

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74781 of 2024

Arising Out of PS. Case No.-274 Year-2019 Thana- COMPLAINT CASE District- Araria

Kisto Kumar Singh @ Kristo Kumar Singh S/o- Late Sant Sharan Singh Ex. Assistant Manager Cum Branch Manager, The Oriental Insurance Company Ltd. Forbesganj, P.S.- Forbesganj, Dist.- Araria. Resident OF Mohalla- Mahesh Nagar, Road No 4, Atal Path, Ps- Patliputra, Dist- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Gautam S/o- Sunil Kumar Singh, Proprietor Maheshwari Distributor, R/o- RBI Lane Ps- Forbesganj Dist- Araria

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Praveen Kumar, Advocate
For the Opposite Party/s	:	Mr. Rajendra Prasad Nat, APP
For the O.P. No.2	:	Mr. Ajit Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 19-08-2025

Heard Mr. Praveen Kumar, learned counsel appearing on behalf of the petitioner; Mr. Rajendra Prasad Nat, learned APP for the State and Mr. Ajit Kumar Singh, learned counsel appearing on behalf of the O.P no.2.

2. The present application has been filed for quashing the impugned order dated 06.09.2024 passed in Cr. Revision No.19 of 2022 passed by the learned Sessions Judge, Araria, whereby, Cr. Revision preferred by the petitioner against the order taking cognizance dated 16.12.2021, passed by the



learned Additional Chief Judicial Magistrate V, Araria in complaint case no.274 of 2019 has been allowed upholding to the extent of the cognizance taken under section 420 of the Indian Penal Code.

3. The brief facts of the case is that the complainant is the owner/proprietor of M/S Maheshwari Distributor R.B. Lane, Forbesganj and deals with the business of medicine. He got his medical shop insured by the Oriental Insurance Company Limited, Branch Forbesganj *vide* insurance policy no. 332601/48/2017/91 which was effective from 29.9.2016 to 28.9.2017. On 13.08.2017, Araria District was faced with flood and the medicines which were stored at the shop of the Complainant were damaged. The Complainant got the damage assessed by One Ajay Kumar, Surveyor, who is accused no.2. The total loss assessed on basis of the price of medicines was Rs. 11,07,756/- and the actual loss as per the Surveyor was Rs. 8,51,997/-. It is alleged against the petitioner that he being the Assistant Manager of the said insurance company had demanded illegal gratification of Rs. 3 lakhs for allowing the claim of the damage assessed. The case under Sections 405, 406 read with 420 of the Indian Penal Code was registered and cognizance was taken on the basis of complaint



under Sections 406 and 420 of the Indian Penal Code.

4. Learned counsel appearing on behalf of petitioner appreciating the order passed by the learned Principal District Judge in Cr. Revision No.19 of 2022 submitted that in absence of ingredients of section 406 of Indian Penal Code, the learned District Court has found that no case of criminal breach of trust is made out against the petitioner but at the same time, he has erred in not considering that in absence of dishonest inducement to deceive, there cannot be a case of cheating, inducing or delivering of property to attract the provisions of Section 420 of the Indian Penal Code. Referring to section 21 of the Indian Penal Code, he submitted that the petitioner is a public servant and very intent of cheating from the very beginning does not arise. He has referred that the petitioner being the Assistant Manager of the said insurance company, had jurisdiction to entertain the claim upto Rs.2,50,000/- and in view of the determination made by the surveyor regarding loss payable to the complainant amounting to Rs.8,51,997 being beyond his jurisdiction, he had forwarded the claim of the complainant to the Divisional Office for net loss payment to the complainant on 09.02.2018. The said letter has been brought on record by way of Annexure P/3. In this background, learned



counsel submitted that though the learned Principal District Judge has appreciated the facts of the case in detail but he has not considered this aspect of the matter and has committed jurisdictional error to conclude that case under Section 420 is made out against the petitioner. On these grounds, learned counsel submitted that the impugned order dated 06.09.2024 requires to be interfered by this Court.

5. *Per contra* Mr. Ajit Kumar Singh, learned counsel appearing on behalf of the O.P No.2/Complainant has submitted that the jurisdiction to allow the claim upto Rs.5 lakhs vests with petitioner, who was the Assistant Manager on the relevant date and above that amount, the jurisdiction vests with the Zonal Manager/ Deputy General Manager. The petitioner demanded a sum of Rs.3 lakhs for clearing the said amount for payment after the assessment was made by the Surveyor. As the demand was not fulfilled, the petitioner indulged intentionally to refer the case regarding payment before the Divisional Manager *vide* letter dated 09.02.2018. He further submitted that the petitioner has committed the criminal act being a public servant and, as such, the learned Principal District Judge has not erred in any manner in passing the impugned order. Learned counsel further submitted that the cognizance was required to be taken



under the Prevention of Corruption Act by the learned Magistrate. However, he submitted that due compensation has been awarded to the complainant in a proceeding before the learned District Consumer Forum but the petitioner cannot be absolved from a criminal act committed by him.

6. Heard the parties.

7. It is well settled that the Court should sparingly exercise its power under Section 482 of the CrPC. In case of ***Prof. R.K. Vijayasarathy & Anr. vs Sudha Seetharam & Anr., (Criminal Appeal No.238 of 2019 arising out of Special Leave Petition (Crl) No.1434 of 2018)***, wherein the Apex Court held that a court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary for the offence. The observations are as under:

“10. Section 482 of Code of Criminal Procedure saves the inherent power of the High Court to make orders necessary to secure the ends of justice. In *Indian Oil Corp. v NEPC India Ltd.*⁵, a two judge Bench of this Court reviewed the precedents on the exercise of jurisdiction under Section 482 of the Code of Criminal Procedure 1973 and formulated guiding principles in the following terms:

“12....

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous



analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the 5 (2006) 6 SCC 736 ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v)...

11 The High Court, in the exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure, is required to examine whether the averments in the complaint constitute the ingredients necessary for an offence alleged under the Penal Code. If the averments taken on their face do not constitute the ingredients necessary for the offence, the criminal proceedings may be quashed under Section 482. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code.

12. The first respondent has alleged in the complaint that the appellants have committed offences under Sections 405, 406, 415 and 420 read with Section 34 of the Penal Code. It would thus be necessary to examine the ingredients of the above offences and whether the allegations made in the complaint, read on their face, attract those offences under the Penal Code.

13. Section 405 of the Penal Code reads thus:

Section 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 willfully suffers any other person so to do, commits "criminal breach of trust."

A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

i) A person should have been entrusted with property, or entrusted with dominion over property;

ii) That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

Entrustment is an essential ingredient of the offence. A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code.

*15. **Section 420** of the Penal Code reads thus: "Section 420. Cheating and dishonestly inducing deliver of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable to being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine." The ingredients to constitute an offence under Section 420 are as follows:*

i) A person must commit the offence of cheating under Section 415; and

ii) The person cheated must be dishonestly induced to

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.

Cheating is an essential ingredient for an act to constitute an offence under Section 420.

16. A court exercising its inherent jurisdiction must examine if on their face, the averments made in the complaint constitute the ingredients necessary



for the offence.”

8. A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with *mala fides*/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

9. I have dealt with the facts of the case in above paragraphs. Now, the question arises, as to whether, the learned Principal District Judge has committed any error insofar as holding the petitioner guilty for committing offence under Section 420 of the Indian Penal Code. The learned Principal District Judge has dealt with the entire aspect of the matter but at the same time, I find that he has not taken into consideration the basic fact relating to the jurisdiction of the petitioner, who was working on the post of Assistant Manager of Oriental Insurance Company Limited and the chart adduced to the present application by way of Annexure- P/4, from where I find that the Assistant Manager in case of fire and salvage disposal has jurisdiction to allow the claim upto Rs. 2,50,000/-. The complainant has admitted that Deputy General Manager has jurisdiction upto Rs.5 lakhs. Considering the admitted position that the Surveyor has assessed total amount of Rs.8,51,997/-, the



petitioner, who was posted as the Assistant Manager lacked the jurisdiction, had referred the matter to the Divisional Manager *vide* letter dated 09.02.2018 for making payment of the assessed amount by the Surveyor. In view of the admitted position, the basic ingredient of Section 420 of the Indian Penal Code is lacking.

10. A criminal proceeding can be quashed where the allegations made in the complaint do not disclose the commission of an offence under the Penal Code. The complaint must be examined as a whole, without evaluating the merits of the allegations. Though the law does not require that the complaint reproduce the legal ingredients of the offence verbatim, the complaint must contain the basic facts necessary for making out an offence under the Penal Code. The order taking cognizance dated 16.12.2021, in view of the discussion made hereinabove and the law as held by the Hon'ble Supreme Court, is set-aside and quashed. The impugned order dated 06.09.2024 passed by the learned District Court is modified to the above extent. Accordingly, entire criminal proceeding arising out of Complaint Case No. 274 (C) of 2019 pending in the Court of A.C.J.M.. V, Araria/ concerned court is also set aside and quashed.



11. Accordingly, the present quashing application
stands disposed of.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.08.2025
Transmission Date	NA

