

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.253 of 2025

Arising Out of PS. Case No.-4834 Year-2024 Thana- PATNA COMPLAINT CASE District-
Patna

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Ashmeet Singh Son of Sri Amarjeet Singh, Resident of E-43, Chhatarpur
Extension, P.S. - Chhatarpur, District - South Delhi - 110074

... .. Petitioner/s

Versus

1. The State of Bihar
2. Niraj Shrivastav Son of Late Sukhdeo Prasad Srivastav, Resident of Plot No.
2, Shakti Puram, Ashiana Nagar, P.S. - Rajeev Nagar, P.O. - Ashiana Nagar,
District - Patna - 800025

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Raj Kumar, Advocate
		Mr. Akshansh Ankit, Advocate
For the Opposite Party/s :		Mr.Zainul Abedin, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 16-12-2025

Heard learned counsel appearing on behalf of the
petitioner and learned APP appearing for the State.

2. The petitioner has preferred the application under
Section 482 Cr.P.C. / 528 BNSS for quashing of the order dated
11.06.2024 passed by the learned Judicial Magistrate 1st Class,
Patna in complaint case no. 4834(C)/ 2024 whereby he has
taken cognizance for the offence under Sections 406, 420, 463,
467, 468, 471 and 120(B) of the Indian Penal Code against the
petitioner.

3. At this stage, this Court don't want to go into the
legality or illegality of the order passed by the learned District



Court taking cognizance under Sections 406, 420, 463, 467, 468, 471 and 120(B) of the Indian Penal Code as it is settled principle of law that where the facts disclose the commission of an offence under Section 406 IPC in relation to a particular transaction, the accused cannot, at the same time and on the same set of allegations, be held liable for the offence of cheating under Section 420 IPC and vice-versa.

4. Recently, the Apex Court in the case of ***Arshad Neyaz Khan Vs. State of Jharkhand & Anr.***, reported in (2025) ***SCC OnLine SC 2058***, upon analysis of law, has finally concluded that Sections 406 and 420 of the Indian Penal Code cannot co-exist simultaneously. The observations made by the Apex Court in Para-16, 20 and 21 are reproduced hereinafter:

“16. The contents of the complaint as well as the FIR would have to be read in light of the ingredients of Sections 406 and 420 IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 29.01.2021, it is noted that the complainant/respondent No. 2 has filed the said complaint invoking Sections 406, 420 and 120B IPC. For ease of reference, the aforesaid Sections are extracted as under:

“406. Punishment for criminal breach of trust.—
Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

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420. Cheating and dishonestly inducing delivery 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 of 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.

xxx

120B. Punishment of criminal conspiracy.-(1)
Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

20. *On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No. 2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No. 2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust.*

21. *Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of*



making 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 misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other.”

5.The learned Magistrate without following the said principal of law by the Apex Court as referredabove, proceeded to take cognizance against the petitioner under the aforesaid sections. I find that the order dated 11.06.2024 passed by the learned Judicial Magistrate 1st Class, Patna to that extent is required to be quashed and set aside. The matter is remitted back for taking cognizance by the learned Magistrate concerned in accordance with the provision prescribed under Chapter 15 of Cr.P.C. without delay.

6. Accordingly, the present application stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.12.2025
Transmission Date	18.12.2025

