

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63816 of 2024

Arising Out of PS. Case No.-916 Year-2020 Thana- KANKARBAG District- Patna

Ashish Kumar, S/o Sri Umesh Kumar, R/o Ashok Nagar, Road No.02,
Lohiyanagar, P.S. - Kankarbagh, District - Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Abhishek Raj S/o Sri Hemant Kumar, R/o Flat No. 303, Ganpati Apartment,
Janak Kishore Road, P.O. and P.S.- Kadamkuan, Distt.- Patna.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Ashok Kumar, Advocate
For the State	:	Mr. Tarun Prasad Mandal, APP
For the O.P. No.2	:	Mr. Piyush Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 14-07-2025

Heard learned counsel appearing for the petitioner
and learned counsel appearing on behalf of the
informant/O.P. No.2.

2. The present application has been filed for
quashing the cognizance order dated 12.04.2023 passed by
learned Judicial Magistrate-1st Class, Patna in connection with
Kankarbagh P.S. Case No.916 of 2020, whereby the learned
Jurisdictional Magistrate has taken cognizance of the offence
punishable under Section 420 of the Indian Penal Code (in
short 'IPC') against the petitioner.

3. The case of prosecution, in brief, according to
the informant is that he purchased a Maruti Swift ZXI from



the accused/petitioner in November, 2019 after paying Rs.5 lacs for which the accused/petitioner issued a Sale Letter in favour of the informant on 25.12.2019, which was certified by the Notary on 20.01.2020. It is further alleged that the accused/petitioner had purchased the said vehicle through Mahindra Finance and assured the informant that he would give a No Objection Certificate (NOC) from Mahindra Finance Company after giving all the due installments within a month for transfer of ownership. It is further alleged that instead of assurance given to the informant, the accused/petitioner did not pay the amount of installment and on 15.03.2020, the said vehicle was seized by Mahindra Finance Company from the possession of the informant. Thereafter, the informant conveyed the information to the accused/petitioner, whereafter he assured that he would return Rs. 5 lacs within one or two months but, till today, the petitioner/accused has not returned the said money, consequent upon, present case was lodged.

4. It is submitted by learned counsel appearing for petitioner that both parties are known to each other being



business partners and out of said acquaintance, the car of petitioner bearing Registration No. BR01DV6065 was purchased by O.P. No.2 against sum of Rs. 5 lakhs. It is submitted that from the facial perusal of FIR, it is clear that petitioner never deceived O.P. No.2 as FIR itself speaks to pay balance loan amount to the Mahindra Finance Company within one month. It was never said by petitioner to O.P. No.2 that the car is loan free, whereas the cognizance was taken under wrong impression that petitioner said to O.P. No.2 that the entire installment has already paid and, therefore, took cognizance for the offence under Section 420 of the IPC wrongly. It is submitted that when the vehicle was lifted by M/s. Mahindra Finance Company from the possession of O.P. No.2, the O.P. No.2 raised a demand to return Rs.5 lakhs as received against purchase of aforesaid amount but, same was not returned and, thereafter, the present case was lodged. It is submitted that non-returning of the amount is not amounting to cheating for the simple reason that it is amounting to revocation of the contract. It is submitted that if petitioner would have intention to cheat the O.P. No.2 from



very inception of the said purchase, he never handed over the vehicle in issue to O.P. No.2. In support of his submission, learned 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]**, **CBI v. Duncans Agro Industries Ltd., [(1996) 5 SCC 591]** and **Delhi Race Club (1940) Ltd. v. State of U.P., [(2024) 10 SCC 690]**.

5. On the other hand, learned counsel appearing for O.P. No.2 submitted that it is a clear cut case of inducement and on the basis of assurance of petitioner that the loan would be deposited within one month, the vehicle in issue was purchased by O.P. No.2. It is submitted that the entire consideration amount of Rs.5 lakh was paid to petitioner by O.P. No.2 on 25.12.2019. It is pointed out that the vehicle in issue was lifted by M/s. Mahindra Finance Company on 15.03.2020. It is submitted that non-payment of hypothecation amount within one month is amounting to cheating in terms of FIR, as petitioner categorically assured O.P. No.2 to pay the loan amount within one month.



6. During course of argument, learned counsel appearing for O.P. No.2 drawn attention of this Court towards affidavit executed by petitioner on 20.01.2020, where intentionally the petitioner did not mention that the vehicle is hypothecated with Mahindra Finance Company. It is submitted that the affidavit was issued as mandatory requirement for transferring the ownership in terms of Motor Vehicles Act and non-revealing of the facts that the vehicle was under hypothecation in itself is amounting to cheating, which was executed on the same day on which the sale letter was issued to O.P. No.2 by petitioner.

7. Besides aforesaid, it is submitted that the argument, which was raised by the learned counsel appearing for petitioner is of such nature which cannot be looked into at this stage, as same appears in defence and, therefore, can be considered during trial only.

8. 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.”

9. It would also be apposite to reproduce para-23 of the legal report as available through **CBI v. Duncans Agro**

Industries Ltd. case (supra), which is as under:-

“23. Coming to the offence under Section 420 IPC as alleged in the FIR, Mr Shanti Bhushan has submitted that the offence of cheating has been defined in Section 415 IPC and consists of fraudulently and dishonestly inducing a person by deceiving him to deliver any property or to do or omit to do anything which he would not do or omit if he were not so deceived. Two essential ingredients of offence would be (i) To make a false statement so as to deceive any person and (ii) fraudulently and dishonestly inducing the person to deliver any property or to do or omit to do something. It is submitted that neither in the FIR nor in the extracts from the FIR which have been referred to in the CBI’s submission, there is any reference to any false



representation about the existence of stocks of Rs 17.50 crores on any particular day. That the credit facility limit sanctioned to M/s DAIL on 12-1-1984 was to the tune of Rs 17.50 crores. It is also wrongly stated in the written submission of the CBI that the grant of credit facility amounts to delivery of property. The grant of credit facility only means that the Bank is prepared to give loans up to the limit sanctioned. Hence, no case of cheating has been made out even prima facie.”

10. It would also be apposite to reproduce para- 36,37 and 43 of the legal report as available through **Delhi Race Club case** (supra), which is as under:-

“**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.

Similarly, in respect of an offence under Section 420 IPC, 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.

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.

43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a 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 misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences



cannot co-exist simultaneously.”

11. Considering the aforesaid factual and legal submissions and by taking note of fact that petitioner/accused has failed to deposit EMI as assured within one month of selling of vehicle in issue, coupled with the fact that the vehicle in issue was under hypothecation with Mahindra Finance Company, which appears lacking in affidavit dated 20.01.2020 as issued by petitioner, this Court *prima facie* finds no reason to interfere with cognizance order.

12. Accordingly, the present quashing petition, being devoid of any merit, hence dismissed.

13. Office is directed to communicate a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16-07-2025
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