

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74489 of 2024

Arising Out of PS. Case No.-380 Year-2022 Thana- RAXAUL District- East Champaran

Deepak Singh Son of Saraju Prasad Singh R/O Vill.- Rajaapur, Khoravir,
P.O.- Ramnagar, P.S.- Jaunpur, Dist.- Jaunpur, U.P.

... .. Petitioner

Versus

1. The State of Bihar
2. Pawan Kumar Son of Late Bijli Singh Manager, Shiv Shakti Industries Pvt. Ltd. Main Road, Near HDFC Bank, P.S.- Raxaul, Dist.- East Champaran.

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Radha Mohan Singh, Advocate

For the Opposite Party/s : Mr.Dr.Mrityunjaya Kr.Gautam, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 18-06-2025

Heard learned counsel for the petitioner and learned counsel for the opposite party no. 2 as also learned A.P.P. for the State.

2. This application has been preferred under section 482 of the Code of Criminal Procedure (in short, the ‘Cr.P.C.’) for quashing the FIR being Raxaul P.S. Case No. 380 of 2022, registered for the offences under sections 420, 406 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act (herein after referred to as the “N.I. Act”).

3. The brief facts of the case of the prosecution is that the informant namely, Pawan Kumar (opposite party no. 2), who is the Manager of Shiv Shakti Industries Private



Limited having its office at Main Road, Near HDFC Bank, Raxaul, which deals with the supply of chicken feed, has alleged that in course of business transaction, his company had supplied chicken feeds to the petitioner, who runs his business in the name and style of M/s Dev Enterprises. The informant further alleged that an outstanding amount of Rs. 28,25,194/- was against the petitioner, since the year 2020-21, and after several demands, petitioner issued a cheque of the aforesaid amount, but when the informant deposited the said cheque in his Bank, the same was dishonoured because of insufficient funds. It is alleged that after this incident, the informant had failed to establish any communication with the petitioner despite of his best efforts.

4. On the basis of aforesaid written application, Raxaul P.S. Case No. 380/2022 was instituted against the petitioner for the offences punishable under Sections 420, 406 of the IPC and section 138 of the N.I. Act.

5. It is submitted by learned counsel appearing on behalf of the petitioner that lodging of FIR for dishonoring of cheque is a non-approved concept under the law. It is



submitted that parties were doing their business together. It is pointed out that as per FIR, the cheque was dishonored, as issued by the petitioner on 11.02.2022, which was duly informed to the informant namely, Pawan Kumar on 16.02.2022 by his bankers, but instead of giving any legal notice to the petitioner, the informant straightway, after a gap of six months, lodged the present FIR against the petitioner for the offences punishable under section 420 & 406 of the IPC and section 138 of the N.I. Act.

6. It is pointed out by learned counsel for the petitioner that in terms of section 142(a) of the N.I. Act, no FIR for the offences punishable under Section 138 of the N.I. Act is maintainable as the same can be brought upon a complaint made in writing, after due compliance of legal provisions as available under section 138(c) and 142 of the N.I. Act.

7. It is also submitted by learned counsel that narration of FIR nowhere suggests *prima-facie* legal ingredients of cheating and criminal breach of trust, as there was no occasion for any entrustment, as parties were doing



business together.

8. Taking note of the allegation, as raised through the present FIR, it is submitted by learned counsel that no cognizable offence, as alleged, is made out against the petitioner and, therefore, the present FIR is fit to be set aside/quashed. It is also pointed out by learned counsel that petitioner lodged a money suit bearing 03 of 2025 for recovery of cheque amount, which is pending before the court of learned Sub Judge – XII, Motihari, and, therefore, the present FIR was lodged unoccasionally to create a pressure of criminal litigation upon the petitioner.

9. While concluding argument, learned counsel relied upon the legal report of the Hon'ble Supreme Court as available through **G. Sagar Suri & Anr. V State of U.P.** reported in **(2000) 2 SCC 636** and **State of Haryana v. Bhajan Lal and Others.** reported in **1999 Supp (1) SCC 335.**

10. While opposing the present petition, Mr. Kumar Amit, learned counsel appearing for the opposite party no. 2 submitted that petitioner was under intention to cheat the



informant from very inception, but fairly conceded that present FIR was lodged with a delay of six months and no legal notice was issued by the informant for realization of cheque amount. It is also conceded that money suit is pending between the parties for recovery of cheque amount.

11. It would be apposite to reproduce paras 14 & 15 of **G. Sagar Suri case (supra)**, which reads as under:

“**14.** We agree with the submission of the appellants that the whole attempt of the complainant is evidently to rope in all the members of the family particularly those who are the parents of the Managing Director of Ganga Automobiles Ltd. in the instant criminal case without regard to their role or participation in the alleged offences with the sole purpose of getting the loan due to the Finance Company by browbeating and tyrannising the appellants with criminal prosecution. A criminal complaint under Section 138 of the Negotiable Instruments Act is already pending against the appellants and other accused. They would suffer the consequences if offence under Section 138 is proved against them. In any case there is no occasion for the complainant to prosecute the appellants under Sections 406/420 IPC and in his doing so it is clearly an abuse of the process of law and prosecution against the appellants for those offences is liable to be quashed, which we do.

15. The appeal is allowed and the judgment of the High Court dated 6-5-1999 is set aside and prosecution of the appellants under Sections 406/420 IPC in Criminal Case No. 674 of 1997 (now Criminal Case No. 6054 of 1998) and pending in the Court of Chief Judicial Magistrate, Ghaziabad is quashed.”

12. It would also be apposite to reproduce paragraph ‘102’ of the **Bhajan Lal case (supra)**, which reads 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 a 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.”

13. In view of the aforesaid factual submission and by taking note of the fact as lodging of FIR for the offence punishable under section 138 of the N.I. Act is completely barred in view of the mandatory provision of section 142(a) of the N.I. Act, coupled with the fact that narration of FIR



nowhere suggests that any legal ingredients to make out a *prima facie* case for the offences punishable under section 420 & 406 of the IPC in view of admitted business relation, therefore, by taking guiding note of **Bhajan Lal case (supra)** and also **G. Sagar Suri case (supra)**, the present FIR being Raxaul P.S. Case No. 380 of 2022 dated 04.08.2022, as lodged against the petitioner, is hereby set aside/quashed along with any consequential proceedings, if any.

14. Accordingly, this application stands allowed.

15. Let a copy of this judgment be sent to the court concerned for immediate compliance.

(Chandra Shekhar Jha, J)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.06.2025
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