IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37733 of 2024

Arising Out of PS. Case No.-137 Year-2018 Thana- SHRIKRISHNAPURI District- Patna

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Lalan Kumar Son of Late Kamleshwari Prasad Yadav Resident of House No. 239, Hira Lal Lane Lodipur, Chhajubagh, P.S.- Gandhi Maidan, Dist.- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Dhiraj Kumar Son of Om Prakash Gupta Navratan Jewellers and Brothers, Bhagwati Saran Enclave, Beside J.P. Hospital, Boring Road, P.S.- S.K. Puri, Dist.- Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.N.K.Agrawal, Sr. Advocate
		Mr.Chandan Kumar, Advocate
For OP No.2	:	Mr.Madhav Raj, Advocate
For the Opposite Party/s	:	Mr.Satyendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 23-09-2025

Heard Mr. N.K.Agrawal, learned Senior Advocate along with Mr. Chandan Kumar, learned counsel appearing on behalf of the petitioner; Mr. Madhav Raj, learned counsel for O.P.No.2 and Mr. Satyendra Prasad, learned APP for the State.

2. At the very outset, Mr. Madhav Raj, learned counsel appearing on behalf of O.P.No.2 seeks to file a hard

copy of the counter affidavit which could not be filed in the office due to strike of the employees of the Franking Machine. The Counter affidavit is accepted and kept on the record.

3. The petitioner seeks quashing of the order dated 15.03.2024 passed in Criminal Revision No.09 of 2021 by the learned Sessions Judge, Patna, whereby and whereunder he has held that *prima facie* case is made out under Sections 406, 420 and 506 of IPC and has upheld the order taking cognizance dated 28.09.2020 passed by the learned ACJM IV, Patna in Shri Krishna Puri P.S.Case No.137 of 2018.

4. The Brief facts of the case is that the informant was a partner in M/s Navratna Jewellers & Brothers, a shop dealing in gold, silver, and diamond jewellery. The petitioner was a regular customer of the informant. He along with two unknown persons had visited the shop of the informant on 07.03.2018 and on the pretext of his impending marriage, petitioner took jewellery worth Rs. 79,51,755/-, for which a Bill No. 354 dated 07.03.2018 was issued. The petitioner for making payment of the consideration amount had issued a cheque dated 07.03.2018, drawn on the State Bank of India, Boring Road Branch, and requested the informant to encash the cheque after ten days. Relying on the long standing relationship and past dealings, the

informant accepted the cheque in good faith. After the stipulated period, when the informant contacted the petitioner to encash the cheque, Petitioner claimed that he was busy on his honeymoon and assured that the cheque could be encashed by 10th April. However, when the informant followed up again on 12th April, Petitioner's tone had changed, and he asked the informant to stop pressing him for payment. The informant then explained the urgency due to upcoming market payments around Akshaya Tritiya (18th April), and petitioner promised to make payment by 19th April. Consequently, when the informant contacted the petitioner to make such payment, the Petitioner allegedly threatened the informant, asserting his political influence and warning that if the informant insisted on payment, he would not pay a single penny and might even get the shop closed. He further requested the informant to wait for another ten days. Eventually, on 30.05.2018, the informant deposited the cheque, only to learn through a bank memo dated 02.05.2018 that the account of the petitioner was closed. The informant issued a legal notice to the Petitioner, which went unanswered. On the basis of written complaint of O.P. No.2 F.I.R being S.K. Puri PS Case No. 137/2018 was instituted against the petitioner for offences under section 406, 420 and 506 of IPC and Section

138 NI Act. Upon completion of investigation, police submitted charge-sheet under section 406, 420 and 506 of IPC and Section 138 NI Act against the petitioner and thereafter Court of learned ACJM IV, Patna took cognizance *vide* order dated 28.09.2020. The petitioner challenged the cognizance order dated 28.09.2020 before the Sessions Judge, Patna via Criminal Revision No. 09/2021. The Sessions Court, vide order dated 06.04.2021, allowed the revision and partly set aside the cognizance order on the ground that adjudication cannot be taken under section 138 NI Act. The petitioner then approached this Court by filing Criminal Misc. No. 37503 of 2023, challenging the order dated 06.04.2021. This Court on 15.06.2023 set aside the order. The order dated 15.06.2023 was challenged before the Hon'ble Supreme Court vide Criminal Appeal No. 2880 of 2023 (arising from SLP (Crl.) No. 9932 of 2023). The Supreme Court, by order dated 15.09.2023, held that cognizance under Section 138 of the NI Act could not have been taken based on Section 173 CrPC report, and clarified that no findings were made on other offences. It is noted that the Sessions Court had not examined the merits of the case under Sections 406, 420, and 506 IPC. Consequently, both the High Court and Sessions Court orders were set aside, and Criminal

Revision No. 09/2021 was restored. The present criminal revision application is thus revived and is now being heard and disposed of accordingly.

Argument on behalf of the petitioner

5. Mr. N.K. Agrawal, learned Senior Advocate appearing on behalf of the petitioner submitted that case of the informant is based solely on a document showing that the gold was delivered to the petitioner, However, the gold was never actually delivered to the petitioner because the tax invoice (invoice), which is the part of the FIR, does not contain the signature of the buyer.

6. Learned Senior Counsel further submitted that the averments regarding the alleged payment made by the petitioner through a cheque drawn on the SBI Branch, Patna cannot be subject matter of delivery and the allegation of issuance of cheque is not correct and justified. So far as, the validity of the cheque and signature on the cheque are concerned, the same can only be questioned before the competent civil court. The learned counsel submitted that since the FIR was lodged for dishonour of cheque for allegation under Section 138 of NI Act, an offense under Sections 420, 406 and 504 of the IPC are not made out.

7. Learned counsel otherwise also submitted that

upon perusal of FIR in support of the allegation the informant has claimed that upon receipt of cheque the gold was delivered to the petitioner but the question of transfer of goods upon receipt of cheque in question on the basis of tax invoice which do not contain the signature of the petitioner, case under Section 406 IPC is not made out in absence of the deception subsequent to the intrustment of the property and thereafer its dishonest misappropriation. Learned counsel further submitted that no material has been collected by the investigating officer in course of investigation that on the alleged date of occurrence the petitioner had visited the shop and further the informant himself had refused to provide the CCTV camera footage to the I.O.. *Prima facie* the allegation under Section 405 is vitiated in the eye of law. In above ground learned counsel submitted that from the bare perusal of the FIR itself no case is made out.

8. Learned counsel further submitted that Sections 406 and 420 IPC are independent to each other. As regards applicability of Section 420 IPC, the element of deception from the very beginning of the transaction must exist. In the present case, the bank account of the petitioner was already closed well before the issuance of the cheque. Question of fraudulent intent to retain the payment dishonestly does not arise. Learned

counsel further submitted that the cheque in question for which tax invoice was issued was lost and petitioner had already lodged *Sanha* in that regard on 18.02.2015 before the police station much before lodging of FIR dated 14.08.2018. On these grounds the petitioner seeks quashing of the order dated 15.03.2024 passed in Criminal Revision No.09 of 2021 by the learned Sessions Judge, Patna, and the order taking cognizance dated 28.09.2020 passed by the learned ACJM IV, Patna in Shri Krishna Puri P.S.Case No.137 of 2018.

Argument on behalf of O.P.No.2

9. Per contra, learned counsel appearing on behalf of O.P.no.2 submitted that order dated 15.06.2023 passed in Cr. Misc. No.37503 of 2023 was challenged before the Apex Court vide SLP (Crl.) No.9932 of 2023 and the Apex Court has passed order dated 15.09.2023, upholding the decision of the Revisional Court vide order dated 06.04.2021 and setting aside the cognizance taken under Section 138 of the NI Act and directed the learned Revisional Court to take decision with regard to cognizance under Sections 406, 420 and 506 of IPC.

10. So far as the fact of lodging of *Sanha* in respect of the loss or theft of Cheque no.200170 is absolutely false, he submitted that the lodged Sanha dated 18.02.2015 was lodged

by managing the police officials by tampering the government documents. In this regard, Kotwali P.S. Case No.526 of 2018 has been lodged on 14.08.2018 under Sections 417, 418, 419, 420, 466, 467, 468, 477(A), 477(B) and 120(B) of IPC against the petitioner and the concerned police official. Learned counsel informs that the petitioner had lodged Gandhi Maidan P.S.Case No.185 of 2018 on 14.05.2018 with respect to theft of his seven signed cheques including cheque no.200170, in question. However, during the course of investigation, it was found that the said case has been filed merely as part of conspiracy to fradulently obtain money related to the jewellery. The case was subsequently, disposed of by the learned ACJM XIV, Patna, vide order dated 04.01.2021. Learned counsel however admits that on earlier occasion these informations were not brought on record nor the same has been considered by the learned ACJM.

11. Learned counsel further submitted that the petitioner has ten criminal antecedents, which has been suppressed by the petitioner as he has submitted only five criminal antecedents. Learned counsel further submitted that the petitioner filed second anticipatory bail application bearing Cr. Misc. No.32888 of 2019 on 15.05.2019 and during the pendency of the said bail application, he also moved for

anticipatory bail before the Apex Court bearing SLP (Crl.) No.5088 of 2019 filed on 27.05.2019, in which he got protection from arrest on 03.06.2019 and thereafter the petitioner withdrew Cr. Misc. No.32888 of 2019 on 19.06.2019.

12. Learned counsel submitted that the petitioner purchased jewellery of Rs.79,51,755/- and in lieu of the same, he gave a cheque bearing No.200170 dated 07.03.2018 of SBI Branch Boarding Road, Patna bearing Account No.20002057717, which was presented in the bank on 30.04.2018 by O.P.no.2 but it was reported on 02.04.2018 that the concerned Account has already been closed on 01.11.2015 on the request of the petitioner. In spite of the account having been closed the petitioner issued the cheque to deceive the O.P No. 2 from beginning. Thereafter, O.P.No.2 sent a legal notice on 10.05.2018 to the petitioner and ultimately lodged Sri Krishna Puri P.S.Case No.137 of 2018 on 04.06.2018 against the petitioner and, thereafter, the petitioner lodged Gandhi Maidan P.S.Case No.185 of 2018 on 14.05.2018 stating therein that some cheques including Cheque No.200170 have been stolen from his office, however, the Police in course of the investigation found the case to be untrue and the case was disposed of on 04.01.2021.

13. Learned counsel submitted that on the one hand in the *Sanha* lodged by the petitioner on 18.02.2015, it has been claimed that his signed cheque No.200170 was lost, whereas in the FIR lodged in the year, 2018, the petitioner claimed that unsigned/blank cheque including cheque No.200170 had been lost.

14. Learned counsel on these grounds submitted that *prima facie* case against the petitioner is made out for the offences punishable under Sections 406, 420 and 506 IPC. The petitioner has dishonestly retained the payment of Rs.7951755/- with guilty mind calling for no interference with this order taking cognizance dated 28.09.2020 and impugned order dated 15.03.2024.

15. Learned APP appearing on behalf of the State submitted that the law is well settled that there can be civil remedy for non-payment of consideration amount but at the same time criminal case for the alleged offences under Sections 406, 420 and 506 of IPC is made out against the petitioner.

Analysis and conclusion

16. Heard the parties

17. The Opposite Party No.2/informant appears to have issued tax invoice on 07.03.2018 in the name of the

petitioner for a total sum of Rs.79,51,755/- for which payment, the petitioner allegedly had issued a cheque bearing No.200170 dated 07.03.2018 to O.P.No.2, which got dis-honoured due to closure of the account, drawn on the State Bank of India, Personal Banking Branch, Boring Road, Patna. The tax invoice does not bear the signature of the buyer. According to the informant, it is alleged that the petitioner had requested him that he should present the cheque after ten days of its date of issuance. Thereafter, the informant requsted the petitioner on several occasions to make the payment of the consideration amount and suddenly the petitioner threatened the informant that he will not pay a single penny. Consequently the informant deposited the cheque in the bank account. However, vide bank memo, dated 02.05.2018, he was informed on behalf of the bank that the account on which the cheque had been drawn had already been closed as on 01.11.2015. Following these events, the complainant, issued a legal notice, dated 10.05.2018, to the petitioner, which remained unanswered. As a result, on the basis of written complaint S.K. Puri P.S. Case No. 137/2018 was registered against the petitioner for offences punishable under Sections 420, 406 and 506 of the IPC and Section 138 of the Negotiable Instruments Act. After the investigation was completed, the police filed a charge sheet under the above provisions, and the learned A.C.J.M. IV, Patna, thereafter took cognizance of the aforementioned sections vide order dated 28.09.2020.

18. The order taking cognizance was assailed by the petitioner through Criminal Revision No. 09 of 2021, in which the learned Sessions Judge, Patna, by order. dated 06.04.2021, allowed the revision and set aside the order dated 28.09.2020, passed by the learned A.C.J.M. IV, Patna and remanded the matter to the Court of the learned A.C.J.M for a fresh adjudication in accordance with law. Aggrieved thereby, the petitioner filed Criminal Miscellaneous No. 37503 of 2023 before this court, challenging the order dated 06.04.2021. This Hon'ble High Court, by order dated 15.03.2023, was pleased to set aside the order, dated 06.04.2021. The said order was challenged by the O P No. 2, namely Dheeraj Kumar before the Hon'ble Supreme Court and while disposing of the Appeal, the Apex Court had modified the order taking cognizance dated 28.09.2020, that except for the offense under section 138 of NI Act, decided to interfere with the order taking cognizance, observing that no adjudication was being made on any other issue. Consequently, the order, dated 06.04.2021, passed by the

learned Sessions Judge, Patna, and the order, dated 15.04.2023, passed by the Hon'ble High Court were set aside and Criminal Revision No. 09 of 2021 stood restored. The relevant part of the order passed by the Apex Court in its judgment dated 15.09.2023 in SLP (Crm) No. 9932/2023 is reproduced herein after: -

> ***After having heard the learned counsel appearing for the parties, we find that the approach adopted both by the high court and the Sessions Court was erroneous.***
>
> ***The learned counsel appearing for the appellant states that the appellant is agreeable for dropping Section 138 of the Negotiable Instruments Act, 1881 (for short, "NI Act").***
>
> ***A perusal of the judgment of the Sessions Court in Criminal Revision Application shows that merits of the case made out by respondent no.2 as regards the offences punishable under Sections 406, 420 and 506 of the Indian Penal Code, 1860, have not been gone into.***
>
> ***Hence, by setting aside both the judgments of the High Court and the Sessions Court, we restore Criminal Revision No.09 of 2021 before the learned Sessions Judge, Patna. The Criminal Revision Application shall be decided on its own merits.***
>
> ***We clarify that the order dated 28.9.2020 passed by the Learned Additional Chief Judicial Magistrate-IV, Patna, stands modified to the extent that the cognizance for the offence punishable under Section 138 of the NI Act, could not have been taken on the basis of a report under Section 173 of the Code of Criminal Procedure, 1973.***
> ***We direct the parties to this Appeal to appear before the Learned Sessions Judge, Patna, in the morning of 3rd October, 2023. As the contesting parties are before this court, it will not be necessary for the Sessions Judge, Patna, to issue notice of the Criminal Revision Application.***

> ***It will be open for the appellant to apply to the Sessions Court for giving necessary priority to the disposal of the Criminal Revision Application.***
>
> ***We make it clear that except for the applicability of Section 138 of the NI Act, there is no adjudication made by this court on any other issue.***
>
> **The Appeal is partly allowed on the above terms.**

19. Pursuant thereto in compliance of the Apex Court order dated 15.09.2023 having examined the complainant, the Revisional Court, as indicated above, held that a prima facie case was made out against the petitioner under Sections 406, 420 and 506 of the Indian Penal Code and accordingly upheld the order, dated 28.09.2020, passed by the learned A.CJM. IV, Patna. It is in these circumstances that the petitioner is, now, before this Court challenging the legality and validity of the impugned order, dated 15.03.2024, aforementioned.

20. Before embarking upon the discussion as to whether the impugned order, dated 15.03.2024, whereby cognizance of the offences in question has been upheld, can be sustained in law, it is apposite to first delineate and analyse the principal distinction between the offence of criminal breach of trust and that of cheating.

21. In ***SW. Palanitkar v State of Bihar*** reported in, ***(2002) 1 SCC 241,*** the Hon'ble Supreme Court elaborated upon the essential ingredients that must be established to constitute

the offences of criminal breach of trust and cheating respectively. The relevant observations are reproduced hereinbelow:

> *"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 the 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 to 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."*

22. In ***Samsung India Electronics Pvt. Ltd. v. State Of Assam, Criminal Petition No. 82 of 2008 (Jul 26, 2012), 1.A Ansari, J.,*** Speaking for the Court, expounded the clear distinction that exists between the two offences under consideration. The relevant observations are reproduced hereinbelow:

> *7. Thus, in criminal breach of trust', the intention of the accused cannot be dishonest or mala fide at the time, when he comes into possession of the property or comes to acquire dominion over the property; but, having come into possession of, or having acquired dominion over, the property, the accused develops dishonest intention and actuated by such mens rea, he converts to his own use the property or dishonestly uses or disposes of the 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.

8. Contrary to what happens in 'criminal breach of trust', the intention of the accused, in a case of 'cheating', is dishonest from the very commencement of the transaction. There is really no consent by the person, who is intentionally induced by deception to deliver the property or allow any person to retain the property or is intentionally induced, as a result of deception, to do or omit to do anything, which he would not do or omit to do if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property."

23. In the case of ***Paramjeet Batra v. State of Uttarakhand*** reported in ***(2013) 11 SCC 673,*** the Apex Court observed that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. Further in para 12 the court held as under:

"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 complaint discloses a criminal offence or not depends upon the nature of facts alleged ingredients of criminal 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."

24. Relying upon the decision in **Paramjeet Batra (supra),** the Apex Court in ***Randheer Singh v. State of U.P***. reported in ***(2021) 14 SCC 626,*** observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. Further, in ***Usha Chakraborty & Anr. V. State of West Bengal & Anr.*** reported in ***2023 SCC OnLine SC 90***, it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

25. A plain and careful reading of the foregoing observations makes it clear that the offences punishable under Sections 406 and 420 of the IPC rest on fundamentally different legal foundations. To constitute the offence of criminal breach of trust, the element of deception must arise subsequent to the entrustment of property or after the accused has acquired dominion over the property followed by its dishonest misappropriation. conversion, or disposal in violation of the terms of such entrustment. In contradistinction, in the case of cheating under Section 420, the element of deception is sine qua non from the very inception of the transaction, forming the basis of the inducement by which property is delivered or an act is

caused to be done. It therefore follows as a matter of settled legal principle that where the facts disclose the commission of an offence under Section 406 IPC in relation to a particular transaction, the accused cannot, at the same time and on the same set of allegations, be held liable for the offence of cheating' under Section 420 IPC and vice versa.

26. Bearing in mind the discussion above, it is now appropriate to advert to the findings recorded in the judgment and order, dated 15.03.2024, passed by the learned Sessions Judge, Patna, whereby a *prima facie* case against the petitioner-accused for offences punishable under Sections 406, 420 and 506 of the IPC was affirmed. A plain reading of the impugned order indicates that the learned Court below declined to interfere with the cognizance of the offences on essentially one principal ground, namely, that the petitioner had dishonestly withheld the amount payable to the complainant inasmuch as the bank account bearing No. 20002057717, standing in the petitioner's name, had been closed as early as on 01.11.2015 pursuant to his own application, dated 17.09.2015. This, in the opinion of the learned Sessions Judge, was sufficient to disclose the ingredients of the offence punishable under Section 406 IPC. As regards the applicability of Section 420 IPC, it was further

concluded that the element of deception, which must exist from the very inception of the transaction, also stood satisfied in the present case since the bank account in question had already been closed well before the issuance of the cheque, thereby indicating that the inducement itself was vitiated by fraudulent intent from the outset. The relevant portions of the impugned order are reproduced hereinbelow for ready reference:

> *"18. The allegation in the present case is that the petitioner issued Cheque No. 200170 dated 07.03.2018 against invoice no. 354 dated 07.03.2018, for an amount of Rs. 79,51,755/-, which was dishonoured, attributable to the bank account of the petitioner on which the cheque was drawn, having been closed, thereby failed to make payment for the jewelleries purchased by the petitioner from O.P. 2. Thus, it shows that petitioner dishonestly retained the said payment, as the Bank Account No. 20002057717 of the petitioner was closed on 01.11.2015, based on his request vide application dated 17.09.2015, much before the issuance of the said cheque on 07.03.2018, as such making out a prima facie case under Section 405 IPC punishable under Section 406 IPC*
>
> *22. It would also be evident from combined reading of Sections 415 and 420 of the IPC that one of the essential ingredients of Section 420 IPC is mens rea of the accused at the time of making the inducement. It is a well settled position in law that in order to attract the provisions of Section 420 IPC, the guilty intent at the time of making the promise is a prerequisite and an essential ingredient thereto, and subsequent failure to fulfil the promise by itself would not attract the provisions of Section 420 IPC. As a matter of fact in the present case, illustration (d) of Section 415 makes the position clear enough.*
>
> *23. In the case at hand, deception since inception i.e guilty intent at the time of making the promise is glaring, based on allegation in FIR and material collected in course of investigation including the memo issued by the bank dishonouring the cheque and para-103 of the case diary wherein, report received from Branch Manager, Personal Banking Branch, Sahdeo Mahto Marg, Patna has been recorded that Bank Account no. 20002057717 of the petitioner was closed on 01.11.2015*

based on his request vide application dated 17.09.2015, much before the issuance of the said cheque on 07.03.2018."

27. In my view, the reasonings adopted by the learned Revisional Court, as noted above, are wholly incorrect. In the present matter, there is no material on record to demonstrate that any entrustment of property, namely, the jewellery in question, ever passed from the complainant's shop to the petitioner. It is true that an invoice, dated 07.03.2018, forms part of the record and mentions the petitioner's name. However, the mere presence of his name on the document, in the absence of any signature or acknowledgment attributable to him, cannot by itself warrant the inference that the invoice was, in fact, issued to him or that any property was delivered pursuant to it. Moreover, there is a complete absence of credible material indicating that the petitioner visited the complainant's establishment on the said date, particularly, since the complainant refuses to produce the CCTV footage of the said day.

28. With the views noted hereinabove, it becomes apparent that unless the foundational requirement of entrustment, which constitutes the very first and essential ingredient of the offence under Section 406 IPC, is established, the charge of criminal breach of trust cannot, in law, be sustained. In the absence of proof of such entrustment, any

subsequent allegation of dishonest misappropriation or conversion of property would stand vitiated at its very inception, leaving no occasion for the facts of the case to attract the penal consequences contemplated under Section 406 IPC. In context of the present case, except for the assertions made by the complainant and his witnesses in their testimonies, there is no independent or corroborative evidence to support such a claim. The absence of any reliable proof of the alleged visit of the petitioner renders the evidence, as it stands, too fragile and unsustainable to establish the element of entrustment or dishonest intention requisite to constitute an offence under Section 406 IPC

29. In addition to the foregoing, it cannot be ignored that the impugned order dated 15.03.2024 ex facie discloses a manifest failure to apply judicial mind, as the learned court below has proceeded to uphold cognizance under Sections 406 IPC and 420 IPC without appreciating the fact that the foundational elements of these offences are conceptually incompatible and cannot, in law, be invoked simultaneously on the basis of the same set of allegations.

30. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one

of the parties, would not attract prosecution for criminal offence in every case, as held by the Apex Court in ***Sarabjit Kaur V. State of Punjab and Anr.*** reported in ***(2023) 5 SCC 360.*** Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, the Apex Court, in ***Vesa Holdings (P) Ltd. V. State of Kerala,*** reported in ***(2015) 8 SCC 293,*** has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

31. In this background of the above set of facts before, I proceed to conclude, I find it gainful to take into consideration the law laid down 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***, The Apex court after discussing the earlier law laid down in several cases in respect of whether every criminal breach of trust raises a criminal prosecution. The Apex Court 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."*

32. Thereafter, the Apex Court finally concluded in paragraph nos. 39 and 49 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."*
>
> ***49.*** *From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it.*

33. It is, therefore, manifest from the observations of the Hon'ble Supreme Court that even assuming, for the sake of argument, that the materials on record successfully disclose entrustment of the jewellery by the complainant to the petitioner, the same would, by itself, not render the criminal prosecution maintainable in law. Such a transaction, even if duly established, would, at best, give rise to a civil dispute, and cannot, constitute the foundation for a criminal proceeding.

34. The Revisional Court, while affirming the inclusion of the charge under Section 420 IPC against the petitioner, proceeded on the premise that his bank account had stood closed as on 01.11.2015, well before the issuance the cheque in question, which, according to the complainant's case, was issued on 07.03.2018, thereby, in its view, evidencing the

presence of deception from the very inception of the transaction. However, it appears that the learned Court below failed to duly appreciate other material aspects of the record before arriving at such a conclusion.

35. During the course of police investigation, it was noted that the petitioner had, on 18.02.2015, lodged a sanha vide Station Diary Entry No. 1989, reporting the loss or theft of the cheque in question, an event stated to have occurred considerably prior to the alleged transaction. Furthermore, the invoice bearing No. 354, dated 07.03.2018, does not bear any acknowledgment or signature of the petitioner. In absence of such acknowledgment, the said invoice cannot be regarded as a definitive piece of evidence to establish that the jewellery was ever issued to the petitioner. When no material has been placed on record to indicate that the petitioner had, in fact, visited the complainant's establishment on the date so alleged, the version put forth by the complainant becomes inherently doubtful. In such a situation, where no cogent or credible evidence exists to demonstrate the petitioner's possession of the jewellery, the burden to explain the manner in which the cheque came into the complainant's possession must lie upon the complainant.

36. From the aforesaid, there remains no manner of

doubt whatsoever that the materials available on record do not satisfy the essential ingredients necessary to constitute the offence of cheating within the meaning of Section 415 IPC.

37.Insofar as the offence under Section 506 IPC is concerned, the learned Court below has proceeded on the premise that the said provision is attracted in the present case on the basis of the allegation in the FIR that, when the complainant contacted the petitioner over a phone call, the latter threatened that, if he acted in haste, he would ensure the closure of the complainant's shop and withheld payment in its entirety. In my view, the finding so recorded does not appear to be sustainable. The allegation, even if taken at its face value, remains an unsubstantiated assertion, unsupported by any independent material on record. In the absence of any credible evidence demonstrating the commission of a criminal intimidation of the nature contemplated under Section 506 IPC, the mere recital of such a statement in the complaint cannot, by itself, furnish a legally sustainable basis for prosecuting the petitioner for the said offence.

38. The dispute, as projected, is, at its highest, civil in nature and, if so advised, warrants initiation of civil proceedings rather than a criminal prosecution. The learned Court below,

therefore, erred gravely in holding the cognizance order, dated 28.09.2020, to be valid and sustainable in law.

39. If the complainant's allegation is that a certain sum of money remains due and payable by the petitioners, the appropriate remedy in law would be to institute a civil proceeding for recovery of the said amount. Invoking criminal machinery by filing a complaint alleging offences of cheating and criminal breach of trust, in the absence of specific materials disclosing the ingredients of either of the said offences amounts to a clear misuse of the criminal process.

40. In this regard, I find it apt to refer the law laid down by the Apex Court in case of ***State of Haryana vs Bhajan Lal*** reported in, ***1992 Supp (1) SCC 335,*** wherein in paragraph no. 102, the apex court has held 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."

41. Therefore, from the foregoing discussion and on bare perusal of the FIR along with the allegations made therein, even if taken at their face value and accepted in their entirety, fail to disclose the essential ingredients constituting the offences punishable under Sections 406 and 420 of the Indian Penal Code. The allegations, as they stand, do not prima facie make out any case of commission of the said offences.

42. In the circumstances referred hereinabove, the

continuation of the criminal proceeding would be nothing but abuse of the process of law and lead to serious miscarriage of justice.

43. In the result and for the reasons discussed above, this application made under Section 482 of the CrPC succeeds

44. The impugned order, dated 15.03.2024, passed by the learned Sessions Judge, Patna and the cognizance order, dated 28.09.2020, passed by the Additional Chief Judicial Magistrate, Patna are hereby set aside and quashed.

45. Accordingly, the quashing application stands disposed off.

(Purnendu Singh, J)

chn/-

AFR/NAFR	
CAV DATE	NA
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