

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58640 of 2024

Arising Out of PS. Case No.-83 Year-2023 Thana- PATNA COMPLAINT CASE District-
Patna

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Sayed Sarfaraz @ Seemab Hussain @ Simab Hussain, Son of Syed Tafazzul Hussain, R/V- Mogalpura, Hathi Khana Lane, Dorukhi Imambada, Patna City, Distt.- Patna Presently Residing At Choti Baazar, Durukhi Imambara, Post-Jhauganj, P.S.- Khajekalan, Distt.- Patna

... .. Petitioner

Versus

1. The State of Bihar
2. Dilkash Ghazala, D/o Md. Shakil R/V- Ward No. 11, Bela, Bhutahi, Sitamarhi-843317. Presently Residing at C/o Md. Salim Ansari, Mohalla-Sheikha Ka Roza (Noonka Chauraha), Post-Jhauganj, P.S.-Khajekalan, Distt.- Patna

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Senior Advocate Ms. Aditi Sharma, Advocate Mr. Gaurav Singh, Advocate
For the State	:	Mr. Vinod Shanker Modi, APP
For O.P. No.2	:	Mr. Rakesh Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-07-2025

Heard Mr. P.N. Shahi, learned senior counsel
appearing for the petitioner and Mr. Rakesh Kumar Verma,
learned counsel appearing for complainant/O.P. No.2.

2. The present application has been preferred on
behalf of the petitioner under Section 482 of the Code of
Criminal Procedure (in short 'CrPC') for quashing of the
cognizance order dated 15.05.2023 passed by the learned
Judicial Magistrate-1st Class, Patna City, in connection with
C.A. 83 of 2023 dated 19.01.2023, whereby the learned



Jurisdictional Magistrate has taken cognizance for the offences under Section 420 read with 34 of the Indian Penal Code.

3. That the prosecution case is based upon a written complaint filed by the Opposite Party No. 2/complainant, namely, Dilkash Ghazala, alleging therein that the marriage of the petitioner with the O.P. No. 2 was finalized in October 2022 and the expenses incurred in the preparation was around Rs. 11,00,000/-(Rupees Eleven Lakhs only). The date of marriage was fixed for 24.12.2022 and the place of marriage was decided to be Hotel Windsor and the expense incurred for booking the hotel came upto Rs. 2,00,000/-. It is further alleged that the petitioner was posted in the Central Bank of India at Ahmadabad and he demanded a sum of Rs. 5,00,000/- to purchase a flat at Ahmedabad on the pretext that the married couple would stay in the said flat after marriage. The complainant further alleged that the accused persons persuaded that the name of the petitioner in the wedding card to be printed as Syed Sarfaraz and not Seemab Hussain, which was objected by the O.P. No. 2 but,



they agreed to the same thinking it to be a trivial matter. It is further alleged that on the date of marriage i.e. on 24.12.2022 at Hotel Windsor at the fixed time at 7:00 pm, only 5 persons arrived as '*baarati*' which was astonishing for all the people present for the wedding, when it was informed that a total of 25 persons would be there as *baarat*. It is further alleged that when the Maulana performed the *Nikkah*, the petitioner accepted the marriage but, when the Maulana asked the petitioner and his father (accused No.2) to sign on the *Nikkahnama*, they refused and were adamant that the O.P. No. 2/complainant be sent to the petitioner and demanded Rs. 10,00,000/- before signing *Nikkahnama*. The family of the O.P. No. 2 refused the demands of the petitioners, as the petitioner and O.P. No. 2 were not married, since there was no sign on the *Nikkahnama*. The petitioner along with other accused persons have fraudulently extracted Rs. 5,00,000/- cash and the total expenses incurred in the marriage amounting to Rs. 11,00,000/- from the family of O.P. No.-2. The petitioner alongwith co-accused persons have conspired together to cheat the O.P. No. 2 and have insulted



them publicly in front of family and their friends. It is alleged that expenses have been incurred by the father of O.P. No. 2, who has travelled from Saudi Arabia and by her younger brother also, who travelled from Chennai. It is further alleged that petitioner had earlier married to a woman named Nafisa and has two children from her, who he has left in her maternal home. It is further alleged that the accused persons have conspired to deceive O.P. No.2 on the pretext of marriage to extract Rs. 11,00,000/- and have publicly insulted them in front of their relatives and friends.

4. On the basis of aforesaid complaint, the learned jurisdictional Magistrate vide order dated 15.05.2023 took cognizance for the offence punishable under Section 420 read with 34 of the IPC against the petitioner and other accused persons.

5. It is submitted by Mr. P.N. Shahi, learned senior counsel appearing for petitioner that the entire allegation is in the background of the matrimonial discord, where *nikah* was solemnized but, was not completed for the reason that the *nikahnama* was not alleged to be signed by petitioner. It is



submitted that from the factual aspect of this case, it cannot be said that the petitioner was under intention to cheat O.P. No.2 from very inception. If it had so, even ‘*nikah*’ could not be performed. It is pointed out that preparatory expenses on the occasion of *nikkah* was done by both the parties and not by O.P. No.2 only and, therefore, the factual allegation nowhere suggest that petitioner deceit the informant/opposite party no.2 as to make out a *prima facie* case punishable under Section 420 of the IPC. In support of his submission, learned senior counsel has relied upon the legal reports of Hon’ble Supreme Court as available through **Rikhab Birani and Another vs. State of Uttar Pradesh and Another [2025 SCC Online SC 823]**.

6. It is submitted by Mr. Shahi that the matter travelled upto Supreme Court, as the petitioner was granted anticipatory bail only after intervention of Hon’ble Supreme Court in the present criminal case, where the petitioner already paid Rs.11 lacs to O.P. No.2 and now, nothing survives in this matter and, therefore, continuing with present criminal proceeding would only amounting to abuse of the



process of the court of law and, therefore, the impugned cognizance order is fit to be quashed/set aside.

7. Heard learned APP and learned counsel for informant/O.P. No.2.

8. It would be apposite to reproduce the impugned order taking cognizance dated 15.05.2023 passed by learned Judicial Magistrate-1st Class, Patna City, which is as under:-

"CA 83/2023

Court of Sri Aman Kumar, Judicial

Magistrate-1st Class, Patna City

15.05.2023 Complainant present.

The present complaint case has been filed by the complainant, namely, (1) Dilkash Gazhala against the accused namely, (1) Sayyed Sarfaraz @ Seemab Hussain @ Simab Hussain @ Sayyed Taffazul (3) Samama Khatoon, u/s 406, 420, 504, 506, 120-B IPC.

Upon perusal of the routine record, including deposition of inquiry witnesses and related statements, it transpires that, prima facie, sufficient material is available on record to proceed against all the three accused persons u/s 420/34 IPC. Since in the present case there appears dishonest intention at the time as in option of making promise to money & subsequently there was a loss of property, in consequence to the complaint. (Venkatesh and Ors. V/s State of Karnataka, 2022)

Material available on record is not legal enough



to proceed against other prepared sections.

O/c is issue summon, only upon filing of
requisite by the complainant.

Put up on 29/05/23 for appearance

Sign.

JMFC”

9. It would be apposite to reproduce para-18 of the
judgment as available through **Rikhab Birani’s case**
(supra), which is as under:-

“18. Let us now examine whether the ingredients
of an offence of cheating are made out. The essential
ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false
or misleading representation or by dishonest
concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that
person to either deliver any property or to consent to
the retention thereof by any person or to intentionally
induce that person so deceived to do or omit to do
anything which he would not do or omit if he were not
so deceived; and

(iii) such act or omission causing or is likely to
cause damage or harm to that person in body, mind,
reputation or property.”

10. It would be apposite to reproduce the order
passed by Hon’ble Supreme Court in Special Leave to Appeal
(Crl.) No.1915 of 2024 dated 14.05.2024 in support of the
fact that Rs.11 lacs was paid to O.P. No.2 by petitioner,
which is as under:-



“UPON hearing the counsel the Court made the following

ORDER

1. The petitioner was agreed to pay an amount of Rs.11,00,000/- (Rupees Eleven Lakhs Only) to the complainant-Dilkash Ghazala. Hence, a demand draft bearing No. 042378 dated 08th May, 2024 drawn in favour of the complainant, drawn on Central Bank of India has been handed over to the learned counsel for the complainant.
2. In that view of the matter, we are inclined to allow this petition.
3. In the event of arrest, the petitioner is directed to be released on bail in connection with Complaint Case No.83 of 2023, subject to him executing personal bonds for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), with one or two sureties in the like amount.
4. The special leave petition is, accordingly, disposed of.
5. Pending application(s), if any, shall stand disposed of.”

11. In view of aforesaid factual and legal submissions and by taking note of fact as entire allegations raised in the background of the marriage related dispute, where petitioner refused to sign *nikaahnama*. The factual aspect of this case *prima facie* not appears to make out the legal ingredients of offence under Section 420 of the IPC. The allegation of cheating from very inception *prima facie* appears absent in present factual scenario. Moreover, the



petitioner has already paid Rs.11 lacs to O.P. No.2 in the year 2024, as discussed aforesaid.

12. In view of aforesaid factual aspect and by taking note of legal report of Hon’ble Supreme Court as available through **Rikhab Birani’s case** (supra), the cognizance order dated 15.05.2023 passed by the learned Judicial Magistrate-1st Class, Patna City, in connection with C.A. 83 of 2023 dated 19.01.2023 is hereby quashed/set aside.

13. The application stands allowed.

14. Let a copy of this judgment be communicated to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19-07-2025
Transmission Date	19-07-2025

