IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51237 of 2018

Arising Out of PS. Case No.-359 Year-2012 Thana- BARAUNI District- Begusarai

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Amar Kumar S/o Sri Baleshwar Ram, R/o Village- Bashi, P.S.- Bhagwanpur, District- Begusarai. At present R/o Village- Mahna, P.S.- Barauni, District- Begusarai.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr
2. Md. Afzal Hussain Branch Manager, State Bank of India, Barauni Refinery Campus, P.S.- Barauni, Dist

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ravindra Kumar, Advocate
For the OP No.2(Bank)	:	Mr.Binod Bihari Sinha, Advocate
		Mr.Amarjeet Chaudhary, Advocate
For the Opposite Party/s	:	Mr.Ajit Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL JUDGMENT

Date : 23-09-2025

Heard Mr. Ravindra Kumar, learned counsel appearing on behalf of the petitioner; Mr. Binod Bihari Sinha along with Mr. Amarjeet Chaudhary, learned counsels appearing on behalf of the Bank and Mr. Ajit Kumar, learned APP for the State.

2. Learned counsel appearing on behalf of the petitioner seeks to quash the order taking cognizance dated 07.03.2018 passed by the learned CJM, Begusarai in Barauni (ROP) P.S.Case No.359 of 2012, whereby the cognizance has been taken under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code.

3. As per the allegation made in the FIR, Mr. Vijay Bundela, Director of Ms. Lakshya Bardhan Marketing (Indra Ltd.) and Lakshya Live Science Pvt. Ltd. issued a cheque bearing No.396589 dated 02.06.2011 of Rs.5 in favour of the petitioner (Amar Kumar), who is the Distributor in the Company, and the petitioner deposited the said cheque in the Bank, in the meantime, the Bank received a complaint from Mr. Kishore Bundela, Assistant Director of the Company that the cheque to be illegal but the Bank found the said cheque to be genuine and the Bank lodged FIR against the petitioner and Kishore Bundela, Assistant Director of the Company and kept the Account of the petitioner on 'Hold'.

4. Learned counsel appearing on behalf of the petitioner seeks quashing of order taking cognizance on the ground that the learned Chief Judicial Magistrate has taken cognizance in a very mechanical manner.

5. Learned counsel appearing on behalf of the petitioner submitted that the police has closed the investigation and the closure report (Final Form No.106/2015) is kept at page 23.

6. Learned counsel appearing on behalf of the petitioner is not able to give clear picture as to whether the

forensic science report was submitted.

7. The petitioner is present in the Court and he informs that after forensic science examination, certain remarks have been made in respect of the cheque, which indicated disturbance of paper fibers and printing but due to excessive disturbance of paper fibers, it has not been possible to decipher the original writings. He further informs this Court that the cheque had been sent by the Director of the Company, namely, Ms. Lakshya Bardhan Marketing (Indra Ltd.) and Lakshya Live Science Pvt. Ltd.

8. Learned counsel further submitted that Vijay Bundela, Director of the Company has not lodged any FIR nor he has made any complaint that the cheque is forged one nor the petitioner has committed any forgery. On these grounds, the learned counsel submitted that the learned Chief Judicial Magistrate in a very mechanical manner has taken cognizance against the petitioner.

9. *Per contra,* Mr. Binod Bihari Sinha, learned counsel, who has tendered his appearance on behalf of the Bank, informs this Court that the cheque having been found to be genuine but at the same time after receiving certain complaint from Kishore Bundela, Assistant Director of the Company,

account of the petitioner was kept on 'Hold' and FIR was lodged against the petitioner and Kishore Bundela, the person who had informed the Bank. After having found that the cheque is not forged, the Bank withdrew the 'Hold' and a communication was given to the Director of the Company, Vijay Bundela. Learned counsel further submitted that either Vijay Bundela or the Bank has not suffered any monitory loss and it would not be proper to proceed with the prosecution.

10. Learned APP for the State has supported the allegations alleged against the petitioner under Sections 406, 420, 467, 468 and 471 of the Indian Penal Code is prima facie made out, therefore, no interference is required.

11. Heard the parties.

12. Having considered the rival submissions made on behalf of the parties, as well as, having perused the allegations made in the FIR dated 16.10.2012 and the order taking cognizance dated 07.03.2018 under Sections 420, 467, 468, 471 and 406 of the Indian Penal Code, I have also perused the case diary in which the Investigating Officer has taken note of the forensic science examination report, in which the opinion is as under : -

> ***"Opinion"***
>
> ***The documents of the case have been carefully and thorough examined.***

2. The examination under VSC 3000 reveals that in the red enclosed portions stamped and marked Q-1 to Q-4, there are marks of mechanical erasure at places as indicated by the disturbance of paper fibers and security printing, but due to excessive disturbance of paper fibers, it has not been possible to decipher the original writings"

13. The said opinion of the Forensic Science Laboratory was given to the Investigating Officer by the wife of the complainant, as has been informed by the Investigating Officer on the basis of the materials collected in course of the investigation.

14. In course of enquiry, the Investigating Officer has recorded that there is no report of the Expert from the Forensic Science Laboratory or the cheque has been found to be forged one.

15. Section 191 of IPC deals with the fact that any extra material having been produced by the complainant or on behalf of the accused or any person, the entire investigation shall be vitiated. Section 191 of IPC is reproduced hereinafter as follows : -

"191. Giving false evidence. -Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

16. Now question arises, in such circumstances, in absence of any complaint made by the Director of the Company

(Mr. Vijay Bundela) and the Assistant Director for the aforesaid reason has been made accused in the present FIR after having been found his complaint to be false, can further proceeding against the petitioner be allowed ?

17.The intention to cheat and commit fraud whether right from its inception which was equally shared between both the parties i.e. the petitioner and the Director of the Company having issued the cheque.

18. The ingredients of cheating, fraud, deceiving or inducement is contained in Section 415 of IPC, the same is reproduced herein after:-

> ***"Section 415-. Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit 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, is said to "cheat".***

19. Now the question which arises at this junction, when after receiving complaint from the Assistant Director (co-accused), the bank immediately freezed the account and thereafter the account was de-freezed could be construed as amounting to fraud committed by the petitioner. In absence of any complaint made by the drawer whether crime under Section 420 is made out? The Hon'ble Supreme Court in ***Paragraph***

no.13 of the case of ***Ram Preeti Yadav vs U.P. Board Of High School and Ors.*** reported in ***(2003) 8 SCC 311*** has held as follows :

> ***"13. Fraud is a conduct either by letter or words, which induces the other person, or authority to take a definite determinative stand as a response to the conduct of former either by words or letter. Although negligence is not fraud but it can be evidence on fraud."***

20. Section 17 of Indian Contract Act, 1872 defines 'Fraud' as -

> ***17. "Fraud" defined.— "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent2, with intent to deceive another party thereto of his agent, or to induce him to enter into the contract:—(1) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;(2) the active concealment of a fact by one having knowledge or belief of the fact;(3)a promise made without any intention of performing it;(4) any other act fitted to deceive;(5) any such act or omission as the law specially declares to be fraudulent."***

21. The Apex Court while consiering the contents of ingredients of Sections 467 and 468 of IPC in the case of ***Suresh C. Singhal & Ors. vs State of Gujarat & Ors***. reported in ***CRIMINAL APPEAL NO. 3862 OF 2024*** has observed in para 18 as under:

> *"The insistence on the part of the CBI to prosecute the Appellants appears to be primarily on the assumption that offences under Sections 420, 419, 467, 468 and 471 of IPC have been committed. The said offences and the proceedings arising therefrom, when seen, some of those offences are compoundable and with the matter having been amicably resolved, the Court ought to have proceeded to quash the same*."

22. This Court observes that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other. The Apex Court while considering the content of ingredients of Sections 406 and 420 of the Indian Penal Code in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024***, after discussing the earlier law laid down in several cases, has observed in paragraphs no. 35, 36 and 37 *inter alia* as follows:

Difference between criminal breach of trust and cheating

35. *This Court in its decision in S.W.*

Palanitkar v. State of Bihar S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under :

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

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

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

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

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

(2) The person entrusted:

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

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

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

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

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

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

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

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

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

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

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

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

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

24. In absence of criminality and considering the facts and circumstance of the case it appears that the matter is purely civil in nature and further proceeding against the petitioner will be abuse of process of law. 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.

25. Law in this regard is well settled by the Apex Court in the case of ***Paramjeet Batra v. State of Uttarakhand*** reported in ***(2013) 11 SCC 673***, in which, the Apex Court in paragraph no. 12 has held as follows:

*"**12.** While exercising its jurisdiction under Section 482 of the Code the High Court has to*

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

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

26. The Apex Court has cautioned that the inherent power under Section 482 Cr.P.C. should be exercised sparingly and with great caution, and that the power should not be used as an alternative to the statutory remedies available to the parties. The Apex Court has also held that the inherent powers should be used to interfere with the jurisdiction of the lower courts or to scuttle a fair investigation or prosecution. The Apex Court in the case of ***State of Haryana v Bhajan Lal,*** reported in, ***1992 Supp (1) SCC 335,*** in paragraph no. 102, has laid down conditions for quashing court proceedings in relation to criminal cases.

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.

27. The record reveals that the FIR has been lodged

by the Branch Manager of the Bank concerned and he has given instruction to the learned counsel appearing on behalf of the Bank that the Bank has not suffered any loss and the account holder has not complained of any loss. In such circumstances, the FIR instituted on the basis of the complaint of the Assistant Director of the Company with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

28. Accordingly, entire proceeding in connection with Barauni (ROP) P.S.Case No.359 of 2012 and also the order cognizance order dated 07.03.2018 passed by the learned Chief Judicial Magistrate are set aside and quashed.

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

(Purnendu Singh, J)

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AFR/NAFR	AFR
CAV DATE	NA
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