IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29313 of 2025

Arising Out of PS. Case No.-556 Year-2021 Thana- PATRAKARNAGAR District- Patna

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1. Manoj Nari Sainani @ Manoj Sainani Son of Nari Mulchand Sainani Resident of B/1901- 1602, Brook Hill Tower Co-operative Housing Society Ltd, Road No. 03 Lokhandwala Complex Andheri (West) Mumbai 400053 PS -Oshiwara, Maharashtra India
2. Anjali Manoj Sainani @ Anjali Sainani Wife of Manoj Nari Sainani Resident of B/1901- 1602, Brook Hill Tower Co-operative Housing Society Ltd, Road No. 03 Lokhandwala Complex Andheri (West) Mumbai 400053 PS -Oshiwara, Maharashtra India
3. Sumit Singh chawla Son of Gurdeep Singh Chawla Resident of Navnidh Bungalow Plot No. B4, gulmohar Cross Road No. 07, JVPD Scheme, Andheri West, Mumbai -400053, ps- Oshiwara, Maharastra, India
4. Shabana Singh chawla @ Shabana Chawla Wife of Sumit Singh Resident of Navnidh Bungalow Plot No. B4, gulmohar Cross Road No. 07, JVPD Scheme, Andheri West, Mumbai -400053, ps- Oshiwara, Maharastra, India
5. keval Dilip Mehta @ Kewal Mehta Son of Dilip Mehta @ Dilip Hirajibhai Mehta Resident of 12/64, Sagarika Co-operative Housing Society Limited, near Lilavati Hospital, Bandara Reclamation, Bandra (West), Mumbai -400050, Ps- oshiwara, Maharastra

... ... Petitioners

Versus

1. The State of Bihar
2. The Director General of Police, Bihar, Patna Bihar
3. The Superintendent of Police, City East, Patna Bihar
4. Dr. Arvind Kumar son of Late Durga Singh Resident of Chitragupta Nagar, Ps- Patrakar Nagar, Town and Dist- Patna

... ... Opposite Parties

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Appearance :
For the Petitioners : Mr.Amit Shrivastava, Sr. Advocate

Mr.Girish Pandey, Advocate
Mr.Brajesh Sahay, Advocate
Mr.Akash Ambuj, Advocate
For the State : Mr.Navin Kumar Pandey, APP
Mr.Arvind Kumar, In-person.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

C.A.V.JUDGMENT

Date : 18-08-2025

Heard Mr. Amit Shrivastava, learned senior counsel appearing on behalf of the petitioners and Mr. Navin Kumar Pandey, learned A.P.P. for the State and Mr. Arvind Kumar, in-person/O.P. No.4.

At the outset, a joint attention was drawn that inadvertently in order no. 9 dated 25.07.2025, O.P. No.4 was mentioned as O.P. No. 2. Considering typographical error, same be read as O.P. No.4, upon correction.

2. The present petition has been preferred by the petitioners under section 482 of the Code of Criminal Procedure (in short, the 'Cr.P.C.')/528 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (in short, the 'B.N.S.S.'), for quashing of the order of cognizance dated 05.03.2025, passed by Ms. Ankita Raj, learned Judicial Magistrate - 1st Class, Patna, whereby and whereunder learned Magistrate has been pleased to take cognizance of the offences under section 406/420/34 of the Indian Penal Code against the

petitioners in connection with FIR No. 556/2021 lodged on 01.10.2021 at Patrakar Nagar Police Station, Patna by informant/O.P. No.4.

3. At the outset, it would be apposite to mention that petitioners preferred Cr.W.J.C. No. 158 of 2023 before this Hon'ble Court on 06.01.2023 for quashing the FIR dated 01.10.2021 arising out of Patrakar Nagar P.S. Case No. 556/2021, which on the date of filing of present petition was pending for adjudication.

4. An interim order dated 01.05.2025 was passed by this Court, through which proceeding before the learned trial court in aforesaid matter was stayed till further order as:

> "**01.05.2025:** 1. It is submitted by Mr. Amit Shrivastava, learned senior counsel appearing for above named petitioners that present criminal case was lodged, when petitioners raised lawful demand for balance payment of Rs. 55 lacs from opposite party no. 4 in connection with purchase of property/show room in Mumbai. It is submitted that dispute which *prima facie* appears civil in nature was given criminal colour in the circumstance when, petitioners never visited Patna. It is submitted that no criminal case as alleged appears *prima facie* make out against petitioners and, therefore, the present impugned order of cognizance dated 05.03.2025 passed by Judicial Magistrate 1st Class, Patna is fit to be set aside/quashed, in view of legal ratio as available through ***State of Haryana and Ors. Vs. Bhajan Lal and Ors.,*** reported in ***1992 Supp (1) Supreme Court Cases 335.***
>
> 2. Considering the aforesaid submission as raised by

Mr. Shrivastava, learned senior counsel appearing for petitioners, let further proceedings *qua* above named five petitioners shall remain stayed till further order.

3. Learned APP accepts notice for opposite party nos. 1, 2 and 3.

4. Let notice be issued to opposite party no. 4 by both modes i.e. speed post as well as ordinary post with A/D, for which necessary requisites must be filed within two weeks.

5. Considering the submission of Mr. Shrivastava, learned senior counsel, let up-to-date legible copy of the case diary be also called for in connection with Patrakar Nagar P.S. Case No. 556 of 2021, G.R. No. 6718/2021 from the Court of learned Judicial Magistrate, 1st Class, Patna/concerned Court positively on or before next date of hearing.

6. Learned APP Mr. Navin Kumar Pandey is directed to file counter affidavit, positively by next date of hearing.

7. Re-notify this case on 07.07.2025."

5. After passing of the aforesaid stay order in the present matter, the petitioners approached before the learned coordinate Bench of this Court and prayed for withdrawal of Cr.W.J.C. No. 158/2023, wherein learned coordinate Bench has passed the following order on 19.06.2025, which reads as under:

"**19.06.2025:** Heard the learned Senior Counsel for the petitioners, learned counsel for the State and the learned counsel for the respondent no. 5.

2. This is an application for issuance of appropriate writ/writs, order/orders, direction/directions for quashing the Patrakarnagar P.S. Case no. 556/2021 dated 01.10.2021 registered for offences under Sections 406, 420 of the I.P.C. by which private respondent set the criminal court in motion to settle a dispute which is essentially Civil in nature and all transactions took place in the territorial jurisdiction within the jurisdiction of High Court at Bombay and petitioners who are

resident of Mumbai deals with some commercial property situated at Mumbai and all transactions took place at Mumbai and petitioners initiated Civil Proceeding under ordinary Original Civil Jurisdiction within the territorial jurisdiction at High Court at Bombay being numbered as Suit no. 2310/2021 for enforcement of agreement for Sale dated 15.11.2021 and after adjudication private respondent may be directed either to pay the remaining consideration amount of Rs. 40500000/- with interest and other ancillary expenses or agreement for sale between the parties may be rescinded.

3. At the very outset, learned counsel for the respondent no. 5, Sri Pramod Kumar has submitted that this case has become infructuous as the charge sheet has been submitted, cognizance has been taken and summon has been issued for the appearance of the petitioners.

4. Learned counsel for the informant has further submitted that in this case, the informant has been cheated of Rs. 23 Crore and the accused persons are delaying the judicial process which is denied by the learned Senior Counsel for the petitioner. He further submits that the accused are trying to delay their trial as they are enjoying the cheated amount.

5. At this stage, learned Senior Counsel for the petitioner has very fairly submitted that he may be permitted to withdraw this application as the same has become infructuous now.

6. Permission is accorded.

7. Accordingly, this application is dismissed as withdrawn.

8. The Trial Court is directed to proceed with the case on day-to-day basis so that the guilty persons are punished.

9. Let a copy of this order be communicated to the Principal District and Sessions Judge, Patna through FAX for its compliance forthwith."

6. Both aforesaid orders of this Court i.e. order dated 01.05.2025 as passed in Cr. Misc. No. 29313/2025 and the order dated 19.06.2025 passed in Cr.W.J.C. No. 158/2023, were challenged before the Hon'ble Supreme Court.

7. Against the interim order dated 01.05.2025 as

passed in Cr. Misc. No. 29313/2025, the Hon'ble Supreme Court, vide its order dated 16.05.2025, has been pleased to pass the following order:

> **"1. After some arguments, learned counsel for the petitioner prays to withdraw the petition with liberty to file an application for discharge of the interim order.**
>
> **2. In view of the above, the Special Leave Petition is dismissed as withdrawn.**
>
> **3. Pending application(s), if any, shall stand disposed of."**

8. Thereafter, the Hon'ble Supreme Court has been pleased to pass the following order dated 4th July, 2025 in Special Leave to Appeal (Crl.) Nos. 9560/2025 (**Annexure 'B' to the Rejoinder to I.A. No. 01/2025 filed by O.P. No.4**), against the order dated 19.06.2025 passed by this Court in Cr.W.J.C. No. 158/2023, which are as under for ready reference:

> "Leave granted.
>
> Heard Sri Amit Pawan, learned counsel for the appellants and Sri Siddarth Dave, learned senior counsel appearing for respondent No.5 (1.e. the complainant).
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> Considering the nature of the order that we propose to pass, we do not deem it necessary to issue notice to the State of Bihar and its officers at this stage.
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> The case of the appellant is that they approached the Patna High Court for quashing of the First Information Report pertaining to Case No.556 of 2021 by filing Criminal Writ Jurisdiction Case NO.158 of 2023. During pendency of the aforsaid case, the investigation resulted in a charge sheet on which cognizance was taken and therefore, when the

aforesaid case came for hearing on 19.06.2025, it was prayed that the petition be dismissed as withdrawn because in the meantime, the appellants had already invoked the jurisdiction of the High Court for quashing of the cognizance order.

Consequently, by order dated 19.06.2025 the High Court granted permission to withdraw the petition and the said petition was dismissed as withdrawn. However, while dismissing the writ petition as withdrawn vide order dated 19.06.2025, the High Court directed as under:

"The trial court is directed to proceed with case on day-to-day basis so that the guilty persons are punished."

The learned counsel for the appellants submitted that the aforesaid direction of the High Court is uncalled for because in the proceedings initiated by the appellants for quashing of the cognizance order, the further proceedings of the case was stayed by the High Court itself vide interim order dated 01.05.2025. It submitted that the order dated 01.05.2025 was challenged by the complainant party before this court. But this court refused to entertain the challenge by giving them liberty to approach the High Court for discharge of the interim order.

Sri Dave, learned senior counsel, who appears for complainant-party, submits that pursuant to the the liberty given by this Court, the complainant party has already applied for discharge of the interim order passed in Criminal Miscellaneous No.29313 of 2025 and the next date fixed in those proceedings is 14.07.2025.

It is however not in dispute between the learned counsel for the parties that the interim order granted earlier in Criminal Miscellaneous No.29313 of 2025 is still subsisting.

In view thereof, we deem it appropriate to modify the impugned order dated 19.06.2025 by directing that the direction given in paragraph 8 of the impugned order shall be subject to further orders passed in Criminal Miscellaneous No.29313 of 2025 and would operate only on discharge of the interim order passed therein.

With the aforesaid observations/clarification, this appeal stands disposed of.

Pending application(s), if any, shall stand disposed of."

9. Mr. Shrivastava, learned senior counsel while appearing for the petitioners, after passing of the aforesaid order by the Hon'ble Apex Court, prays for final hearing on

'Admission' along with hearing of petition i.e. I.A. No. 01 of 2025, which was not objected by Mr. Gaurang Chatterjee, learned senior counsel appearing for the opposite party no. 4.

10. Vide order dated 16.04.2025, it was informed to this Court by Mr. Gaurang Chatterjee, learned senior counsel that he is under instruction as not to appear further in this matter as the opposite party no. 4 (Mr. Arvind Kumar) himself desirous to appear in-person.

11. With aforesaid backgrounds, it would be apposite to give a brief look to the case of the informant/O.P. No. 4, which was lodged as Patrakar Nagar P.S. Case No. 556/2021 and subject of present quashing petition.

<u>Brief facts of the case</u>

(i) As per the case of the informant/O.P. No.4, it appears that he is the resident of Chitraguptnagar, Kankarbagh, Patna and Director of M/s Rudra Tara International Private Limited. He is a regular visitor to Mumbai to meet his children and in said connection, on one occasion, he met with two persons namely, Manoj Nari Sainani and his wife Anjali Nari Sainani, who were residents of Mumbai, where he was informed that they are engaged in the business of Real Estate and further disclosed that Sumit Singh Chawla and his wife, Shabana Chawla and Sri Keval Dilip Mehta, all residents of Mumbai, are also actively engaged/associated with them in their business of real estate.

(ii) It is alleged that Manoj Nari Sainani (petitioner no.1) and Sumit Singh Chawla (petitioner no.3) with his wife Shabana Singh Chawla (petitioner no.4) came to Patna in connection with some property dealing and approached him by asking his residential address. They came to the house of the informant and discussed one property in Mumbai, which was of market value somewhere between 27-30 Crores.

(iii) It is alleged that petitioners persuaded him that property in issue would give a good profit in due course and as they are in dire need of money, they are ready to sell him the discussed property against consideration a amount of Rs. 19.45 Crores only, and whenever he wants after the lapse of one year, they will take back the property after giving him 15% annual profit.

(iv) The aforesaid proposal was accepted by O.P.

No.4/informant. The property was allotted to petitioners by MHADA (Maharashtra Development Authority) having five shops which were in the names of petitioner nos. 1, 2, 3, 4 & 5, which were constructed over 483.30 square meters being a showroom, located at Lokhandwala, Andheri (East), Mumbai.

(v) It is further alleged that upon telephonic talks, all five petitioners (accused) visited the residence of O.P. No. 4 at Chitraguptnagar, Kankarbagh, Patna on 02.10.2016 and took Rs. 1.48 Crores in cash and a cheque for Rs. 11 Lakh and distributed the money amongst themselves in his presence and drew up an agreement on plain paper and also gave a receipt for the same. All of them said that they have given their power of attorney to Manoj Nari Sainani (petitioner no. 1), as such only the signature of petitioner no. 1 is available everywhere.

(vi) On the basis of the aforesaid agreement on plain paper, the petitioners came and stayed at Patna between 01.11.2016 and 05.11.2016 and in that duration, took money from him on three occasions and further gave a receipt on plain paper agreement. It is alleged that agreement

(Memorandum of Understanding) on plain paper which was executed at his residence at Patna on 02.10.2016, was notorized in Mumbai on 17.11.2016. The petitioners did not take the entire money from O.P. No. 4/informant for the reason that the occupancy certificate was not given to them by MHADA, which he promised to provide in the next 15-30 days, and on said assurance only , till 02.03.2019, the petitioners took about Rs. 16.50 Crores from O.P. No.4/informant.

(vii) It is further alleged that the money was paid by the informant/OP No.2 for the smooth running of the business of the petitioners, as they were in dire need of money as said. In the meantime, the attorney Holder Manoj Nari Sainani (petitioner No.1) prepared an additional agreement on 22.07.2017, stating that they will take back the property within three months against Rs. 23 Crores. The petitioners failed to act on said assurance. The stamp papers were purchased at Mumbai, but were signed at Patna in the presence of local witnesses.

(viii) The aforesaid agreement was also not honoured and the petitioners again came to Patna on 25.07.2017 and executed a third Extension Agreement on stamp paper brought from Mumbai, where signatures were put at his Chitraguptnagar residence at Patna. They admitted that they have committed a mistake and requested a further period of three months and for such mistake, they will pay Rs. 12 Lakhs per month for total of Rs. 36 Lakhs, for which they drew three cheques on Kotak Mahindra Bank in favour of O.P. No.4, which he got deposited in his account available with Canara Bank, Hanuman Naagar, Patna, which were duly credited. Thereafter, they have written in the agreement that Rs. 18.84 Crores will be refunded within three months and, till such time, interest of Rs. 12 Lakhs shall be payable on a monthly basis, but under conspiracy, which was pre-planned he was called to Mumbai and one registered agreement for sale was prepared.

(ix) It is alleged that even after getting three agreements prepared, they have not refunded Rs. 18.84 Crores nor paid Rs. 12 Lakhs interest per month, which they had promised to re-pay by 25.01.2018, and they did not even agreed to buy-back the property.

(x) It is further alleged that after all the aforesaid events, petitioners stopped talking with the informant/O.P. No.4. The informant/O.P. No.4 tried regularly to contact with all the aforesaid petitioners, during the entire month of September, 2021, but the accused persons never picked their phone nor return the money and neither make any step to buy-back the property and therefore, the entire amount of Rs. 18.84 Crores was cheated on the false pretext of selling property.

(xi) With the aforesaid allegation, the present FIR was lodged for the offences punishable under sections 406, 420, 384, 504 of the I.P.C. on 01.10.2021 in Patrakarnagar Police Station, Patna.

Argument on behalf of the petitioners

12. At the outset, Mr. Amit Shrivastava, learned senior counsel appearing on behalf of the petitioners, denied each and every averments, allegations and insinuation as contained in the FIR, which is contrary and inconsistent with the true and actual events. It is submitted that the present

FIR was lodged with a sole oblique intention to harass and victimize the petitioners and to wreak personal vengeance.

13. It is submitted by Mr. Shrivastava, that O.P. No.4/informant had initially filed a complaint under section 200 of the Cr.P.C. being Complaint Case No. 805/2021 before the learned Additional Chief Judicial Magistrate, Patna City with same cause of action. Mr. Shrivastava submitted that contents of the present FIR is completely different to the averments made by the informant/O.P. No. 4 in the complaint case No. 805/2021 filed on 10.09.2021 in the court of learned A.C.J.M., Patna City.

14. It is submitted by Mr. Shrivastava that this is an admitted position that informant/O.P.No.4 has not at all disclosed while lodging the said FIR through his letter (written information) dated 27.09.2021 that he has already filed complaint case No. 805/2021 on 10.09.2021 in the court of learned A.C.J.M., Patna City, therefore, the present FIR dated 01.10.2021 which was lodged after almost 20 days is virtually a second FIR, which is not permissible under law.

15. It is pointed out that complainant (O.P. No.4)

never appeared in the said complaint case and by order dated 16.12.2022 **(Annexure-'P/3')**, the learned Jurisdictional Magistrate -1st Class, Patna City dismissed the said complaint case under section 203 of Cr.P.C. as no *prima facie* case was made out against the accused persons (petitioners) under sections 406, 420, 467, 468, 147, 504, 120B of the IPC, by observing categorically that dispute is of civil nature.

16. Mr. Shrivastava, further submitted that the Investigating Officer of this case with the assistance of Inspector of Oshiwara Police Station, Mumbai had conducted and completed the investigation, where, to the best of the knowledge of the petitioners, no culpability had been found against them during the course of the investigation.

17. It is further submitted that petitioners never visited Patna (Bihar) in connection with the transaction of sale of the property in question, and, therefore, lodging of FIR in Patna is without jurisdiction. It is further pointed out that considering the balance in favour of petitioners, they were granted privilege of section 41-A of the Cr.P.C. during the investigation, which was never misused by them.

18. It is pointed out that the entire deed was finalized in Mumbai, and, therefore, the related documents were executed at Mumbai itself, as such, on this very ground, the FIR in issue is liable to be quashed/set aside in want of jurisdiction.

19. It is further submitted that the I.O. has failed to procure the CCTV footage, call details or anything in support of the fact *qua* physical presence of petitioners on 02.10.2016 and between 01.11.2016 and 05.11.2016 and further on 25.07.2017 at Patna, which is the core issue requiring investigation at its first instance.

20. In view of the aforesaid, it is submitted by Mr. Shrivastava, that no cognizable offence, as alleged, is made out against the petitioners and, therefore, the present FIR is fit to be set aside/quashed in view of the legal report of the Hon'ble Supreme Court as available in through **State of Haryana v. Bhajan Lal [(1992) Supp (1) SCC 335]** and **Maghavendra Pratap Singh @ Pankaj Singh Vs. State of Chhatisgarh [2023 INSC 415].**

21. Learned senior counsel further submitted that in

Bhajan Lal case (supra), the Hon'ble Apex Court had set out, by way of illustration, the broad categories of cases in which the inherent power under Section 482 Cr.P.C. could be exercised. Para 102 of the decision reads as follows:

> "**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 give 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 informant 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 persons 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."

22. In this context, Mr. Shrivastava, also drew the attention of this Court towards para 38 of the judgment as available through **Maghavendra Pratap Singh case (supra)**, which reads as under:

"**38.** The Investigating Officer is the person tasked with determining a direction, the pace, manner and method of the investigation. In **Amarnath Chaubey v. Union of India (2021) 11 SCC 80,** it was observed that the police has a primary duty to investigate upon receiving the report of the commission of crime. In **Manohar Lal Sharma v. Union of India (2014) 2 SCC 532,** this Court observed that one of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences to bring the offender to the book and facilitate the ultimate search for truth is one of the important duties the police has to perform. This is a statutory duty under the Cr.P.C. and is also a constitutional obligation ensuring the maintenance of peace and the upholding of rule of law."

23. Contrary to the aforesaid submissions, it is submitted by O.P. No. 4, who is appearing in-person, that

petitioners are taking a plea of *alibi* that they were not present on the given date and time at Patna to execute the contract and received the money. It is submitted that this fact cannot be ascertained at this stage rather this is a matter of evidence and can be ascertained during the trial only and, therefore, on this ground, this petition is liable to be dismissed.

24. It is further submitted that a complaint case was filed earlier to the FIR, but the same was dismissed without any inquiry and, therefore, same is of no bearing to the present FIR, moreover, this fact was also only looked into during the trial. It is submitted that he did not proceed with the complaint case initially on the basis of assurance given by petitioners to resolve the issue shortly, but every time they failed to comply with their promise, it suggested *prima facie* that from the very inception of the transaction the petitioner were under the intention of cheating.

25. It is also submitted that considering all such aspects, the police find the allegation true and submitted a charge-sheet against the petitioners for the offences

punishable under sections 406, 420/34 of the I.P.C. through charge-sheet No. 158/2025 dated 28.02.2025.

26. It is pointed out that upon perusal of materials as collected during investigation, the learned jurisdictional Magistrate took cognizance against petitioners finding the case *prima facie* true for the offences under Sections 406/420/34 of the IPC vide order dated 05.03.2025 (order under challenge).

27. It is submitted by opposite party no. 2/informant that he was always ready and is even ready now to pay the balance of Rs. 55 Lakhs of the **total consideration amount of Rs. 19,45,00,000/- (Rupees Nineteen Crores Forty Five Lakhs only)** for execution of the sale deed, but to frustrate the cause, instead of accepting the balance amount, petitioners approached the City Civil Court at Mumbai (Maharashtra), where an interim order was obtained against him not to alienate the property without any occasion.

28. It is pointed out that neither petitioners are accepting the balance of Rs. 55 Lakhs nor executing the sale deed for the simple reason that the property for which the

deal was done in the year 2016, now becomes Rs. 60-70 Crores as per market value. It is submitted that the filing of a civil suit before the Civil Court at Mumbai was only with the oblique motive to give the dispute a civil colour to create a defence that a civil suit is pending for the property and further to make the property disputed.

29. In furtherance of the aforesaid submission as O.P. No. 4/informant is ready to pay Rs. 55 Lakhs in terms of the agreement dated 15.11.2018, Mr. Shrivastava, learned senior counsel for the petitioners, took an adjournment to discuss this issue with the petitioners as to whether they are ready to execute the sale deed. But, subsequently, it was informed to this Court by Mr. Shrivastava that now the petitioners are neither ready to execute the sale deed even after receiving Rs. 55 Lakh nor willing to pay 15% interest since 2016 on the received amount for the reason that they have been dragged into the criminal case for no reason.

30. It is further submitted by the informant/O.P. No.4, that at the time of selling of the property the petitioners were in dire need of money for their business revivals and

after post Covid-19, when the property got a boom, they changed their mind even after receiving almost the entire consideration amount and thereafter made fair transaction a disputed one after lodging the civil case being Civil Suit No. 2936/2024 at Mumbai, where an order was passed that O.P. No. 4/informant would not alienate the property. The lodging of the aforesaid civil case was completely uncalled for and unwarranted and was in a very planned and formulated manner to mitigate criminal offence by giving a colour of civil dispute. The lodging of a civil case was in itself a cheating step to delay the execution of the sale deed.

31. While concluding argument, it is submitted by the informant that what would be more cheating is that the petitioners are neither executing the sale deed, even after receiving almost the entire consideration amount i.e. Rs. 18,84,00,000/- against Rs. 19,45,00,000/- nor returning the amount with 15% interest since 2016.

32. It is submitted that on its face, the dispute appears civil in nature because it was painted so by the petitioners but the conduct of the petitioners from a very

inception of the deal is sufficient to make out a case of cheating and criminal breach of trust. It is also pointed out that as per established principle of law, civil disputes and criminal proceeding can both co-exist. Learned counsel relied upon the legal report of the Hon'ble Supreme Court as available through **Devendra and Others Vs. State of Uttar Pradesh and Anr.** reported in **(2009) 7 SCC 495 and S.N. Vijayalakshmi & Ors. Vs. The State of Karnataka and Anr. [2025 SCC Online SC 1575].**

33. It would be apposite to reproduce **para '13'** of **Devendra case (supra),** which reads as such:

> "**13.** There cannot, however, be any doubt or dispute whatsoever that in a given case a civil suit as also a criminal proceeding would be maintainable. They can run simultaneously. Result in one proceeding would not be binding on the court determining the issue before it in another proceeding. In ***P. Swaroopa Rani*** **v.** ***M. Hari Narayana*** **[(2008) 5 SCC 765 : (2008) 3 SCC (Cri) 79]** the law was stated, thus: (SCC p. 769, para 11)
>
> > *11.* It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case."

34. It would also be apposite to reproduce **para '42'** of **S.N. Vijayalakshmi case (supra)**, which reads as under:

> "**42.** Coming to the second question i.e., whether civil and criminal proceedings both can be maintained on the very same set of allegations *qua* the same person(s), the answer

stricto sensu, is that there is no bar to simultaneous civil and criminal proceedings. If the element of criminality is there, a civil case can co-exist with a criminal case on the same facts. The fact that a civil remedy has already been availed of by a complainant, *ipso facto*, is not sufficient ground to quash an FIR, as pointed out, *inter alia*, in *P Swaroopa Rani* v. *M Hari Narayana*, (2008) 5 SCC 765 and *Syed Aksari Hadi Ali Augustine Imam* v. *State (Delhi Admn.)*, (2009) 5 SCC 528. The obvious caveat being that the allegations, even if having a civil flavour to them, must *prima facie* disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the process of the Court, which the Courts have always tried to prevent by putting a stop to any such criminal proceeding, where civil proceedings have already been instituted with regard to the same issue, and the element of criminality is absent. If such element is absent, the prosecution in question would have to be quashed. In this connection, ***Paramjeet Batra*** **v.** ***State of Uttarakhand*****, (2013) 11 SCC 673** can be referred to:

> '***12.*** *… 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.*' (emphasis supplied)"

35. No doubt, the dispute arises in the background of the purchase of property by informant/O.P. No.4 which is located in the prime location of Mumbai, for which the petitioners admittedly received altogether Rs. 18.84 Crores against consideration of Rs. 19,45,00,000/-. It also transpires that on the date of agreement or on the date of

receiving money, the occupancy certificate was not issued in favour of the petitioners so as to enter into the deal, for which O.P. No. 4 was kept in dark as the occupancy certificate could be obtained only on **03.05.2021**.

36. During the course of proceedings, it also appears that petitioners are adamant as not to return the admitted received amount of Rs. 18,84,00,000/- with interest of 15% per annum to O.P. No. 4 since 2016, or alternatively to execute the sale deed of the property in issue after receiving the balance amount of Rs. 55 Lakhs, which the informant/O.P. No.4 is ready to pay any time.

37. This Court fails to understand that how the petitioners can be adamant about both aforesaid options, which certainly implies *prima facie* their intention *qua* cheating by importing the element of criminality.

38. There is no bar in view of **S.N. Vijayalakshmi case (supra),** that the civil case and the criminal case cannot co-exist. Hence, considering the aforesaid discussed conduct of petitioners, there is no occasion to interfere with the impugned cognizance order dated 05.03.2025 passed by

learned Judicial Magistrate - 1st Class, Patna, and, therefore, this petition stands dismissed at the admission stage itself, being devoid of any merit.

39. In view of the aforesaid, no separate order is required to pass on pending I.A. No. 01 of 2025, and, the same also stands disposed of.

40. Consequent upon dismissal of petition as above, learned trial court is directed to proceed with the trial on a day-to-day basis as per the order mentioned at paragraph '8' of Cr.W.J.C. No. 158/2023 dated 19.06.2025, as discussed aforesaid, which was further affirmed by the Hon'ble Supreme Court through SLA (Crl.) No. 9560/2025 dated 04.07.2025.

41. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**25.07.2025**
Uploading Date	**18.08.2025**
Transmission Date	**18.08.2025**