contained in paragraphs no.



10 to 13 of the present application, I find that petitioner has given information in paragraph no. 10 of the present application that she had joined the said company as a receptionist in the month of March, 2011. She has given information in paragraph no. 12 of the present application that she got married on 07.03.2013 and she resigned from the company in May, 2013. Complaint was lodged on 11.11.2013, which was converted into FIR on 04.01.2014 i.e. after her resignation.

9. In view of the information given by the petitioner, as well as, considering the nature of job of the petitioner, I find that the receptionist has no concern with any business affairs of the company rather, their work is to do the work of hospitality. At the same time, it has been alleged in the complaint that altogether, Rs. 75,00,000/- (Rupees Seventy Five Lakh) was transferred into the account of the company and the beneficiary of the same being one of the directors of the company i.e. co-accused Subir Mukherjee, I don't find that allegation under Sections 420, 406 and 120(B) of the Indian Penal Code and the Bihar Protection of Interests of Depositors (in Financial Establishments) Act, 2002 is attracted against the petitioner from bare perusal of the content of the complaint. The order taking cognizance also don't give reference of any



materials collected against the petitioner in course of investigation and it has been passed in most mechanical manner.

10. I find that the present is the one case, in which the main allegation of committing fraud is against the company. The petitioner is not the office bearer, therefore, question of attributing vicarious liability to the petitioner so far as the offence of cheating or criminal breach of trust is concerned cannot be made out against the petitioner.

11. The Apex Court in similar circumstances, in the case of ***Delhi Race Club (Supra)*** considering the case of ***Legal Remembrancer, West Bengal v. Abani Kumar Banerji*** reported in ***AIR 1950 Cal 437***, has observed in paragraphs no. 15, 16 and 17 as follows:

"15. In Legal Remembrancer, West Bengal v. Abani Kumar Banerji reported in AIR 1950 Cal 437, a Division Bench of the Calcutta High Court speaking through Justice K.C. Das Gupta (as he then was) held that a magistrate is not bound to take cognizance of an offence merely because a complaint is filed before him. He is required to carefully apply his mind to the contents of the complaint before taking cognizance of any offence alleged therein. The relevant observations read as under:

"... As I read s. 190 of the Code of Criminal Procedure and the subsequent sections, it seems to me to be clear that a magistrate is not bound to take cognizance of an offence, merely because a petition of complaint is filed before him. Mr. Mukherji's argument is that a magistrate cannot possibly take any action with regard to a petition of complaint, without applying his mind to it, and taking cognizance of the offence mentioned in the complaint necessarily takes place, when the magistrate's mind is applied to the petition. Consequently Mr. Mukherji argues, whenever a magistrate takes the action, say, of issuing search warrant or asking the police to enquire and to



investigate, he has taken cognizance of the case. In my judgment, this is putting a wrong connotation on the words “taking cognizance”. What is “taking cognizance” has not been defined in the Code of Criminal Procedure, and I have no desire now to attempt to define it. It seems to me clear, however, that before it can be said that any magistrate has taken cognizance of any offence under s. 190(1)(a) of the Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition, but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter,—proceeding under s. 200, and thereafter sending it for enquiry and report under s.202. When the magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for taking action of some other kind, e.g., ordering investigation under [s. 156\(3\)](#), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence. My conclusion, therefore, is that the learned magistrate is wrong in thinking that the Chief Presidency Magistrate was bound to take cognizance of the case as soon as the petition of complaint was filed.” (Emphasis supplied)

16. The aforesaid observation of the Calcutta High Court was referred to and relied upon with approval by this Court in its decision in R.R. Chari v. State of U.P. reported in AIR 1951 SC 207.

17. In Tilak Nagar Industries Ltd. & Ors. v. State of A.P. reported in (2011) 15 SCC 571, this Court held that the power under Section 156(3) of the CrPC can be exercised by a magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable offences and if the complaint does not disclose commission of cognizable offences, such an order of the magistrate directing investigation is liable to be quashed. The relevant observations read as under:

“11. After considering the rival submissions, we are of the view that the contentions of Mr Luthra are correct in view of Section 155(2) of the Code as explained in Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . We are of the opinion that the statutory safeguard which is given under Section 155(2) of the Code must be strictly followed, since they are conceived in public interest and as a guarantee against frivolous and vexatious investigation.

12. The order of the Magistrate dated 21-6-2010 does not disclose that he has taken cognizance. However, power under Section 156(3) can be exercised by the Magistrate even before he takes cognizance provided the complaint discloses the commission of cognizable



offence. Since in the instant case the complaint does not do so, the order of the Magistrate stated above cannot be sustained in law and is accordingly quashed.”

12. Recently, the Apex Court in the case of ***Dinesh Kumar Mathur vs. State of M.P. & Anr. in Criminal Appeal No. 4915 of 2024*** has reiterated the same principle and I find it apt to reproduce paragraphs no. 11 to 13, which *inter alia* are as follows:

"11. Having considered the application of Section 197, as above, we are of the view that the submission of the appellant bears merit and, therefore, deserves to be accepted, for the appellant's official duty would be in furtherance of the act and, therefore, would be covered by wordings of Section 83 of the Adhiniyam, 1972. There is no inkling in the slightest, apart from alleging connivance to suggest that the appellant had played a role, in dereliction of his duty. That apart, there are further reasons as to why the High Court appears to have erred in refusing to quash the subject criminal proceedings. They are discussed in the subsequent paragraphs.

12. The ingredients of Section 420 IPC as described in Vijay Kumar Ghai v. State of W.B.11 are:

"34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain



from any act which the person would have not done or had otherwise committed.”

There is nothing on record to suggest, even prima facie, that any of the above-said ingredients are met in the case of the present appellant. No intent can be hinted to, where the appellant had willfully, with the intent to defraud, acted upon the allegedly forged Power of Attorney. Neither has anything been brought in the chargesheet upon completion of the investigation to show that the requirements of Section 120-B have been met. Nor that the appellant had any information or knowledge about the subject Power of Attorney being forged. For the ingredients of this section to be established, Bilal Hajar v. State¹², records as follows: -

“31. The expression “criminal conspiracy” was aptly explained by this Court in E.G. Barsay v. State of Bombay E.G. Barsay v. State of Bombay, (1962) 2 SCR 195. The learned Judge Subba Rao, J. (as his Lordship then was and later became CJI) speaking for the Bench in his distinctive style of writing said :

“31. ... The gist of the offence is an agreement to break the law. The parties to such an agreement will be guilty of criminal conspiracy, though the illegal act agreed to be done has not been done. So too, it is not an ingredient of the offence that all the parties should agree to do a single illegal act. It may comprise the commission of a number of acts.”

32. Therefore, in order to constitute a conspiracy, meeting of minds of two or more persons to do an illegal act or an act by illegal means is a must. In other words, it is sine qua non for invoking the plea of conspiracy against the accused. However, it is not necessary that all the conspirators must know each and every detail of the conspiracy which is being hatched and nor is it necessary to prove their active part/role in such meeting.”

Sections when put into a chargesheet, cannot be based on bald assertions of connivance, there must be a substance which is entirely lacking in the present case.

13. If the intent is on the face of it is absent qua one of the offences in the same transaction, it is absent in respect of the other offence as well, viz., Section 467, 468.”

13. In light of the discussion made hereinabove and the law as held by the Hon'ble Supreme Court, the order dated 29.06.2016 taking cognizance and the entire criminal



proceeding is hereby set-aside and quashed to the extent it relates to the petitioner.

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

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	10.09.2025
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