

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56863 of 2021

Arising Out of PS. Case No.-122 Year-2020 Thana- THAKRAHA District- West Champaran

1. ASHOK SINGH Son of Late Sri Raj Kishore Singh Resident of House No. 110, Balaji Nagar, P.S.- Pilani, Distt.- Bhopal, Madhya Pradesh, Native of village - Shikta, Badgaon (Musrayi Tola), P.S.- Kubersthan, Distt.- Kushinagar, UP
2. Kaushalya Singh @ Kaushalya Wife of Ashok Singh Resident of House No. 110, Balaji Nagar, P.S.- Pilani, Distt.- Bhopal, Madhya Pradesh, Native of village - Shikta, Badgaon (Musrayi Tola), P.S.- Kubersthan, Distt.- Kushinagar, UP

... .. Petitioners

Versus

1. The State of Bihar
2. Brijendra Kumar Son of Late Pram Hans Singh Resident of village - Dhoom Nagar, Thakraha, P.S.- Bagaha, West Champaran.

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Ashhar Mustafa, Advocate
For the State	:	Mr. Md. Arif, APP
For the Opp. Party No.2:		Mr. Ramakant Sharma, Sr. Advocate
		Mr. Rajesh Kumar, Advocate
		Mr. Avinash Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. JUDGMENT
Date : 26-06-2025

The present application is preferred invoking the inherent jurisdiction of this Court under section 482 of the Code of Criminal Procedure, 1973 praying for quashing the F.I.R. registered *vide* Thakraha P.S. Case No.122 of 2020 registered on 30.11.2020 for the offences under sections 406, 420, 467, 468, 504 and 506 read with section 34 of the Indian Penal Code.

2. The aforesaid F.I.R was instituted based on



the written complaint dated 30.11.2020 by informant - Brijendra Kumar (opposite party no.2). The brief facts relevant for the present application is that the informant being a resident of West Champaran district was engaged in agricultural work in his village. It is alleged that a person from his maternal village (*nanihal*) situated in the district of Siwan, namely, Chandra Bhushan Singh, who was working as L.I.C agent in Bhopal often used to visit the native village of the informant and therefore, the informant came in contact with him, as his acquaintance grew, the informant started visiting Bhopal where the aforesaid Chandra Bhushan Singh was working. Being an L.I.C. agent, Chandra Bhushan Singh had opened multiple insurance policies of railway staffs and for collecting the premium installments of such policies, he often visited Bhopal railway station, where the informant would also accompany him. It is further alleged that in the course of accompanying Chandra Bhushan Singh to Bhopal railway station, in the year 2004, the informant met one Ashok Singh (petitioner no.1) who was working as a T.T.E. in railway and was a resident of village-Shikta Badgaon, P.S.- Kubersthan, District- Kushinagar (UP) which is situated at a distance of about 15 Km. from the native village of the informant. Whenever, the petitioner no.1



used to visit his native village, he used to call the informant to meet him. It is stated that with time the informant became acquainted with the petitioner no.1.

2.1. It is alleged that in the year 2019 the petitioner no.1 had told the informant that he had multiple connections with the higher officials of the Indian Railways and had assured him that he could help him in getting the license for opening the shops at railway stations. The petitioner no.1 had further asked the informant to ask some persons to join as partners to facilitate the application process. It is further alleged that the petitioner no.1 had demanded around Rs.51 lakhs in the name of surcharge and other expenses for allocation of the aforesaid license for the shops. Since the informant did not have the amount demanded by the petitioner no.1, he borrowed an amount of Rs.31,00,000/- from one of his friends, namely, Deepak Sarraf, which was transferred in the bank account of the informant. The informant also borrowed Rs.14,00,000/- from his friends with an assurance that they would become partners at the licenced vendor shop, once the licence is allocated in proportion to their contribution towards the total amount.

2.2. It is next alleged that on 24.07.2019, the petitioner no.1 and his wife (petitioner no.2) came to the village



of the informant to collect the amount and in presence of several persons, the informant gave an amount of Rs.35,00,000/- to the petitioner no. 1 and drew a receiving agreement on a stamp paper of Rs.1000/-. It is also alleged that since Rs.10,00,000/- could not be withdrawn from the bank account of the informant, he told the petitioner no.1 that he would send the same to the bank account of the petitioner no.1 however the petitioner no.1 refused citing the reason to be in Government service and alternatively asked the informant to transfer the remaining amount in the bank account of his wife. Complying to the said request of the petitioner no.1, the informant transferred the remainder amount of Rs.10,00,000/- to the bank account of the petitioner no.2 through the bank account of his niece. Therefore, it is alleged that a total of amount of Rs.45,00,000/- was given/transferred to the petitioners by the informant, which according to the informant, can be verified from the bank account statements.

2.3. It is also alleged that thereafter the petitioners assured the informant that the allocation of the licence would be finalized within two-three months, however, even after a lapse of one year and two months, they failed to get the work done and even they did not return the said amount. Ultimately, on



23.09.2020, the informant came to the residence of the petitioners in Bhopal and demanded his amount. Upon which, the petitioners assured him that the amount will be given to him on 24.09.2020. During the aforesaid time, the informant stayed at the house of Chandra Bhushan Singh and when he went to receive the amount on 24.09.2020, he was verbally abused and assaulted by the petitioners and also threatened of dire consequences, if the informant is seen again in Bhopal. Thereafter, the informant returned back to Patna on 26.09.2020 and fell sick and after recovery from the illness, he filed the present F.I.R.

3. Learned counsel for the petitioners submits that the substance of allegation in the F.I.R. is that on being dissuaded by petitioner no.1, the informant gave him Rs.45,00,000/- for the allotment of license for opening shops at railway station and the petitioner allegedly neither went through with the allotment of the license nor returned the said amount. It is thus clear that the F.I.R. was primarily registered for recovery of money which was allegedly paid by the informant to the petitioner no.1 for grant of license. The learned counsel for the petitioners emphasized that for recovery of the alleged amount paid to the petitioner no.1 the informant ought to have instituted



a money suit before competent Court.

4. Learned counsel for the petitioners submits that it is apparent from the bare reading of the F.I.R. that the basic ingredients of the offences, as alleged in the F.I.R., are not made out against the petitioners. He further submits that it goes without saying that even as per the F.I.R. version, a huge sum of money was allegedly paid to petitioner no.1 by the informant to manage and secure issuance of license for opening of shops at railways stations. As per the prosecution case, the petitioner no.1 was allegedly responsible for backdoor management for issuance of license. This exercise being on the face of it unlawful would therefore not attract the rigors of section 406 and 420 IPC. It is a settled law that if the object of transaction is illegal, it is not open for the party to either complain breach of trust or cheating.

5. Learned counsel for the petitioners also submits that although in addition to sections 406 and 420 of the Indian Penal Code, the impugned F.I.R. is also registered under sections 467 and 468 of the Indian Penal Code. However, it is a matter of record that these sections cannot even remotely be attracted in the present matter, even if the entire statements made in the F.I.R. are taken to be true. These sections are



attracted only when the case relates to forgery of a document which purports to be valuable security, however, the entire case does not involve any such allegation of forging any document by the present petitioners.

6. Learned counsel for the petitioners has placed relied upon the decision of the Hon'ble Supreme Court rendered in the case of *Mohd. Ibrahim vs. The State of Bihar*, reported in **2009 (8) SCC 751** and has submitted that in the aforesaid decision the Hon'ble Supreme Court after a detailed analysis of sections 467 and 471 referred to section 464 has explained the meaning of "forgery". Making of a false document is *sine qua non* for commission of offence under section 467 of the Indian Penal Code, and therefore the offence under section 467 is wholly not made out, the same position applies for section 468 since from reading of the F.I.R. there is not even a whisper regarding any forgery done by the petitioners. In the present case, there is not even a single averment in the entire F.I.R. to indicate towards such an act of making any false document, as against the petitioners. It becomes clear that the said section has been maliciously levelled by the prosecution to add gravity to the case of the prosecution.

7. It has been submitted by learned counsel for



the petitioners that in the FIR the informant claims that he received Rs.20,00,000/- and Rs.11,00,000/- in his bank account on 16.07.2019 and 23.07.2019 respectively which was ultimately given to the petitioners on 24.07.2019 but on careful examination of the bank statement of the informant enclosed with the FIR, it is clear that although the above amount was received in the bank account of the petitioner no.1 on the aforementioned dates, there are only followed by major withdrawals/transfers from his account between 15.07.2019 to 24.07.2019. Further, the details taken from the bank statement of the informant is a conclusive piece of evidence that although Rs. 31,00,000/- was received in his account, he had withdrawn only Rs.3,00,000/- cash, which he can possibly claim to have given to the petitioners. This account statement, thus, itself is sufficient to completely falsify and demolished the claim of the informant regarding alleged payment made to the petitioners.

8. It has further been submitted that there are unimpeachable materials available on record to substantiate that the informant designedly created forged instrument on an old Non-Judicial Stamp Paper dated 07.12.2013 to exert criminal pressure and for blackmailing the petitioners. It is important to clarify at the outset that the aforesaid security does not bear the



signature of petitioner no.1. Further, the signature of the petitioner no.1 shown therein does not even bear remote resemblance with his original signature which have been shown in the passport, pan card and bank cheque of the petitioner no.1.

9. The learned Senior Counsel appearing for the opposite party no.2 and the learned APP appearing for the State have vehemently opposed the present application and have supported the case of the prosecution. It is submitted on behalf of opposite party no.2 that the offences, as alleged in the F.I.R. are squarely made out against the petitioners and therefore they do not warrant indulgence from this Court.

10. Learned Senior Counsel for the opposite party no.2 has also submitted that in the present case, charge-sheet has already been filed and therefore, at this stage, this Court may not interfere with the F.I.R.

11. I have considered the submissions of the parties and perused the materials available on record.

12. It is admitted by the informant in his written complaint based on which present F.I,R came to be registered that he had made the transfers to the petitioners in order to obtain the licence for shops in the railway station. The petitioner no. 1 being a T.T.E., had assured the informant that the licence



would be granted in his favour through his influence and in order to secure this licence, the informant states that the petitioner no.1 had demanded a sum of Rs.51,00,000/- in the name of expenses and surcharges. If this version of the F.I.R. is taken to be true then the act of the informant in obtaining the license by giving an amount of Rs.51,00,000/- is in itself unlawful and illegal.

13. This Court in the case of ***Vijay Sharma and Anr. vs. State of Bihar***, reported as ***(2011) 1 PLJR 780 = 2010 SCC OnLine Pat 1642*** while quashing an F.I.R. under section 482 of the Cr.P.C. had observed that an illegal transaction can not form the basis for attracting the rigors of cheating and criminal breach of trust. This Court had thus observed as under:-

“8. A bare perusal of the complaint reveals that even if the allegations are correct the parties were in pari delicto to commit an offence. Employment in the Government is available on advertisement and selection and not purchased by money. Such appointment is an outright illegal appointment. If two persons agreed to commit an act which is an offence under the Penal Code, 1860 and the agreement fails because the crime could not be committed can it be said that it constitutes an offence under the Penal Code, 1860 when under the Penal Code the agreement itself was an offence.



9. *Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract ex facie being unlawful, both parties can be said to have intended to exploit the law for an illegal purpose. The reliance by the complainant on section 65 of the Indian Contract Act may create a civil cause of action as a money claim. This is a mere observation and not an affirmative finding for the maintainability of any such claim under an illegal contract which shall have to be decided on its own merits in an appropriate civil proceeding. It can however never constitute a criminal offence.*

10. *In Spring Field Financial Services Ltd. v. State of A.P. AIR 1953 SC 479, a Bench of the Andhra Pradesh High Court was dealing with the dishonour of an instrument made in payment under an illegal contract. It was held in paragraph 23, 26 and 28 as follows:-*

"23. The words "any debt or liability" would undoubtedly include a cheque drawn by any person towards a legally enforceable debt or liability of another person. The explanation makes it very clear that the debt or liability towards which the cheque is issued should be a legally enforceable debt or liability. This



would have reference to the nature of the debt or liability and not to the person against whom the debt or liability could be enforced.

26. The purchase of shares of the accused-company by the complainant-company is in contravention of the above regulations and, therefore, they are hit by the provisions of section 23 of the Indian Contract Act and, therefore, the entire transaction is void and the debt is unenforceable.

28. So, I hold that a party to an illegal contract cannot invoke the aid of the Court to have such a contract carried into effect.”

14. The informant in the present case admittedly had voluntarily parted with the money for an illegal purpose of securing a Government licence to open the shops in the railway station. In the F.I.R. the informant mentioned about the receiving agreement allegedly signed by the petitioner no.1, though the said document is heavily disputed by the petitioners. Any agreement, whether oral or written, which is for an unlawful object can not fructify into a contract.

15. In this regard section 23 and illustration (f) to section 23 of the Indian Contract Act, 1872 may be gainfully referred, which reads as under :-



“23. What considerations and objects are lawful, and what not.—*The consideration or object of an agreement is lawful, unless -
it is forbidden by law; or
is of such a nature that if permitted, it would defeat the provisions of any law; or
is fraudulent; or
involves or implies injury to the person or property of another; or
the Court regards it as immoral, or opposed to public policy.*
In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

Illustrations

...

(f) A promises to obtain for B an employment in the public service and B promises to pay 1,000 rupees to A. The agreement is void, as the consideration for it is unlawful.”

16. In the present case, as noted above, the alleged transaction is for obtaining the Government license which is an unlawful act and therefore, the agreement becomes unlawful and unenforceable. The money parted voluntarily by the informant on the basis of an agreement which was for illegally obtaining Government license could not be a lawful entrustment. Considering the peculiar facts, it appears that both



the parties are *pari delicto*. Therefore, now the informant cannot be permitted to turn around and invoke criminal action against the petitioners for cheating or criminal breach of trust, as alleged, since the actions of the informant himself is tainted. So far as the sections 467 and 468 of the I.P.C. are concerned, from a bare reading of the F.I.R, it appears that there is not even a whisper regarding what valuable security, if any, was ever forged by the petitioners. Again, from the reading of the F.I.R, none of the ingredients are made out for the offences as alleged in the F.I.R.

17. Since according to the informant, he voluntarily parted away the money for an illegal purpose of securing Government licence for the shops allegedly on the assurance of the petitioner no.1 and none of the ingredients of the offences as alleged are made out against the petitioners, it would be an abuse of the process of law to allow the present criminal case to continue. Therefore, considering the law laid down by the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal*** reported as ***1992 Supp. (1) SCC 335***, the present F.I.R. registered *vide* Thakraha P.S. Case No.122 of 2020 for the offences under sections 406, 420, 467, 468, 504 and 506 read with section 34 of the I.P.C and all other



consequential proceedings arising therefrom are hereby quashed.

18. Accordingly, the present application is allowed.

19. However, the informant/opposite party no.2 may file a money suit in the competent Court, if he so desires. If such a suit is filed then the condonation of delay in filing the aforesaid suit shall be considered in view of the fact that the informant/opposite party no.2 has been contesting this proceeding filed under the criminal law before this Court and thereafter the suit shall be decided in accordance with law.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	27.03.2025
Uploading Date	26.06.2025
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