

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13306 of 2026

Arising Out of PS. Case No.-347 Year-2022 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Mala Devi Wife of Sri Kanhai Singh Resident of Village - Gaighat, Ward No.-
1, P.S.- Runnisaidpur, District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Vikas Anand Son of Late Parmeshwar Yadav Resident of Village -
Sinhvahini, Tole Khutaha, P.S.- Sonbarsa, District - Sitamarhi.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Vaidehi Raman Prasad Singh, Advocate
For the Opposite Party/s	:	Mr. Md. Mushtaque Alam, APP
For the O.P. No.2	:	Mr. Santosh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 30-04-2026 Heard Mr. Vaidehi Raman Prasad Singh, learned
counsel appearing on behalf of the petitioner and Mr. Md.
Mushtaque Alam, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Complaint Case No. 347/2022 registered for the offence(s)
punishable under Sections 406,420 of the Indian Penal Code and
Section 138 of N.I. Act.

3. As per the allegation made in the complaint petition
the petitioner is alleged to have taken a friendly loan of Rs.
7,00,000/- from the complainant and issued a cheque in
discharge thereof, which, upon presentation, was dishonoured
due to insufficient funds, and despite service of legal notice, the



amount was not repaid, leading to institution of the complaint case under Section 406 IPC and Section 138 of the N.I. Act.

4. Learned counsel appearing submitted that the petitioner is innocent and has been falsely implicated in the present case. However, on instruction, learned counsel submitted that the matter is purely civil in nature and to buy peace of mind, petitioner wants to settle the dispute amicably outside the Court.

5. Learned counsel appearing on behalf of the complainant and learned APP appearing on behalf of the State submitted that a chance be given to the parties for amicable settlement outside the court.

6. Counsel for the petitioner and complainant on instructions, submitted that the petitioner and the complainant have agreed to appear before the learned District Court at **10:30 A.M. on or before 15.05.2026.**

7. Heard the parties

8. Considering the nature of allegation made in the F.I.R. which has a civil flavour and the same *prima facie* don't disclose an overwhelming element of criminality. In the absence of the element of criminality, if both civil and criminal cases are allowed to continue, it will definitely amount to abuse of the



process of law.

9. In this regard, I find it apt to refer the observation made by the Apex Court in para-12 in case of ***Paramjeet Batra v. State of Uttarakhand, (2013) 11 SCC 673***, which is reproduced hereinafter::

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

10. The Apex Court has reiterated the aforesaid preposition in its recent judgment of ***S.N. Vijayalakshmi & Ors. Vrs. The State of Karnataka and Anr.*** reported in (2025) ***SCC Online SC 1575***.

11. The Apex Court while considering the content of ingredients of Sections 406 and 420 of the Indian Penal Code in the case of ***Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr. in Criminal Appeal No. 3114 of 2024***, after discussing the earlier law laid down in several cases, has



observed in paragraphs nos. 35, 36 and 37, *inter alia* as follows:

Difference between criminal breach of trust and cheating

35. This Court in its decision in *S.W. Palanitkar v. State of Bihar* S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under :

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii) (b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

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 (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241.

Similarly, in respect of an offence under Section 420IPC, 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 (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712.

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."

12. Learned District Court is directed to take necessary steps to issue notices to the respective parties and upon their appearance refer the matter under the provision of Mediation Act, 2023 before the learned Mediator of the District Mediation Centre by fixing a date for appearance of the parties to give effect to "Mediation for the Nation 2.0".

13. Thereafter, learned Mediator of the District Mediation Center concerned shall make his/her best efforts to settle the dispute amicably and submit his/her report before the concerned learned District Court, well within a period of three months, till then, no coercive action shall be taken against the



petitioner in connection with the aforesaid case.

14. In case, the parties resolve their dispute amicably or arrive at a mutual settlement, in light of the law laid down by the Apex Court as referred above, the petitioner is required to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

15. In case of failure on the part of the petitioner to appear on or before 15.05.2026 before the learned District Court or any date fixed by the learned Mediator, the interim protection granted to the petitioner shall automatically lose its force.

16. In case, it is deliberate on the part of the complainant to reconcile, then in that case, the interim protection granted to the petitioner shall continue and the trial shall proceed in accordance with law.

17. In case, the parties fail to reconcile, then in that case, parties may avail appropriate remedy. Then also, petitioner is directed to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

18. With aforesaid direction and observation, the present application stands disposed of.

19. Let a copy of this order be communicated to the Member Secretary, Bihar State Legal Services Authority and the



Patna High Court Mediation Centre for the purpose of record.

(Purnendu Singh, J)

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