IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18734 of 2023

Arising Out of PS. Case No.-747 Year-2019 Thana- PATNA COMPLAINT CASE District-Patna

==

Vijay Kumar Choudhary, aged about 59 years, Male, Son of Late Bidhichand Choudhary, resident of just before Sri Ganesh Bandana Enclave, Vivekanand Park Road, P.S- Patliputra, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. Satyendra Prasad Singh Son Of Late Kamal Singh Resident Of B/24, P.S.- Budha Colony, District-Patna

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar, Advocate
For the Informant	:	Mr. Manoj Kumar Jha, Advocate
For the State	:	Mr. Nirmal Kumar Sinha, A.P.P.

==

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

4 30-01-2026 Heard Mr. Santosh Kumar, learned counsel appearing on behalf of the petitioners; Mr. Manoj Kumar Jha, learned counsel appearing on behalf of the informant and Mr. Nirmal Kumar Sinha, learned APP for the State.

2. The petitioners seek pre-arrest bail in connection with Complaint Case No. 747(C) of 2019 registered for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

3. The prosecution case, in brief, is that the complainant, Satendra Prasad Singh, filed a written complaint before the learned Chief Judicial Magistrate, Patna, alleging that

WEB COPY

in connection with a contract work, a sum of ₹5,83,500/- was paid in cash to the accused persons, which was to be refunded. It is further alleged that for the purpose of furnishing a performance guarantee, an amount of ₹7,00,000/- was paid, out of which ₹3,00,000/- was transferred on 16.09.2017 and another ₹3,00,000/- on 05.10.2017 into two different bank accounts of the accused persons. It is further alleged that an unregistered agreement dated 06.03.2018 was executed between the complainant and the accused persons regarding payment of the contract amount to the complainant and authorizing him to operate the accuseds' bank account, which was not accepted by the bank. Subsequently, on 12.03.2018, a registered Power of Attorney was executed by the accused in favour of the complainant for operation of the said bank account. The complainant further alleged that despite investing a substantial amount in the construction work, the accused did not take interest in the work and failed to hand over the amount of ₹4,09,000/- paid by the department to the accused. Repeated demands were allegedly made by the complainant, including on 21.12.2018, and a legal notice dated 01.02.2019 was also issued, but the accused failed to return the money.

4. Learned counsel appearing on behalf of the

WEB COPY

petitioners submits that the petitioners are innocent and they have falsely been implicated in the case. He further submits that the matter primarily relates to monetary transaction between the parties and for amicable settlement of dispute between the parties outside the Court, the matter be referred for mediation.

5. Learned counsel appearing on behalf of the informant opposing the prayer for grant of pre-arrest bail submitted that an opportunity may be given to the parties to resolve their dispute amicably outside the Court.

6. Learned APP appearing on behalf of the State submitted that a chance be given to the parties for amicable settlement outside the court.

6. However, at this stage, learned counsel appearing on behalf of the parties, on instructions, submitted that the parties have agreed to appear before the learned District Court at 10:30 A.M. on 19.02.2026 for resolving the dispute by way of mediation .

7. Heard the parties

8. Having considered the rival submissions made on behalf of the parties, as well as, having perused the allegation made in the FIR, I am of the opinion that an opportunity is required to be given to the parties to settle their score amicably

WEB COPY

outside the Court.

9. In this regard, I find it apt to take note of the observation made by the Apex Court in case of ***Paramjeet Batra v. State of Uttarakhand*** reported in ***(2013) 11 SCC 673***, in which, the Apex Court in paragraph no. 12 has held as follows:

> *"**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."*
>
> *(emphasis supplied)*

10. The Apex Court has reiterated the aforesaid proposition in 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***,

WEB COPY

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*

WEB COPY

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. The parties have willingly desired to appear before the learned District Court on or before 19.02.2026, so that the matter can be referred to the District Mediation Centre.

13. Learned District Court is directed to take necessary steps to issue notices to the respective parties and upon their appearance, refer the matter before the learned Mediator of the District Mediation Center by fixing a date for appearance of the parties, so as to give effect to Mediation 2.0.

14. Learned Mediator of the District Mediation Center concerned, upon appearance of the parties, shall make his/her

WEB COPY

best efforts to settle the dispute amicably and thereafter submit his/her report before the concerned learned District Court, well within a period of two months, till then, no coercive action shall be taken against the petitioners in connection with the aforesaid case.

15. 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 hereinabove, the petitioners are required to be released on pre-arrest bail on such terms and conditions as the learned District Court deems it fit and proper.

16. In case of failure on the part of the petitioners to appear on 19.02.2026 before the learned District Court or any date fixed by the learned Mediator, the interim protection granted to the petitioners shall automatically lose its force.

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

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

WEB COPY

and proper.

19. If both the parties arrive at amicable settlement, then they must withdraw the criminal cases, if any, which they have lodged against each other.

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

(Purnendu Singh, J)

Niraj/-

U		T	

WEB COPY