

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37923 of 2016

Arising Out of PS. Case No.-74 Year-2013 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Ram Pukar Rai Son of Saryug Rai, resident of Village- Fulwaria, P.S.- Korha,
District- Katihar.

... .. Petitioner/s

Versus

1. State Of Bihar.
2. Santosh Kumar S/o Late Prem Chand Singh, Resident of Mohalla- Sheopuri,
P.S.-K.Hat, District- Purnia.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Sanjay Kumar Singh, Advocate
For the State	:	Mr. Sunil Kumar Pandey, APP
For the O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 10-01-2025

The present petition has been preferred by the petitioner, under Section 482 Cr.PC, impugning the order dated 04.01.2016, passed by learned Chief Judicial Magistrate, Purnia in Complaint Case No. 74 of 2013, whereby learned Magistrate has taken cognizance of offence punishable under Sections 420, 467, 468, 471 and 120B of the Indian Penal Code against the accused persons, including the petitioner and directed the office to issue summons against them.

Prosecution Case

2. The sum and substance of the allegation as emerging from the Criminal Complaint bearing No. 74 of 2013, filed by O.P. No. 2 herein is that the parcel of land bearing



Khata No. 299, Khesra No. 1198 measuring 29 decimal belongs to the complainant/O.P. No. 2 herein. It is further alleged that in regard to the same land, co-accused Jagdish Prasad Poddar executed the power of attorney in favour of co-accused person viz., Arun Uraon. Mithilesh Singh and Naresh Kumar Singh were witnesses to the execution of this power of attorney. It is further alleged that some part of that land was sold by power of attorney holder Arun Uraon in favour of co-accused Ram Pukar Rai, who is petitioner herein. It is further alleged that the petitioner herein/Ram Pukar Rai sold the land to co-accused Raj Kumar Chaudhary. Hence, the accused persons, including the petitioner, have committed forgery and played fraud with the complainant. The sale of deed and the power of attorney have been registered in Purnia Registry office.

Factual background

3. After filing of the complaint, the complainant and one inquiry witness, Anant Kumar Singh, who is brother of the complainant/Santosh Kumar Singh were examined under Section 200 Cr.PC. During the inquiry, it has been stated that the land in question belongs to them, because the same was purchased by their father. However, in regard to that land, one Jagdish Prasad Poddar has executed power of attorney in favour



of Arun Uraon and the same was registered in Purnia Registry office and thereafter, Arun Uraon has executed the sale deed in favour of one Ravindra Rai.

4. On the basis of the complaint and the statements of the witnesses during the inquiry, the impugned order was passed taking cognizance and issuing summons against the accused persons, including the petitioner. Hence, the present petition has been preferred by the petitioner.

5. I heard learned counsel for the petitioner and learned APP for the State. However, nobody is present on behalf of O.P. No. 2 despite opportunity.

Submission on behalf of the Petitioner

6. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. He has purchased the land in question from one Arun Uraon, who is the power of attorney holder in regard to the land from co-accused Jagdish Prasad Poddar, after payment of due consideration amount and hence, there is no question for committing any offence by the petitioner. He further submits that even going by the alleged facts and circumstances, only dispute which arises is regarding the title to the land in question. As per the complainant, the land belongs to him as he has



inherited the land from his father and the land has been sold by Arun Uraon in favour of one Ravindra Rai. Hence, no prima facie case is made out from the alleged facts and circumstance of the case.

7. He further submits that even if it is assumed that land belongs to the Opposite Party No. 2 (Complainant), namely, Santosh Kumar and sale-deed has been executed by someone else, no title would get conveyed to the purchaser, because it is settled principle of law that no-one can transfer better title than his own. Hence, there is no loss to the complainant/ Opposite Party No. 2/Santosh Kumar and there is no question committing the offence of cheating.

8. He also submits that even alleged offence of forgery is not made out, because as per the material on record, no document is alleged to be forged. Both power of attorney and the sale deed are genuine.

9. As such, as per learned counsel for the petitioner, the alleged facts and circumstances constitute, at most, a dispute of purely civil nature and the impugned order is not sustainable in the eyes of law and is liable to be quashed and set aside.

10. He also refers to and relies upon the following two judgments of this Court:



(i) **Amit Sinha Vs. The State of Bihar and Anr.**, 2024 SCC OnLine Pat 6330, AIR ONLINE 2024 PAT 468;

(ii) **Harihar Sah and Ors. Vs. The State of Bihar and Anr.**, 2023 SCC OnLine Pat 9582, AIR ONLINE 2023 PAT 929.

Submission on behalf of the State

11. However, Ld. APP for the State defends the impugned order submitting that there is no illegality or infirmity in it and hence, the present petition is liable to be dismissed.

Scope and ambit of Section 482 Cr.PC

12. Before I proceed to consider the rival submissions of the parties, it would be pertinent to see the scope and ambit of Section 482 of the Cr.PC. Here it would be profitable to refer to **Amit Sinha Case** (Supra) and **Harihar Sah Case** (Supra), wherein this Court, after referring to relevant statutory provisions and binding judicial precedents, has held that for taking cognizance of any offence and issuing summons to any accused in a complaint case, there must be a *prima facie* offence made out on the basis of the allegation made in the complaint and the statements made by the complainant and his witnesses during inquiry under Section 202 Cr.PC. However, such allegation or the statements should not be patently absurd and inherently improbable to a prudent mind. Moreover, the allegation/statements made in the complaint and during inquiry



under Section 200 Cr.PC should be examined as a whole, but the veracity of such statements could not be examined at this stage. The statements have to be taken at their face value to see whether *prima facie* case is made out or not. Moreover, if the given set of facts makes only a civil dispute, the complaint or the cognizance/summoning order should be quashed to prevent abuse of the process of court and promote ends of justice.

Whether prima facie case is made out against the Petitioner.

13. Now, the question for consideration is, whether the allegation made in the complaint or the statements of the witnesses as recorded in support of the same taken at their face value make out any case against the accused.

14. As per the allegation in the complaint and the statements of the complainant and his witnesses during inquiry under Section 200 Cr.PC, Ld. Magistrate, has taken cognizance of offences punishable Sections 467, 468, 471, 420 and 120B of the Indian Penal Code vide the impugned order dated 04.01.2016.

15. Section 467 of the Indian Penal Code provides for punishment for forgery of valuable security, Will etc. **Section 468** of the Indian Penal Code provides for punishment for committing forgery with intent to use the forged document



or electronic record for the purpose of cheating. The offence is cognizable and non-bailable. **Section 471** provides for punishment for fraudulently or dishonestly using as genuine any document or electronic record which he knows or has reason to believe it to be a forged document or electronic record.

16. Section 420 of the Indian Penal Code provides for punishment for cheating whereby dishonestly inducing the person deceived to deliver any property to any person or to make, alter or destroy the whole or any part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable security. The offence is punishable by imprisonment upto seven years.

17. Section 120B of the Indian Penal Code provides for punishment for criminal conspiracy which has been defined by Section 120A of the Indian penal Code as per which when two or more persons agree to do, or cause to be done (i) an illegal act or (ii) an act which is not illegal by illegal means, such agreement is designated as criminal conspiracy.

18. Coming to the case on hand, I find that the sum and substance of the allegation is that the landed property belonging to the complainant has been sold by co-accused Arun Uraon, as power of attorney holder of co-accused Jagdish



Prasad Poddar to the accused/petitioner by the sale deed.

19. The first question which arises for consideration of this Court is whether the sale-deed executed by the co-accused Arun Uraon in favour of the petitioner can be held to be a forged document.

20. Forgery has been defined in Section 463 of the Indian Penal Code which provides as follows:

“463. Forgery.—Whoever makes any false documents or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

21. The basic ingredients of forgery as explained by Hon’ble Supreme Court in **Sushil Suri V. Central Bureau of Investigation**, [AIR 2011 SC 1713] are as follows:

“ 1) The making of a false document or part of it and (2) such making should be with such intention as is specified in the section, viz., (a) to cause damage or infringe to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.”

22. **Section 464** of the Indian Penal Code defines making of false documents. It reads as follows:

“ 464. Making a false document. —

A person is said to make a false document or false electronic record—First — Who dishonestly or



fraudulently—

(a)makes, signs, seals or executes a document or part of a document;

(b)makes or transmits any electronic record or part of any electronic record;

(c)affixes any electronic signature on any electronic record;

(d)makes any mark denoting the execution of a document or the authenticity of the electronic signature,

with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Illustrations

23. Hon'ble Supreme Court had occasion to consider the similar facts and circumstances in **Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr., [(2009) 8 SCC 751]** which had traveled from the district of Madhubani, Bihar. In this case also, the complainant had made allegation that his



land was sold by the accused without having any title to the land. The co-accused were witnesses, scribe and vendor in regard to the sale-deed. Ld. Magistrate had taken cognizance of offences punishable under Sections 467, 471, 420 and some other sections of IPC. After analysis of Section 464 of the Indian Penal Code, Hon'ble Supreme Court clearly held as follows:

“ 17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

(Emphasis supplied)

24. Hon'ble Supreme Court in Randheer Singh

v. State of U.P., [(2021) 14 SCC 626], also held as follows:

“ 24. A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a power of attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the power of attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness.

25. In the given case on hand also, there is no



allegation of impersonation by any accused person while executing the sale-deed in question. No one has forged signature of the complainant or anybody else. Accused, Arun Uraon has executed the sale-deed in regard to the land in question in favour of the petitioner on the basis of genuine power of attorney. Hence, the sale-deed in question is genuine and not a forged document. Whether it conveys title to the transferee is a legal question to be decided by competent Civil Court. But Sections 467, 468 and 471 of the Indian Penal Code do not get attracted against the accused-petitioner.

26. As for application of Section 420 of the Indian Penal Code in the alleged facts and circumstances of the case on hand, I find that the ingredients of this Section are as follows as explained by Hon'ble Supreme Court in **Mohammed Ibrahim case (supra)** :

“18.....

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

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."

(Emphasis supplied)

27. As such, representation by the Accused to the deceived doing fraudulent or dishonest inducement is *sine qua non* for making out offence under Section 420 of the Indian Penal Code. But in the case on hand, I find that there is no allegation of the Complainant that any Accused has made any



representation to him to part with any property. As such, for want of any representation, question of any fraudulent or dishonest inducement of the Complainant does not arise.

28. Moreover, the complainant has not parted with any property to the Accused persons, nor has he executed the sale-deed. As such, his title, if any, to the land in question, is still safe, because his title cannot get conveyed to purchaser if the conveyance deed/sale-deed has been executed by someone else, who is not possessed of the title to the land in question. A purchaser can get the title conveyed only if the seller has title to the property. It is a settled principle of law that no one can transfer better title than his own, as **Hon'ble Supreme Court in Eureka Builders Vs. Gulabchand, (2018) 8 SCC 67**, has clearly held as follows:

“35. It is a settled principle of law that a person can only transfer to other person a right, title or interest in any tangible property which he is possessed of to transfer it for consideration or otherwise. In other words, whatever interest a person is possessed of in any tangible property, he can transfer only that interest to the other person and no other interest, which he himself does not possess in the tangible property.

36. So, once it is proved that on the date of transfer of any tangible property, the seller of the property did not have any subsisting right, title or interest over it, then a buyer of such property would not get any right, title and interest in the property purchased by him for consideration or otherwise. Such transfer would be an illegal and void transfers.”

(Emphasis supplied)



29. Here, it would be also pertinent to refer to **JIT Vinayak Arolkar Vs. State of Goa & Ors. (Criminal Appeal No. 393 of 2024)** as decided by **Hon'ble Apex Court** just four days back on 06.01.2025. In that case, undivided share in landed property was sold by the accused and the FIR was lodged by the co-sharer. In this case, Hon'ble Supreme Court quashed the FIR holding as follows, relying upon **Mohammed Ibrahim Case** (Supra):

“12.1 In this case, it is impossible to understand how the appellant deceived the 4th respondent and how the act of execution of sale deeds by the appellant caused or was likely to cause damage or harm to the 4th respondent in body, mind, reputation or property. The appellant has not purported to execute the sale deeds on behalf of the 4th respondent. He has not purported to transfer the rights of the 4th respondent. There is no allegation that the appellant deceived the 4th respondent to transfer or deliver the subject property.”

(Emphasis supplied)

30. As such, no offence under Section 420 of the Indian Penal Code is made out in the case on hand.

31. Even ingredients of Section 120B of the Indian Penal Code are not fulfilled. No agreement by the petitioner and the co-accused are alleged to have been made to commit any illegal act.



Conclusion/Finding of this Court

32. Hence, in my view, the complaint does not disclose any offence, much less any offence under Sections 467, 468, 471, 420 and 120B of the Indian Penal Code. The alleged facts and circumstances of the present case, at most, constitute a dispute of purely civil nature between the parties for which remedy lies before a civil court by filing appropriate civil suit. Hence, the impugned order is not sustainable in the eye of law and is liable to be quashed and set aside to prevent the abuse of the process of Court and meet the ends of justice.

33. Accordingly, the present petition stands allowed, quashing and setting aside the impugned order dated 04.01.2016, passed by learned Chief Judicial Magistrate, Purnia in Complaint Case No. 74 of 2013.

(Jitendra Kumar, J.)

shoaib/ravi
shankar

AFR/NAFR	AFR
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