

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1222 of 2022

Arising Out of PS. Case No.-322 Year-2022 Thana- AURANGABAD TOWN District-
Aurangabad

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1. Bishwanath Singh @ Vishwanath Singh Son of Late Lal Bihari Singh R/V- Rambandh, PO- Aurangabad, P.S- Aurangabad (M) Dist- Aurangabad Bihar Pin- 824101 at present residing at Holding No. 179, Ward No. 12, Tikri Road, Aurangabad Bihar-824101
 2. Santosh Kumar Singh Son of Sri Bishwanath Singh R/V- Rambandh, P.O- Aurangabad, P.S- Aurangabad (M) Dist- Aurangabad Bihar Pin- 824101, at present residing at 5C, Samrudhhi Bright Homes, Kundalahalli, Nr. Ryan International School, Bangaluru- 560037, Karnataka
 3. Uttam Kumar Singh Son of Sri Bishwanath Singh R/V- Rambandh, PO- Aurangabad, P.S- Aurangabad (M), Dist- Aurangabad Bihar, Pin- 824101, at present residing at Holding No. 179, Ward No. 12, Tikri Road, Aurangabad Bihar-824101
 4. Gautam Kumar Singh Son of Sri Bishwanath Singh R/V- Rambandh, PO- Aurangabad, P.S- Aurangabad (M) Dist- Aurangabad Bihar, Pin- 824101, at present residing at Quarter No. H11/03, CTJW College, Singarbhat, Shakti Aawasiya Parisar, Kanker, Chhattingarh, NH- 30, Pin- 494334

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Home Department, Govt. of Bihar, Old Secretariat, Bihar, Patna- 800001 Bihar
3. The Inspector General of Police, Magadh Range, Gaya
4. The Superintendent of Police, Aurangabad, Bihar
5. The Dy. Superintendent of Police, Aurangabad, Bihar
6. The Sub- Divisional Police Officer, Aurangabad, Bihar
7. The Station House Office Police Station- Aurangabad, Bihar 824101 Bihar
8. Ajit Kumar Singh Son of Late Dharendra Singh Resident of Bypass Chowk, Aurangabad P.S- Aurangabad (Nagar), Dist-Aurangabad (Bihar)
9. Amit Kumar Singh @ Amit Kumar Mishra Son of Late Arvind Mishra Resident of Bypass Chowk, Aurangabad Police Station, Aurangabad (Bihar)
10. Upendra Kumar Singh Son of Late Ganga Singh Resident of Bypass



Chowk, Aurangabad Police Station, Aurangabad (Bihar)

11. Jagannath Singh Son of Late Lal Bihari Singh R/V- Rambandh, P.O- Aurangabad, P.S- Aurangabad (M), Dist- Aurangabad (Bihar), Pin - 824101
12. Baijnath Singh Son of Late Lal Bihari Singh R/V- Rambandh, P.O- Aurangabad, P.S- Aurangabad (M), Dist- Aurangabad Bihar, Pin- 824101
13. Ajay Kumar Singh S/O Late Lal Bihari Singh Resident of Village- Rambandh, P.O.- Aurangabad, P.S.- Aurangabad, District- Aurangabad (Bihar), Pin-824101

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr.Niranjan Kumar, Advocate
For the State : Mr.Sheo Shankar Prasad, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 01-07-2025 Heard learned counsel for the petitioners; learned counsel for the State and learned counsel for the respondent nos. 8 to 13.

2. The petitioners have moved the Court for the following reliefs:

“(i) Issuance of an appropriate writ in the nature of certiorari or any other writ, order or direction as may be deemed appropriate by this Hon'ble Court to quash the F.I.R. bearing Aurangabad Nagar P.S. Case No. 322/22 dated 02.06.2022 (Annexure 5) registered against the petitioners under Section 406, 420, 504, 506/34 of Indian Penal Code on the basis of typed application of respondent no. 8 who in collusion with respondent no. 9 to 13 hatched a conspiracy and made a false and concocted story in his such typed application



with sole intention to grab the ancestral property of the petitioners involving them in criminal case and taking shelter of such F.I.R. (Annexure - 5)

(ii) Issuance of an appropriate direction commanding the concern respondent authority not to take any coercive action against the petitioners on the basis of F.I.R. bearing Aurangabad Nagar P.S. Case No. 322/22 dated 02.06.2022 (Annexure – 5). ”

3. The petitioner no.1 and respondent no. 11, 12 and 13 are own brothers. The learned counsel for the petitioners has brought the relevant factual background of the case and submitted that one Kesho Singh who was the grandfather of the present petitioner no.1 as well as respondent no. 11, 12 and 13. The aforesaid Kesho Singh had three sons namely Raj Bihari Singh, Lal Bihari Singh and Krishna Bihari Singh. The three sons of Kesho Singh got separated through partition Suit No. 252 of 1996 and consequently Lal Bihari Singh got the 1/3rd property share. Lal Bihari Singh in turn had four sons i.e., (1) Jagarnath Singh @ Jagannath Singh, arrayed as respondent no.11 and elder brother of petitioner no. 1; (2) Bishwanath Singh @ Vishwanath Singh, present petitioner no.1; (3) Baijnath Singh, respondent no. 12 and younger brother of petitioner no.1, and (4) Ajay Singh @ Ajay Kumar Singh, respondent no.13 and



younger brother of petitioner no.1.

4. The learned counsel appearing for the petitioners submits that the four sons of Late Lal Bihari Singh after the death of their father became equal share-holders in the property inherited by their late father.

5. The learned counsel for the petitioners has next submitted that the informant of Aurangabad Nagar P.S. Case No. 322 of 2022 is one Ajit Kumar Singh. It has been alleged by the informant that he had entered into an agreement with the accused persons for purchasing 38 decimals of land and an agreement for sale was prepared, in connection thereto an advance was also paid to the petitioners. It is alleged by the informant that after the agreement for sale was executed and the part payment was made, the parties have refused to execute the sale deed and furthermore that when the informant went to request for the refund of the advanced amount, the petitioners had abused and threatened the informant.

6. Learned counsel for the petitioners submits that the petitioner no. 1 is a Senior Mining Sardar is Bishrampur Coal Field, Surajpur, Chhattisgarh. The petitioner no. 2 is employed in Lenovo (India) Pvt. Ltd. and working as Options Business Development Manage (BDM). The petitioner no. 3 is a



businessman and petitioner no. 4 is working in Chhattisgarh Armed Force as Head Constable.

7. The respondent nos. 11 to 13 are own brothers of petitioner no. 1. Respondent no. 11 is elder brother of the petitioner no. 1 and has retired from service and owns a house in Roorkee, Uttarakhand. Respondent no. 12 and 13 are younger brothers of the petitioner no. 1. Respondent no. 12 is also a retired person and has his own house in Bengaluru (Karnataka) and Mumbai (Maharashtra). Respondent no. 13 also owns a house in Nashik (Maharashtra).

8. The petitioner no. 1 and respondent no. 11 to 13, besides joint cultivated land also has an ancestral house in village Ramabanth, Aurangabad (Bihar), where the petitioner no. 3 had been living with his family. The petitioner no. 1 and respondent no. 11 to 13 used to stay in the house at Ramabandh, when they came to Aurangabad (Bihar). The petitioner no. 1 after his retirement, shifted from Bishrampur, Surajpur (Chhattisgarh) to Aurangabad (Bihar) in January 2008 and started living in the ancestral house at Ramabandh, Aurangabad (Bihar) with petitioner no. 3. The respondent no. 11 to 13 also live at the Ramabandh, Aurangabad in ancestral house, when they came from Roorkee, Mumbai and Nashik for settlement of



their ancestral property.

9. The respondent no. 11 to 13 are residing outside the State of Bihar and they had come to Ramabandh, Aurangabad, Bihar only for the purpose of selling the ancestral property situated at Mauza-Ramabandh bearing Khata No. 25, Plot No. 209, 210, 211, 212. They stayed in their ancestral house at Village-Ramabandh Aurangabad, Bihar where the petitioner no. 1 and petitioner no. 3 were also living with their family.

10. The respondent no. 11 to 13, who are own brothers of petitioner no. 1 came to Aurangabad, Bihar in December 2021 for selling the property in question situated at Mauza-Ramabandh and consulted with petitioner no. 1 and expressed their desire to sell-off the property. However, the petitioner no. 1 denied and clearly told them that he is not in favour to selling off the property. The petitioner no. 1 also told the respondent no. 11 to 13 that if they have decided to sell-off the property then first of all, they would have to partition all ancestral property. But the respondent no. 11 to 13 refused for partition.

11. The learned counsel for the petitioners has further submitted that the petitioner no. 1 has also constructed a house situated at holding no. 179, ward no. 12, Tikri Road,



Aurangabad (Bihar). When the respondent no. 11 to 13 started exerting pressure on petitioner no. 1 for selling the land situated at Mauza-Ramabandh, the petitioner no. 1 and 3 with their family left the ancestral house at Ramabandh, Aurangabad and shifted to the house situated at holding no. 179, Ward No. 12, Tikri Road, Aurangabad, Bihar.

12. The learned counsel appearing on behalf of the petitioners have also submitted that a Partition Suit No. 22 of 2022 (titled Vishwanath Singh vs. Jagarnath Singh and others) is pending and the land in question here are also part of the partition suit.

13. Learned counsel for the petitioners has pointed that from the bare perusal of F.I.R., it is evident that the name of respondent no. 12, who is also one of the four brothers, does not appear among the persons, i.e., petitioner no. 1 respondent no. 11 and respondent 13, who are alleged to have taken money from the informant, in lieu of selling the plot.

14. It is further submitted that though the informant, arrayed as respondent no. 8, herein, alleged that he along with respondent no. 9 and 10 had given the alleged sum of money to the petitioner no. 1, but they have not disclosed this fact that who is the purchaser of the land, since the land situated



at Mauza-Ramabandh bearing Khata No. 25, Plot No. 209, 210, 211, 212, measuring 38 Decimal has a market value of more than Rs. 04 Crores, which is beyond the means of respondent no. 8 to 10.

15. It is submitted by the learned counsel for the petitioners that the true fact is that the respondent nos. 8 to 10 are land brokers and are involved in multiple criminal cases in respect of fraudulent activities. The real name of respondent no. 9 is Amit Kumar Mishra, son of Late Arvind Mishra not Amit Kumar Singh. The respondent no. 8 intentionally and knowingly gave the name of respondent no. 9 as Amit Kumar Singh in place of Amit Kumar Mihsra without disclosing the name of his father.

16. The learned counsel for the petitioners has emphasised that, it is therefore apparent from the aforesaid facts and circumstances that the prosecution is completely *malafide*, untenable and solely intended to harass the petitioners. The respondent no. 8 has wrongly made allegation against the petitioners in the F.I.R. on the basis of false and concocted story. It is further emphasised by the learned counsel for the petitioners that the attempt of the respondent no. 8 against the petitioners is primarily and purely of civil action. It is also



pointed by the learned counsel that the petitioner no. 1 that the alleged land property of Khata no. 25, Plot No. 209, 210, 211 and 212 as suit property in the partition suit no. 022 of 2022 (Vishwanath Singh Vs. Jagarnath Singh and others) which was filed on 15.01.2022, that is, much before the lodging of the present F.I.R. which was lodged only on 02.06.2022.

17. The learned counsel for the petitioners has reiterated that the entire dispute is purely contractual / civil in nature, however, the respondent no. 8 to 13 have attempted to give a criminal colour to the same. It is emphatically argued that the breach of contract does not come within the purview of cheating as defined in Indian Penal Code. The transaction in question between the petitioner no. 1 and respondent no. 8 to 10 as revealed from the F.I.R. is purely a sale transaction or commercial transaction and as such the question of cheating does not arise at all.

18. It is next submitted that the statements made in the F.I.R. does not disclose any criminal offence at all much less any offence under sections 406, 420, 504, 506 read with section 34 of Indian Penal Code and the present case is a case of pure civil dispute between the petitioner no. 1 and respondent no. 11 to 13 for which partition suit no. 022 of 2022 has been



filed and pending adjudication before the Civil Court, Aurangabad (Bihar). The averments in the F.I.R. and the allegations made therein against the petitioners cannot constitute an offence under Section 406, 420, 504, 506/34 of Indian Penal Code 1860. The entire origin of the allegations made against the petitioners emanates from the denial of petitioner no. 1 to sell the ancestral property before its division/partition.

19. Learned counsel for the petitioners, in support of his contentions has relied upon a judgment of the Hon'ble Supreme Court in the case of *Murari Lal Gupta vs. Gopi Chand* reported as **2005 (13) SCC 699**.

20. Learned counsel for the respondent nos. 8 to 13 have appeared and have opposed the application by filing counter affidavit.

21. The contention of the private respondents is that the petitioner no.1 and respondent No.11 to 13 had executed an agreement for sale on 30.12.2021 intended for selling their land pertaining to Khata No.25, Plot No.209, 210, 211& 212 with a total area of 38 decimal and the aforesaid joint agreement for sale was executed with respondent nos.8 to 10. It is also submitted that all the parties accepted the terms and conditions of the aforesaid agreement and subsequently had put their



signatures on the agreement on 30.12.2021. In connection with the aforesaid agreement, the petitioner no.1 and respondent No.11 to 13 received advance in presence of witnesses.

22. Learned counsel for the private respondents submits that the respondent No.8 had also deposited a sum of rupees 2 lakhs in the account of petitioner no.1 and in lieu of agreement the petitioner No.1 taken 3 Lakhs 25 thousand Rupees from the respondent No-8. and after receiving the same the petitioner No.1 was not willing to execute the sale deed or returned the money. It is further submitted that the brother of the petitioner on.1 who are respondent No.11 to13 have tried to settle the dispute but due to ill behaviours of the petitioner no.1 and his sons, the sale deeds was not executed in the favour of respondent No.8 to 10.

23. It is next submitted by learned counsel for the private respondents that the informant / respondent No.8 asked the petitioner to return the money but the petitioner no.1 is not willing to return the amount therefore petitioners threatened and abused the informant and in that circumstance, the informant lodged Aurangabad (Nagar) Police Station Case No. 322 of 2022.

24. It is also pointed out that the petitioner no.1 and



respondent No.11 to 13 has executed another sale deed to Amisha Kumari on 25.11.2021 with regard to other piece of land vide sale deed No.15837 upon which the petitioner no.1 and respondent No.11 to 13 put their signature in presence of the Registrar.

25. Learned counsel for the private respondents has also drawn attention of this Court to the fact that the petitioner no.1 has also filed a complaint case No.398 of 2022 against the respondents which was dismissed by the Learned J.M 1st Class Aurangabadh on 30.1.2023.

26. It is lastly submitted by learned counsel for the private respondents that the petitioners have wrongly mentioned in the writ petition that they have not put their signature on the agreement for sale. The respondents no. 11 to 13 have accepted the fact that in their presence an agreement for sale was executed upon which petitioner no.1 has put his signature willingly.

27. A counter affidavit has been filed on behalf of respondent no. 4 wherein the respondents have supported the case of prosecution and oppose this writ petition.

28. I have considered the submissions of the parties.

29. Undisputed facts are that the parties have entered



into an agreement for sale. Subsequently, the petitioners have refused to execute the sale deed as per the agreement for sale though the petitioners deny the factual aspect of the case.

30. The Hon'ble Supreme Court in the case of ***Murari Lal Gupta (supra)*** has held as follows:

“6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt



to pressurise the petitioner for coming to terms with the respondent.”

31. Further in the case of ***Dalip Kaur and Others vs. Jagnar Singh and Another*** reported in **(2009) 14 SCC 696**

“8. Sections 405 and 415 of the Penal Code defining “criminal breach of trust” and “cheating” respectively read as under:

“405. Criminal breach of trust.—Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust’.

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’.”

An offence of cheating would be constituted when the accused has fraudulent or dishonest intention at the time of making promise or representation. A pure and simple breach of contract does not constitute an offence of cheating.

9. *The ingredients of Section 420 of the Penal Code are:*

*“(i) Deception of any persons;
(ii) Fraudulently or dishonestly inducing any person to deliver any property; or*



(iii) To 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.”

*10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See *Ajay Mitra v. State of M.P.* [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])”*

32. From the bare perusal of the F.I.R, it is evident that no offence of cheating on the part of the petitioners is made out. It is not the case of the informant that the petitioners did not have title to the said property in question. A mere non-performance of the agreement to sell by itself does not attract the rigours of cheating or criminal breach of trust. The criminal law cannot be employed as an arm-twisting instrument to pressurise the petitioners. Attempt by the informant to impart criminal colour to a civil wrong cannot be permitted.

33. In my opinion, the facts of the case are squarely covered by the judgment of *Murari Lal Gupta (supra)* and in my opinion, no offence is made out against the petitioners in the facts of the case.



34. Accordingly, the application is allowed.

35. The F.I.R. bearing Aurangabad Nagar P.S. Case No. 322/22 is hereby quashed.

36. The respondent nos. 11 to 13 are given liberty to approach the District Court for appropriate relief in accordance with law. It is made clear that any observations made herein will not affect the competent court in deciding the aforesaid suit which shall be decided on its own merit.

(Sandeep Kumar, J)

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