IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51234 of 2024
Arising Out of PS. Case No.-4049 Year-2023 Thana- PATNA COMPLAINT CASE District-Patna

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Chandra Prakash S/O Late Sukhdeo Prasad Sah R/O R.K. Puram, Khagaul Road, Saguna More, Behind Hi-Tech Hospital Danapur, Patna-801503.

... ... Petitioner

Versus

1. The State of Bihar
2. Mrs. Leena Sharma, wife of Late Arvind Kumar Sharma, R/o - C/o Suman Sharma, House No. D/45, Birla Colny, Police Station-Phulwarisharif, Distt.- Patna.

... ... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Rana Vikram Singh, Advocate Mr. Sanjeev Kumar, Advocate Mr. Pravashankar Mishra, Advocate Ms. Jyoti Singh, Advocate
For the State	:	Mr. Nand Kishore Prasad, APP
For the O.P. No. 2	:	Mr. Sunil Kumar, Advocate Mr. Binod Kumar Sinha, Advocate Mr. Ajay Kumar Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

C.A.V.JUDGMENT

Date : 28-03-2025

Heard Rana Vikram Singh, learned counsel appearing for the petitioner and Mr. Sunil Kumar, learned counsel for the complainant/opposite party no. 2.

2. The present petition has been preferred for quashing the order dated 31.08.2023 passed in connection with Complaint case No.4049(c)/2023, whereby the learned Chief Judicial Magistrate, Patna has been pleased to take cognizance of offence under Section 420 of Indian Penal Code

vide order dated 31.08.2023 and issued summons against the petitioner.

3. The Complaint case in brief is that the complainant executed an agreement for sale on 03.02.2020 for booking of 3 flats and car parking space in 'Sunit Ambrosia Project', which is the housing project of M/s Sunit Housing Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as "Company") for total consideration amount of Rs. 29.25,000/- Rs. 27,75,000/- and Rs. 27,37,500/- total Rs.88,59,375/- for which the payment was made in 2020. The complainant alleged that due to death of her husband she could not repay the balance amount. The husband of the complainant and the accused/petitioner knew each other. The accused petitioner did not give clear picture about payment and refused to hand over the flat taking advantage of the death of husband of the complainant. It is further alleged that despite lapse of two years and payment of 40% of total consideration amount, the possession was not handed over to the complainant/opposite party no.2. Even legal notice could not bring result and the

Police has not lodged FIR. The complainant has paid total amount of Rs.53,41,000/-.

4. In furtherance of aforesaid complaint, the complainant was examined on solemn affirmation, wherein he has supported the averments made in the complaint petition. The witnesses have also deposed before the learned Court on 15.05.2023 and 29.05.2023. Consequent upon, vide order dated 31.08.2023, the learned Chief Judicial Magistrate, Patna has taken cognizance of offences under Section 420 of I.P.C. and issued summons against the accused/petitioner.

5. Mr. Rana Vikram Singh, learned counsel appearing for the petitioner submitted that flats in question have been booked by the complainant on 27.01.2020 and paid booking amount Rs. 2,00,000/- for each of the flat i.e. Rs. 6,00,000/- through cheque No. 731693 dated 27.10.2020 drawn on J & K Bank, Sector 18, Noida (U.P.) by her husband, late Arvind Kumar Sharma, whereafter three separate un-registered agreements for sale (on Stamp paper of Rs. 1000/-) had been executed between the complainant and company on 03.02.2020 for proposed building under the name and style

of "Sunit Ambrosia" for three flats. Later on, in the month of July, 2020, Rs. 20,00,000/- was also received by the company from the husband of the complainant, which makes the total receiving amount of Rs. 26,00,000/-. It appears from the complaint that on 16.07.2020 for each of the flat No. 101, 102 and 213 total of 27,00,000/- was transferred to the Company's account and also above that a transfer of Rs. 20,00,000/- was also made making total transfer to petitioner Rs. 53,41,000/-. The amount, as aforesaid paid by the complainant and her husband was not disputed by the petitioner.

6. It is submitted further submitted by Mr. Singh, that on 21.10.2021, a letter of intimation to clear dues against complainant's booking flat nos. 101, 102 & 213 in the project 'Sunit Ambrosia, Danapur, Patna has been issued by the Company, but no response was made by the complainant. The another intimation was made on 22.11.2021 as to clear dues within next 15 days, failing which the booking of flat may lead to its cancellation in the aforesaid project. Subsequently, final reminder was also issued by way of notice

on 26.12.2021 to the complainant with a caveat that any further failure may lead to cancellation of complainant's booking of flat Nos. 101, 102 & 213 in the project namely, Sunit Ambrosia, Danapur, Patna, but no balance payment was made by the complainant and, thereafter, on 27.01.2022, a final notice regarding intimation of cancellation of complainant's booking of flat nos. 101, 102 & 213 was given with condition that if complainant fails to pay the dues latest by 15.02.2022, booking of flats shall be cancelled. Thereafter, finally on 22.02.2022, the intimation of cancellation of booking of flats was duly intimated to the complainant.

7. It is submitted by Mr. Singh that all of a sudden, the father of complainant came at the site and inquired about status of booking flat Nos. 101, 102 & 213 and, accordingly, he was also informed that booking already stands cancelled. Surprisingly, after inspection by her father, on 09.12.2022, the company received e-mail from the complainant enquiring about her flats, which was replied by the Company on 13.12.2022 on e-mail of the complainant and a request was

made to provide the account details to refund the deposited amount within ten (10) days and, finally, the Company started to refund in the account of the complainant as provided by her father since 14.12.2022, where through three transactions, each of Rs. 2 Lakhs total Rs. 6 Lakhs and on 26.12.2022, two transactions of Rs. 7 Lakhs each and one of Rs. 6 Lakhs total of Rs. 26,00,000/- was refunded to the complainant for which an intimation through e-mail was made to the complainant.

8. It is submitted by Mr. Singh that on 04.01.2023, all of a sudden, without any prior information and discussion, the complainant deposited Rs. 26,00,000/- in the account of Company and further deposited Rs. 20,00,000/- in the same account.

9. Mr. Singh submitted that booking of the flats of the complainant was already cancelled much prior to these transactions and, thereafter, the developer Company has sold it to another allottee. It is submitted that as the flat, which was booked by the complainant upon cancellation, has already sold to another allottee, it is next to impossible to allot again

in favour of the complainant and just to create a pressure upon the petitioner, the present criminal complaint has been filed, without having any occasion.

10. It is submitted by learned counsel that when the booking amount was returned and agreement was cancelled, therefore, there was no occasion to re-deposit the said amount in the bank account of the petitioner without any further discussion or extension.

11. Mr. Singh, while arguing further, submitted that for possession of flats, the complainant has already moved before the court of learned Real Estate Regulatory Authority (in short 'RERA'), Patna, Bihar being Case No. RERA/CC/114/2023, which was dismissed on merit vide order dated 06.5.2024. It is submitted that before RERA, complainant suppressed the facts of various correspondences and refund of amount to her. It is pointed out that there is no latches on the part of Company or petitioner rather it is the fault on the part of complainant herself, which now she want to cover-up by creating an undue pressure by lodging the present criminal complaint case. It is submitted that petitioner

is anytime ready to return the amount received by the Company with reasonable interest to the complainant.

12. Summing up the argument, it is submitted by Mr. Singh that none of the legal ingredients appears available in the present case as to attract cognizance for the offence under Section 420 of the I.P.C. by the learned Magistrate, as it can be said safely out of complaint petition itself that the petitioner and petitioner's Company was not fraudulent or acted with dishonest intention from very inception of promise. It is a case of breach of contract on the part of complainant for which the other legal remedy is available, which complainant is availing and as so the complainant preferred an appeal before the Appellate Authority against the dismissal order of her case by RERA as discussed above.

13. In support of his submission, Mr. Singh relied upon the legal report of Hon'ble Supreme Court as available through **Hriday Ranjan Prasad Vs. State of Bihar [(2000) 4 SCC 168]; S.W. Palanitkar and Ors. Vs. The State of Bihar and Anr. [(2002) 1 SCC 241]; Usha Chakraborty and Anr. Vs. State of West Bengal and**

Anr. [2023 SCC Online SC 90]; and **R. Kalyani Vs. Janak C. Mehta & Ors [2009 (1) SCC 516].**

14. It is further pointed out by Mr. Singh that as civil remedy is available to the complainant, therefore, filing of present criminal complaint was of no occasion and same be also liable to be dismissed on this score alone. In support of this submission, Mr. Singh relied upon the legal report of Hon'ble Supreme Court as available through **Sushil Sethi and Anr. Vs. State of Arunachal Pradesh and Ors.** reported in **(2020) 3 SCC 240.**

15. It is also submitted that present petition is not supported by affidavit of opposite party no. 2 to invoke the jurisdiction of the Magistrate and, therefore, on this ground alone the implied cognizance order is bad in the eyes of law and in support of its submission, Mr. Singh relied upon the legal report of Hon'ble Apex Court as available through **Priyanka Srivastava Vs. State of Uttar Pradesh** reported in **2015 (6) SCC 287.**

16. Another argument, which was raised by Mr. Rana Vikram Singh, that it can be gathered safely from the

impugned cognizance order that cognizance was taken only against the petitioner and not against the Company i.e. M/s Sunit Housing Private Limited, where the petitioner was working in the capacity of the Managing Director. It is submitted that on this score also cognizance order is bad in the eyes of law.

17. In view of aforesaid, it is prayed that continuing of the present criminal proceeding before the court of law is only abusing the process of court and, therefore, it deserves to be set-aside/quashed.

18. Mr. Sunil Kumar, learned counsel appearing on behalf of the complainant/O.P. No.2 submitted that due to genuine hardship as husband of O.P. No. 2 had died on 22.05.2021 due to Covid-19 at Delhi, she was not in a position to pay the balance amount, but now she is willing to pay the balance amount for the aforesaid booking of three flats to the petitioner, for which she had already paid the amount of Rs. 53,41,000/-.

19. Learned counsel for the complainant/O.P. No. 2 submitted that husband of O.P. No. 2 namely, late Arvind

Kumar Sharma and the petitioner had a joint venture in the name and style of M/s Manvi Trading Pvt. Ltd. w.e.f. 14.10.2023, where the present petitioner was one of the Director, which suggests that both parties were in good relation and they knew each other since before. It is pointed out that when petitioner failed to handover the possession, then legal notice dated 15.12.2022 was sent to the petitioner. In fact, O.P. No. 2 never received any letter of intimation regarding payment of balance amount, as submitted above, and also for the cancellation of agreement regarding booking of Flat Nos. 101, 102 & 213 in 'Sunit Ambrosia Project', and the notice which is annexed with the present petition is only manipulated documents in violation of the terms and conditions of the agreement.

20. It is also submitted that though the case of complainant/O.P. No. 2 was dismissed by RERA vide order dated 06.05.2024, against which complainant preferred an appeal before the Real Estate Appellate Tribunal, which is pending for adjudication. It is also pointed out that complainant /O.P. No. 2 communicated the petitioner on

08.12.2022, 09.12.2022, 28.12.2022 and 15.02.2023 through e-mail for clearance of her outstanding dues, but she was never responded by the petitioner or Company.

21. It is submitted that the aforesaid flats in question was sold to strangers due to mala fide intention as several vacant flats as flat no. 111, 112, 313, 411, 412, 703 & 704 available to the petitioner out of which any of the three flats may be handed over to the opposite party no. 2 as to save her being widow to suffer from irreparable injury and mental agony. It is submitted that once the agreement has been made on the ground that balance sale consideration was not paid, same could not be invalidated as opposite party no. 2 has already paid the huge amount against aforesaid allotment of three flats to petitioner and merely on the ground of non-payment of part amount, where no such demand was raised, same cannot be a ground for cancellation of allotment.

22. Here, It would be apposite to reproduce the provision of Sections 415 and 420 of the Indian Penal Code, which are the laws involved in the present case, are as under:

> "**415. Cheating.**—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". Explanation.—A dishonest concealment of facts is a deception within the meaning of this section.
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> **420. Cheating and dishonestly inducing delivery of property.—**Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

23. It is relevant to reproduce para **30 & 31** of the legal report of Hon'ble Supreme Court in **Priyanka Srivastava' case (supra),** which are are under for a ready reference:

> **"30.** In our considered opinion, a stage has come in this country where Section 156(3) Cr.P.C. applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth anvi also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.
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> **31.** We have already indicated that there has to be prior

applications under Section 154(1) and 154(3) while filing a petition under Section 156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an the application under Section 156(3) be supported by an affidavit so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

24. It would be apposite to reproduce para 7.1, 7.2, 7.5, 8.1 and 8.2 of **Sushil Sethi case (supra)**, which runs as under:

"7.1. In **State of Haryana v. Bhajan Lal, [1992 Supp (1) SCC 335],** in para 102, this Court has categorised the cases by way of illustration wherein the powers under Article 226 or the inherent powers under Section 482 CrPC could be exercised either to prevent the abuse of the process of any court or otherwise to secure the ends of justice. In para 102, it is observed and 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 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 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 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 Act concerned (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 Act concerned, 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."

7.2. In **Vesa Holdings (P) Ltd. v. State of Kerala. [(2015) 8 SCC 293].** it is observed and held by this Court that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. It is further observed and held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is further observed and held that even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be said to have been made out. It is further observed and held that the real test is whether the allegations in the complaint disclose the criminal offence of cheating or not.

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7.5. In ***Sharad Kumar Sanghi v. Sangita Rane*, [(2015) 12 SCC 781],** this Court had an occasion to consider the initiation of criminal proceedings against the Managing Director or any officer of a company where company had not been arrayed as a party to the complaint. In the aforesaid decision, it is observed and held by this Court that in the absence of specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is further observed and held that when a complainant intends to rope in a Managing Director or any officer of atompany, it is essential to make requisite allegation to constitute the vicarious liability.

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8.1. As observed hereinabove, the charge-sheet has been filed against the appellants for the offences under Section 420 read with Section 120-B IPC. However, it is required to be noted that there are no specific allegations and averments in the FIR and/or even in the charge-sheet that fraudulent and dishonest intention of the accused was from the very beginning of the transaction. It is also required to be noted that contract between M/s SPML Infra Limited and the Government was for supply and commissioning of the Nurang Hydel Power Project including three power generating units. The appellants purchased the turbines for the project from another manufacturer. The company used the said turbines in the power project. The contract was in the year 1993. Thereafter in the year 1996 the project was commissioned. In the year 1997, the Department of Power issued a certificate certifying satisfaction over the execution of the project. Even the defect liability period ended/expired in January 1998. In the year 2000, there was some defect found with respect to three turbines. Immediately, the turbines were replaced. The power project started functioning right from the very beginning-1996 onwards. If the intention of the company/appellants was to cheat the Government of Arunachal Pradesh, they would not have replaced the turbines which were found to be defective. In any case, there are no specific allegations and averments in the complaint that the accused had fraudulent or dishonest intention at the time of

> entering into the contract. Therefore, applying the law laid down by this Court in the aforesaid decisions, it cannot be said that even a prima facie case for the offence under Section 420 IPC has been made out.
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> **8.2.** It is also required to be noted that the main allegations can be said to be against the company. The company has not been made a party. The allegations are restricted to the Managing Director and the Director of the company respectively. There are no specific allegations against the Managing Director or even the Director. There are no allegations to constitute the vicarious liability. In Maksud Saiyed v. State of Gujarat [Maksud Saiyed v. State of Gujarat, (2008) 5 SCC 668: (2008) 2 SCC (Cri) 692), it is observed and held by this Court that the Penal Code does not contain any provision for attaching vicarious liability on the part of the Managing Director or the Directors of the company when the accused is the company. It is further observed and held that the vicarious liability of the Managing Director and Director would arise provided any provision exists in that behalf in the statute. It is further observed that the statute indisputably must contain provision fixing such vicarious liabilities. It is further observed that even for the said purpose, it is obligatory on the part of the complainant to make requisite allegations which would attract the provisions constituting vicarious liability. In the present case, there are no such specific allegations against the appellants being Managing Director or the Director of the company respectively. Under the circumstances also, the impugned criminal proceedings are required to be quashed and set aside."

25. It would further be apposite to reproduce para 6, 7, 8 & 10 of **Usha Chakraborty case (supra)**, which reads as under:

> "6. In **Paramjeet Batra v. State of Uttarakhand & Ors.**, this Court held:-
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> > 12. While exercising its jurisdiction under Section 482 of the Code of 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 the 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."

7. In **Vesa Holdings Private Limited and Anr. v. State of Kerala and Ors.**, it was held that: -

"13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view the complaint does not disclose any criminal offence at all. The criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 of the Criminal Procedure Code to quash the proceedings."

8. In **Kapil Aggarwal and Ors, v. Sanjay Sharma and Ors.,** this Court held that Section 482 is designed to achieve the purpose of ensuring that criminal proceedings are not permitted to generate into weapons of harassment.

10. In **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others**, a three Judge Bench of this Court laid down the following principles of law:-

"57. From the aforesaid decisions of this Court, right from the decision of the Privy Council in the case of Khawaja Nazir Ahmad (supra), the following principles of law emerge:

i) Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code to investigate into cognizable offences,

ii) Courts would not thwart any investigation into the cognizable offences;
iii) However, in cases where nu cognizable offence or offence of any kind is disclosed in the first information report the Court will not permit an investigation to go on;
iv) The power of quashing should be exercised sparingly with circumspection, in the 'rarest of rare cases" (The rarest of rare cases standard in its application fix quashing under Section 482 Cr.P.C. is not to be confused with the norm which has been formulated in the context of the death penalty, as explained previously by this Court);
v) While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint
vi) Criminal proceedings ought not to be scuttled at the initial stage;
vii) Quashing of a complaint/FIR should be an exception and a rarity than an ordinary rule;
viii) Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities. The inherent power of the court is, however, recognised to secure the ends of justice or prevent the above of the process by Section 482 Cr.P.C.
ix) The functions of the judiciary and the police are complementary, not overlapping;
x) Save in exceptional cases where non-interference would result in miscarriage of justice, the Court and the Judicial process should not interfere at the stage of investigation of offences;
xi) Extraordinary and inherent powers of the Court do not confer an arbitrary Jurisdiction on the Court to act according to its whims or caprice;
xii) The first information report is not an encyclopedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to abuse of process of

> law. During or after investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure:
> xiii) The power under Section 482 Cr.P.C. is very wide, but conferment of wide power requires the court to be cautious. It casts an onerous and more diligent duty on the court:
> xiv) However, at the same time, the court, if it thinks fit, regard being had to the parameters of quashing and the self-restraint Imposed by law, more particularly the parameters laid down by this Court in the cases of **R.P Kapur** (supra) and **Bhajan Lal** (supra), has the Jurisdiction to quash the FIR/complaint; and
> xv) When a prayer for quashing the FIR is made by the alleged accused, the court when it exercises the power under Section 482 Cr.P.C., only has to consider whether or not the allegations in the FIR disclose the commission of a cognizable offence and is not required to consider on merits whether the allegations make out a cognizable offence or not and the court has to permit the investigating agency/police to investigate the allegations in the FIR."

26. Lastly, in paragraph '41' of **R. Kalyani' case (supra),** what the Hon'ble Apex Court has held, is being reproduced hereunder for a ready reference:

> "41. If a person, thus, has to be proceeded with as being variously liable for the acts of the company, the company must be made an accused. In any event, it would be a fair thing to do so, as legal fiction is raised both against the company as well as the person responsible for the acts of the company."

27. From the aforesaid legal discussions, it transpires that as to established an offence for cheating, three essential

legal components are required, which are (i) There must be inducement; (ii) That inducement must lead to promise; (iii) This promise must lead to delivery of property; and (iv) At the time of making the promise the maker of the promise must have a dishonest and fraudulent intention.

28. From the given set of facts, the ingredients of inducement, promise and dishonest intention which are a *sine qua non* to attract an offence of cheating punishable under section 420 of the IPC are not appearing convincing.

29. From the submissions of learned counsel appearing for the opposite party no. 2 and also from contents of his counter affidavit, it cannot be said that there was dishonest intention or inducement on part of petitioner. Both parties are well acquainted with each other prior to lodging this case as they are business partners. Admittedly, due to death of the husband of O.P. No. 2 out of financial hardship, the payment was not made on time. O.P. No. 2 raised all such issues before RERA and the matter is sub-judice before the Real Estate Appellate Tribunal against dismissal order dated 06.05.2024 as passed by RERA, where O.P. No. 2 loosed her

case.

30. The sum and substance of the submission suggests that dispute between the parties are civil in nature out of contractual obligation, where remedy is available with civil side, which opposite party no. 2 is already availing as aforesaid. From the impugned order, it is apparent that cognizance was taken against this petitioner only not against the company to which the payment was made. The complaint in issue is also not appears supported by affidavit as to invoke the jurisdiction of learned Magistrate in view of **Priyanka Srivastava's case (supra).**

31. In view of all such facts, continuing with the present criminal proceeding before learned trial court is nothing but an abuse of the process of the court of law, where prima-facie civil dispute was given a colour of criminal case. Hence, impugned order dated 31.08.2023 passed by learned Judicial Magistrate - 1st Class, Patna in connection with Complaint Case No. 4049(C) of 2023 with all its consequential orders *qua* petitioner is hereby quashed/set-aside.

32. Accordingly, this petition stands allowed.

33. Before closing the judgment, in view of undertaking of petitioner, which is the part of petition itself and as such supported through his affidavit, it is made clear and so directed that the amount, which has been received by the petitioner from the opposite party no. 2 and her husband (since died) total amounting to Rs. 53,41,000/-, shall be returned to opposite party no. 2 with an interest of 5% per annum from the date of filing of the present complaint i.e. 25.04.2023, within four weeks from the date of demand as raised by O.P. No. 2.

34. In case of non-payment of the aforesaid amount to the opposite party no.2 within the aforesaid prescribed time period, the petitioner shall be liable to pay interest of 10% per annum, on aforesaid amount of Rs. 53,41,000/- from the date of the filing of present complaint.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	AFR
CAV DATE	19.02.2025
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