

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.271 of 2020

Arising Out of PS. Case No.-94 Year-2020 Thana- PATLIPUTRA District- Patna

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Prashant Kishor Son of Late Srikant Pandey Resident of C-4, Singeshwar Apartment, East Boring Canal Road, P.S.- Buddha Colony, District- Patna, Office at - IPAC, 6th Floor, Abdul Hai Comple, Exhibition Road, P.S.- Gandhi Maidan, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department, Government of Bihar, Patna Bihar
2. The Senior Superintendent of Police, Patna Bihar
3. the City S.P. Patna Bihar
4. The S.H.O., Patliputra Police Station, Patna Bihar
5. The Investigating Officer, Patliputra, P.S. Case No. 94 of 2020, Patliputra, P.S.- Patna Bihar
6. Shashwat Gautam S/O Late Ramji Singh R/O- 201/A, Patliputra Colony, P.S.- Patliputra, District-Patna

... .. Respondents

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Appearance :

For the Petitioner	:	Ms. Eashita Raj, Advocate Mr. Anuj Kumar, Advocate
For the State	:	Mr. M. Nasrul Huda Khan, S.C.-1 Mr. Harun Quareshi, A.C. to S.C.-1
For the Respondent No.6:		Ms. Sangeet Deokuliar, Advocate Mr. Akhilesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 12-05-2026

The petitioner has invoked the criminal writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India and prayed for quashing the F.I.R. *vide* Patliputra P.S. Case No.94 of 2020 registered for the offence



under sections 467, 468, 471, 420, 406 read with section 120-B of the Indian Penal Code, 1860.

2. The informant namely, Shaswat Gautam (respondent no.06) had lodged a written complaint on 25.02.2020 stating therein that he had previously worked in the United States of America and he asserts himself to be an active member of the Indian National Congress Party and he was preparing for the election campaign leading up to the Bihar Legislative Assembly Elections, which included the work of data collection, compilation and thereafter creating several types of intellectual property. The campaign was based on socio-economic data of Bihar and was named as "*Bihar Ki Baat*". It was further stated that for digital implementation of the aforesaid campaign, a website was registered as "www.biharkibaat.in" on 07.01.2020. The informant alleged that in the early stages of the aforesaid campaign i.e. from December, 2019 one Osama Khurshid got associated with him as a political activist and started working with him without any remuneration. It has further been stated that he personally knew Osama Khurshid from October, 2017 who had also contested for the post of Joint Secretary on the ticket of Janta Dal (United) (JD(U)) in the Student Union elections at Patna University.



However, from the month of February, 2020 said Osama Khurshid stopped coming to the office and fled away with the office-laptop which contained the data, campaign designs and collection of other intellectual properties. Despite repeated calls, said Osama did not return the laptop and thereafter, the petitioner, Prashant Kishor, launched "*Baat Bihar Ki*" with the same set of data and other intellectual materials claimed to be belonging to the informant. It was alleged that the informant later, came to know that said Osama Khurshid stole the materials on the directions of the petitioner, who was associated with Indian PAC Consulting Private Limited. It was further alleged that the petitioner had purchased the said website on 16.02.2020 wherein the alleged intellectual property belonging to the informant was published without his consent or permission. The informant lastly submitted that even in the year 2015 during the ensuing Assembly Elections, the informant, on the pretext of friendship, had given the campaign designs to the present petitioner. Therefore, it is alleged that the said Osama Khurshid and the present petitioner including his other associates have conspired and committed theft of intellectual properties belonging to the informant.

3. Learned counsel appearing for the petitioner



has submitted that the petitioner is innocent and has falsely been implicated in the instant case in order to malign his image prior to the upcoming Bihar Assembly Elections, where the petitioner is looking to impact the election campaign through discussions on relevant issues. He further submits that the petitioner is an election consultant and social activist and had worked in the past. He has been working on several projects related to elections in different States in India under various political leaders including those in Bihar, Punjab, Uttarakhand, U.P., Andhra Pradesh, Maharashtra, Delhi, West Bengal and Tamil Nadu.

4. Learned counsel for the petitioner further submits that the sum and substance of the allegation levelled against the petitioner is that the informant had collected and collated some data claiming to be his intellectual property which was stolen by one Osama Khurshid and handed over to the petitioner. He further submits that the petitioner is the *harbinger* of the idea of 'Professional Election Consultancy' which is driven through data, interviews and surveys on different issues, in order to bridge the communication gap between the demands of the electorate and political actions of various political parties. It is submitted that the political parties are free as per their wish



to incorporate these in their election campaigns and manifestos. It is stressed by the learned counsel that the original data is not generated by the election consultant and the original data is in fact based on the Government data such as, those published by the Office of the Registrar General and Census Commissioner of India or the Economic Survey published by the Government, which are used as and when required. It is further amply stressed that even then the use of such data is but a very miniscule part of the entire exercise.

5. Adverting to the claim of the informant that he got the website “www.biharkibaat.in” registered on 07.01.2020 whereas the petitioner got the website “www.baatbiharki.in” registered on 16.02.2020, it is submitted by learned counsel for the petitioner that around six distinct websites have been registered within the last six months with similar names. He further submits that these websites were domain names and not trademarks over which any exclusivity could be asserted. It is emphasised by the learned counsel that the website launched by the petitioner does provide some data however, the sources of such data have clearly been mentioned and therefore, no question of exclusive right by virtue of intellectual property arises, as claimed by the informant, since



they originate from the publicly available Government records. Therefore, it is the argument of learned counsel that there is no originality or exclusiveness attached thereto and there is no novelty or artistic expression or originality in any content either on the website of the petitioner or that of the informant.

6. The next submission of learned counsel for the petitioner is that the law relating to the intellectual property is governed by the Copyright Act, 1957, Trademark Act, 1999, Patent Act, 1970 and Common Law remedy of 'passing off'. The intellectual property in India is administered by the Controller General of Patents, Designs, Trademarks (CGPDTM), which administers the law of Patents, Design, Trademarks and Geographical Indications. Therefore, it is submitted that this special law dealing with the subject of intellectual property has been casually invoked in the F.I.R, without any substance and applicability in the present case and context.

7. It is submitted that the intellectual property is created by filing relevant applications before the concerned authorities for trademark, copyright and patent, who in turn, after undertaking the necessary enquiry and procedures provided under the concerned relevant statute, provide the



certificates. It is emphasised that the informant is not the holder of any relevant trademark, patent or copyright in his favour and has not averred anywhere regarding holding any certificate for the same. The learned counsel submits that right under trademark may arise after fairly long usage, however, in the present case, the website has been registered merely a month back from the date of institution of the present F.I.R.

8. It has further been submitted by the learned counsel for the petitioner that as per section 4 of the Cr.P.C., whenever there happens to be application of a special law, the investigation, inquiry or trial should be guided by the special law itself, if it so prescribes. Therefore, it is apparent from the reading of section 4 that provisions of the Cr.P.C. would be applicable where an offence under the IPC or under any other law is being investigated, inquired into, tried or otherwise dealt with. These offences under any other law could also be investigated, inquired into or tried with according to the provisions of the Cr.P.C. except in case of an offence where the procedure prescribed thereunder is different than the procedure prescribed under the Cr.P.C.

9. It has further been submitted by the learned Counsel for the petitioner that the informant is well aware that



his case will not be covered at all by any stretch under the Intellectual Property Rights available in India and has therefore resorted to filing of the instant criminal case. It is further submitted that the local jurisdictional police have invoked such sections of Indian Penal Code which have no application at all in the instant case. The F.I.R. has been lodged *inter alia* under sections 467, 468, 471 which fall under Chapter XVIII titled 'offences relating to documents and to property marks'. The genus of the offences in these three sections is 'forgery', and 'making of false documents' which has been defined under sections 463 and 464 of the Indian Penal Code. Adverting to the aforementioned sections of the Indian Penal Code, the learned Counsel submits that a bare perusal of sections 463 and 464 would amply show that they would not cover the stealing of so-called data and so-called intellectual property, which is the main thrust of the allegation against the petitioner. He furthermore submits that prosecution has also been launched under section 406 which deals with criminal breach of trust and has been defined under section 405 Indian Penal Code and the same requires dishonest intention from the very beginning which has not been alleged in this case. Similarly, it has been submitted that section 420 Indian Penal Code which involves cheating and



dishonestly inducing delivery of property, which is not made out in the present case.

10. The submission of learned counsel for the petitioner is that the definition of 'property' as defined in the Indian Penal Code will not cover the intellectual property claimed by the informant as the same is governed by separate enactments and thus, no offence under the aforesaid sections as alleged or any other sections of the IPC is made out against the petitioner, as stated in the F.I.R. So far as the specific allegation levelled against the petitioner is concerned, the crux of allegation is that the so called intellectual property was stolen by one Osama Khurshid, who gave it to the petitioner, and the petitioner used it on his website. There is no allegation of stealing against the petitioner and even if the entire allegation is accepted, no case is made out against the petitioner.

11. It has further been submitted by the learned counsel for the petitioner that the forum chosen by the informant is wrong and the issue can be enquired into by the competent authorities provided for administration of Intellectual Property Laws or Civil Courts having jurisdiction under Law of Torts. The informant has also availed civil remedy by filing Title Suit being Registration No.86 of 2020/CNR No. BRPA03-000293-



2020 titled as ***Shashwat Gautan and Anr. vs. Prashant Kishor and Anr.***

12. Learned Counsel for the petitioner concludes his argument by submitting that the present dispute is civil in nature but has been given the colour of criminal case so as to harass and malign the petitioner with *malafide* intention just to tarnish his image. The entire case of the prosecution is based on false, concocted and manufactured story and therefore, the present FIR may be quashed.

13. Learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court rendered in the cases of ***Krishika Lulla & Ors. vs. Shyam Vithalrao Devkatta & Anr.*** reported as ***(2016) 2 SCC 521*** and in the case of ***Knit Pro International vs. State of NCT of Delhi & Anr.*** Reported as ***(2022) 10 SCC 221*** to contend that in the facts of the present case, the F.I.R. is liable to be quashed.

14. Further, learned counsel for the petitioner has relied upon the decision of the Hon'ble Supreme Court rendered in the case of ***Avtar Singh vs. State of Punjab*** reported as ***1964 SCC OnLine SC 54*** and ***Satya Narain Prasad vs. Bhagwan Ramdas @ Bhagwan Sah & Ors.*** Reported as ***1995 Suppl. (4) SCC 629*** to contend that incorporeal property theft is



not maintainable under section 379 of the Indian Penal Code.

15. The learned counsel for the petitioner has also drawn attention of this Court to the decision of the High Court of Andhra Pradesh rendered in the case of ***Syed Asifuddin and Ors. vs. The State of Andhra Pradesh & Anr.*** reported as ***2005 SCC OnLine AP 1100*** wherein the Hon'ble High Court had categorically distinguished the cases under the I.P.C and the Copyright Act 1957 and the IT Act and thereupon quashed the FIR impugned therein.

16. Learned counsel for the petitioner has also relied upon the decision of the Hon'ble Supreme Court rendered in the cases of ***Parminder Kaur vs. State of Uttar Pradesh and Anr.*** reported as ***(2010) 1 SCC 322*** and ***Paramjeet Batra vs. State of Utrakhand and Ors.*** reported as ***(2013) 11 SCC 673***. Paragraph no.12 and 13 of Paramjeet Batra's case (supra) reads as under:-

“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.

13. *As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by Respondent 2 against him alleging offence under Section 406 IPC. Possession of the shop in question has also been handed over by the appellant to Respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."*

17. Learned counsel has also relied upon the decision rendered in the case of ***Usha Chakraborty & Anr. vs. State of West Bengal and Anr.*** reported as **2023 SCC OnLine SC 90** to contend that the subsistence of present criminal



proceeding is an abuse of the process of the Court since there is already a civil case pertaining to the same subject matter, is pending between the parties.

18. Lastly, the learned counsel for the petitioner has relied upon the decisions of the Hon'ble Supreme Court rendered in the case of *Delhi Race Club (1940) Limited & Ors. vs. State of Uttar Pradesh and Anr.* reported as (2024) 10 SCC 690 and in the case of *Krishika Lulla & Others. vs. Shyam Vithalrao Devkatta & Anr.* reported as (2016) 2 SCC 521.

19. In this case, a counter affidavit has been filed on behalf of the respondent nos. 2 to 5 by the Dy. S.P., Law and Order, Kotwali, Patna, opposing the reliefs sought by the petitioner on account of its un-tenability. Upon submitting the brief facts of the case, the aforesaid respondents have stated that since the written complaint filed by the informant/respondent no.06 shows commission of cognizable offence, the F.I.R. has been registered against the petitioner being Patliputra P.S. Case 94 of 2020 dated 25.02.2020. It is submitted that upon registration of the FIR, the investigation was handed over to the Investigating Officer, who during the course of investigation, has proceeded to record the re-statement of the informant and has also visited the place of occurrence and thereafter the



Investigating Officer has also recorded the statements of several witnesses. The A.S.P., Law and Order, Patna had issued supervision report and directed the Investigating Officer to collect electronic evidences including the CDR and make necessary entries in the case diary. The S.P. Central Patna had issued Report-2 and given several directions including compliance of the earlier supervision report. Subsequently, a notice dated 18.02.2021 under section 91 Code of Criminal Procedure was issued to the petitioner which was returned unserved. Thereafter, a notice under section 91 Cr.P.C was also issued to Abhay Kishore, the cousin of the petitioner, who has sworn the affidavit in support of the present writ petition, however the said notice was also unanswered. Therefore, it is the submission of the respondents that owing to the aforesaid facts, the investigation is still pending.

20. The respondents have adverted to the case of *State of Haryana vs. Bhajan Lal and Ors.* reported as *1992 SCC (suppl) 1 335* to lay emphasis on the parameters for quashing the FIR or complaint case. The respondents in the counter affidavit have also relied upon the case of *Dineshbhai Chandubhai Patel vs. State of Gujarat & Ors.* reported as *AIR 2018 SC 314* to contend that the present F.I.R. may not be



quashed.

21. A separate counter affidavit sworn by Nurul Haque, Sr. Dy.S.P., Law and Order, Patna with a consolidated reply to the present writ petition has also been filed by the respondent no.02, which is essentially *pari materia* to the counter affidavit filed by the respondent nos. 2 to 5, with the only additional submission at paragraph no. 14 that the Investigating Officer of the case has tried to collect the documentary evidence including electronic evidence from the informant but he could not be found at his office.

22. A counter affidavit has been filed on behalf of the informant/respondent no.06. In the said counter affidavit, at the outset, in order to establish his *bona fides* it is submitted on behalf of the informant that he holds a postgraduate degree (M.B.A) in Data Analytics from the George Washington University and has worked as the Head of Analytics Division at the Water Commission, State of Maryland. It is also submitted that the informant/respondent no.06 was an elected member of the Senate at the George Washington University. The informant after gaining experience and expertise in his field of specialisation i.e. political and policy development returned to India and was engaged to oversee communications at *Janta Dal*



(United). It is further submitted that during the aforesaid assignment, the informant actively participated in 2015 election campaign for the *Janta Dal (United)* and introduced data-driven insights of governance using digital technology and developed a political campaign for the aforesaid political party which was executed by the petitioner. The informant has also held positions at the Centre for Economic Policy and Public Finance, ADRI, Government of Bihar and presently the informant is working as the National Coordinator of the Data Analytics Department at the Indian National Congress Party.

23. It is next submitted by the informant / respondent no.06 that he had conceived the idea of data driven political campaign called '*Bihar Ki Baat*' to inform the people of Bihar about the governance, politics and legislation using digital technology and other physical media. The informant has purchased the domain name and also set up the social media accounts and further formed a team of volunteers to work on the campaign. It is alleged by the informant/respondent no.06 that one Osama Khurshid on the instructions of the petitioner has stolen the laptop containing the concept note of the campaign, designs, workflow and the algorithms and subsequently the petitioner launched a similar campaign called '*Baat Bihar Ki*'



using the stolen content from the informant.

24. It is submitted that the relief sought by the petitioner is not maintainable in view of the facts and circumstances of the case and also in view of the settled principle of law that Police is empowered to investigate into the matter of criminal nature and more specifically in cases involving cognizable offences. On the averment of the petitioner that six distinct websites were registered within a span of six months with similar names while the informant registered www.biharkibaat.in on 07.01.2020 and the petitioner registered www.baatbiharki.in on 16.02.2020, the answering respondent no.6/informant submits that there were no such websites registered and only Facebook pages were created for which exact timeline could not be confirmed from the screenshots of the aforesaid Facebook pages. It is, however, emphasised by the respondent no.6/informant that even otherwise most of such pages only started appearing after the conceptualisation of the '*Bihar ki Baat*' campaign initiated by the informant.

25. Replying to the averment of the petitioner that the data sourced from Government records has no originality or exclusiveness, novelty, artistic expression or even original conclusions on the website of both the petitioner as well



as the informant, the informant/respondent no.6 has stated in the counter affidavit that the end product holds significance when it incorporates materials sourced from multiple sources/records, that have undergone thorough analysis and critical thinking, as such, it is submitted that the end product so produced becomes the intellectual property of the creator. The informant/respondent no.6 exemplifies this by stating that the research papers and thesis that are published, draws upon from multiple sources including books and academic journals and through the process of assimilation and interpretation of this information a new intellectual creation is formed that often takes shape of a book. It is submitted that this process underscores the value of synthesising diverse inputs to produce an original work by synthesising and transforming existing knowledge, therefore creators contribute in their own unique way by bringing in their own perspective and insight, resulting in distinct and protected intellectual property. It is asserted that the present work done by the respondent no.6 is his own original creation wherein skill, critical thinking and analysis has been employed to transform existing data and information into the end result which is therefore a protected intellectual property.

26. It is next submitted that the instant F.I.R. was



registered invoking appropriate sections of the Indian Penal Code as in the aforesaid F.I.R. it has been alleged that upon the direction of the petitioner said Osama Khurshid has stolen the laptop belonging to the informant/respondent no.6 and subsequently the contents therefrom were obtained fraudulently. It is alleged in the counter affidavit that this stolen content was then eventually utilised by the petitioner in the '*Baat Bihar Ki*' campaign and the petitioner was the primary conspirator. It is emphasised by the respondent no.6/informant that the sections under which the case has been registered by the Police are not final and are subject to the outcome of the ongoing investigation, it is apposite that after completion of the investigation, the police would determine the final charges to be filed before the competent Court.

27. While replying to the assertion made by the petitioner regarding non-registration of the intellectual property in question under appropriate intellectual property category and non-issuance of any relevant certificates in connection thereof in favour of the informant/respondent no. 6, it is submitted by him that such grounds are not applicable in the facts of the present case since they are irrelevant to the present legal proceedings and do not pertain to the matter at hand.



28. The respondent no.6/informant further submits that the petitioner has chosen to raise a myriad of grounds purely intended to divert the attention of this Court. It is submitted that the police have duly registered the F.I.R. under appropriate provisions of law specifically addressing the offence committed by the petitioner and his associates. It is amply emphasised that the investigation is currently ongoing and has not reached a conclusive stage. The respondent no.6 submits further that the authority to investigate and uncover the truth lies exclusively with the jurisdiction conferred upon the investigating agency under the provisions of the Cr.P.C.

29. While replying to the argument advanced by the petitioner that the exact allegation levelled by the informant was directed towards one Osama Khurshid for theft of intellectual property belonging to the informant and not towards the instant petitioner, it is submitted by him that the petitioner was indeed the master mind and the primary conspirator and has orchestrated the entire incident. It is alleged by the respondent no.6 that it was on the instigation of the present petitioner that his accomplice Osama Khurshid, unlawfully obtained the laptop belonging to the informant/respondent no.6 and subsequently retrieved confidential information therefrom. It is reiterated that



it was this stolen information that was then utilised by the petitioner in creation and design of '*Baat Bihar Ki*' campaign. Therefore, it is submitted that the petitioner played a pivotal role in orchestrating the theft and the subsequent utilisation of the retrieved data for his own campaign.

30. On the assertion of the petitioner that the respondent no.6 has chosen a wrong forum and the issue can only be inquired by an appropriate competent authorities under law, the informant submits that the offences under Chapter-XIII of the Copyright Act, 1957 particularly the offence under section 63 of the aforesaid statute are classified as cognizable offence. Further, it is submitted that the provisions of the aforesaid Act does not restrict, limit or prohibit the jurisdictional police from undertaking the investigation upon a complaint being made. On the contrary, it is submitted that the aforesaid Act empowers the police to take appropriate action in such cases. It is further submitted by the respondent no.6 that the Police have duly registered the FIR under relevant sections of the IPC and the police after bringing the investigation to a logical conclusion may further invoke other penal provisions subject to the outcome of the ongoing investigation. It is vehemently argued that the present case categorically attracts



the section 420 of Indian Penal Code and amply satisfies the ingredients of the aforesaid section. In order to further buttress this argument, the informant/respondent no.6 places reliance on the case of *Mohd. Ibrahim vs. State of Bihar* reported as (2009) 8 SCC 751.

31. It is submitted that the offence committed by the petitioner also falls within the purview of the Copyright Act, 1957. It is also highlighted by reiterating that the offence under section 63 of the Copyright Act, 1957 is a cognizable offence which further affirms the jurisdiction of the police in the present case.

32. The informant has adverted to the case of *State of Haryana vs. Bhajan Lal & Ors.* 1992 Supp (1) SCC 335 to draw attention of this Court to the parameters for quashing of the FIR/complaint. Further, the informant has also placed reliance on the case of *Madhavrao Jiwajirao Scindia vs. Sambhajirao Chandrojirao Angre* reported as (1988) 1 SCC 692 wherein law relating to quashing of proceedings was settled and the same has been reiterated in the case of *Robert John D'souza vs. Stephen vs. Gomes* reported as (2015) 9 SCC 96 wherein the Hon'ble Supreme Court has observed that when a prosecution at the initial stage is asked to be quashed, the test to be



applied by the court is as to whether the uncontroverted allegations as made *prima facie* establish the offence.

33. The informant/respondent no.6 has also placed reliance on the decisions rendered in the case of ***Medchl Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd.*** reported as ***(2000) 3 SCC 269*** and in the case ***Kamaladevi Agarwal vs. State of West Bengal*** reported as ***(2002) 1 SCC 555*** wherein the Hon'ble Supreme Court has held that criminal prosecution cannot be thwarted at the initial stage merely because civil proceedings are also pending.

34. Lastly, the respondent no.6/informant has also relied upon the decision rendered in the case of ***M. Krishnan vs. Vijay Singh*** reported as ***(2001) 8 SCC 645*** and has submitted that in the aforesaid case the Hon'ble Supreme Court has held that while exercising the powers under Section 482 of the Code, the High Court should be slow in interfering with the proceedings at the initial stage and that merely because the nature of the dispute is primarily of a civil nature, the criminal prosecution cannot be quashed because in cases of forgery and fraud there is always some element of civil nature.

35. I have considered the submissions of the parties and perused the materials on record.



36. Both, the petitioner as well as the informant are engaged in the *niche* and specialised work of political/election consultancy. The informant/respondent no.6, had lodged a written complaint stating that, in connection with the then ensuing Bihar Legislative Assembly Elections, he had conceived and developed a data-driven political campaign titled "*Bihar Ki Baat*", consisting of a concept note, campaign designs, workflow, algorithms and a body of socio-economic data, and that, in furtherance of the campaign, he had registered the domain name www.biharkibaat.in in the month of January of 2020. It is the allegation of the informant that one Osama Khurshid, who had been associated with the informant as a political activist from earlier, ceased to attend the office in February, 2020 and left with the office-laptop containing the said material, which he did not return despite repeated requests, and shortly thereafter, the petitioner launched a campaign titled "*Baat Bihar Ki*" and registered the domain www.baatbiharki.in in the month of February of 2020. The specific allegation against the present petitioner, as set out in the complaint and reiterated in the counter-affidavit of the informant / respondent no.6, is in two-folds: *first*, that the petitioner instigated and directed co-accused Osama Khurshid to remove the laptop and



to make over to him the data and other materials said to be belonging to the informant and *second*, that the petitioner thereafter used the said material on his website www.baatbiharki.in and in his "*Baat Bihar Ki*" campaign without the consent of the informant.

37. Pertinently, the informant in his complaint, based on which the present FIR came to be registered, also states that on an earlier occasion in the year 2015, during the State Assembly Elections of that year, the informant had shared certain campaign designs with the petitioner in the course of their earlier association.

38. From the reading of the present F.I.R, it appears that the thrust of the allegation against the present petitioner is that he had conspired with the co-accused in order to allegedly steal protected intellectual property of the informant/respondent no.6 to initiate his own campaign, thereby appropriating the intellectual creation of the informant. Pertinently, the allegation of stealing laptop belonging to the informant is specifically directed towards co-accused Osama Khurshid. The informant in his written complaint dated 25.02.2025 had stated that he came to know about the alleged conspiracy of theft of his protected intellectual property from



the friends of the co-accused Osama Khurshid.

39. The Hon'ble Supreme Court in the case of ***Mohammed Ibrahim & Ors. vs. State of Bihar & Anr.***, reported as ***(2009) 8 SCC 751*** had distilled the law on essential ingredients of sections 467 and 471 of the I.P.C. and held that the condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document or false electronic record or part thereof. Upon a closer analysis of section 464 of the IPC, the Hon'ble Supreme Court had laid down the categories of false document and held as under:-

“14.An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:

- 1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.*
- 2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority,*



after it has been made or executed by either himself or any other person.

3. *The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.*

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.”

40. Subsequently, the Hon’ble Supreme Court in the case of ***Sheila Sebastian vs. R. Jawaharaj & Anr.***, reported as ***(2018) 7 SCC 581*** has held as under:-

“19. A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to



sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore, unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.

20. *The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 IPC. As Collin, J., puts it precisely in Dickinson v. Gill (1896) 2 QB 310 (DC)], a case dealing with the possession and making of fictitious stamp wherein he stated that “to make”, in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.*

21. *It is observed in Mohd. Ibrahim v. State of Bihar [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 that: (SCC p. 756, para 14)*

“14. ... a person is said to have made a “false document”, if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practising deception, or from a person not in control of his senses.”

22. *In Mohd. Ibrahim, (2009) 8 SCC 751, this Court*



had the occasion to examine forgery of a document purporting to be a valuable security (Section 467 IPC) and using of forged document as genuine (Section 471 IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463 IPC depends upon creation of a document as defined under Section 464 IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.

23. *The Court in Mohd. Ibrahim, (2009) 8 SCC 751 observed that: (SCC p. 757, paras 16-17)*

“16. ... There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of “false



documents”, it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.”

24. In Mir Nagvi Askari v. CBI, (2009) 15 SCC 643, this Court, after analysing the facts of that case, came to observe as follows: (SCC p. 687, para 164)

“164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that



the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document.”

25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation



wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.

26. The definition of “false document” is a part of the definition of “forgery”. Both must be read together. “Forgery” and “fraud” are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that “false document”. Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same.”

41. The offences under sections 467, 468 and



471 of the Indian Penal Code takes life from section 463, which defines *forgery*, and from section 464, which defines a *false document*. The Hon'ble Supreme Court in the aforequoted decisions had held that for attracting the ingredients of an offence under section 467, there must be a forgery of a valuable security as defined in section 464 and for an offence under section 468, there must be a forgery with intent that the document forged shall be used for the purpose of cheating, further for an offence under section 471, the accused must have fraudulently or dishonestly used as genuine, a document or electronic record, which he knew or had reason to believe to be a forged document. The foundational requirement of each of sections 467, 468 and 471 is therefore the prior existence of a "false document" within the meaning of section 464, brought into being by the accused himself. Tested against this settled position, the present F.I.R. discloses no offence under sections 467, 468 or 471 of the Code, since there is not even a whisper of allegation that the petitioner made, signed, sealed or executed any document whatsoever, much less a document that could be characterised as a *false document* within the meaning of section 464 IPC. The substratum of the case is the alleged use of certain data, designs and a concept note of a political campaign, said to



have originated with the informant through his intellect, it is not, and has not been alleged to be the case of manufacture of any document by the petitioner. The very ingredient on which sections 467, 468 and 471 are predicated is therefore wholly absent.

42. Now, turning to whether the ingredients of the offence of cheating are made out against the petitioner from the reading of the F.I.R, it would be apposite to refer to a decision of the Hon'ble Supreme Court in the case of ***Jupally Lakshmikantha Reddy v. State of A.P. & Anr.*** reported as **2025 SCC OnLine SC 1950**, had held as under:-

“12. The ingredients of the offence of cheating are as follows:

1) Deception of a person by making false representation which the maker knows or has reason to believe is false and thereby

2)(a) Fraudulently or dishonestly inducing such person:

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain any property, or

(b) Intentionally induces that person to do or omit to do anything which he would not



do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

13. *The words 'dishonestly' and 'fraudulently' are defined as follows:*

"24. "Dishonestly"—

Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing "dishonestly".

25. "Fraudulently"—

A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise."

Section 23 IPC defines wrongful loss/wrongful gain:

"Wrongful gain": Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled."

"Wrongful loss": Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled."

Reading the ingredients in the backdrop of these definitions, it is evident in order to attract the offence of cheating, a person must knowingly make a false statement which would induce another to part with property or to do or omit to do a thing which the latter would not do or omit unless deceived and thereby is likely to suffer damage/harm in body, mind, reputation or property.

14. *In Dr. Sharma's Nursing Home v. Delhi Admn.*



(1998) 8 SCC 744, this Court held mere deception by itself would not constitute cheating unless the other essential ingredient, i.e., dishonest inducement is established. This Court held as follows:

“...both the learned courts have rested their findings on deception only and did not go into the question whether the complaint and its accompaniments disclosed the other essential ingredient of the offence under Section 420 IPC, namely, dishonest inducement. “Dishonesty” has been defined in Section 24 IPC to mean deliberate intention to cause wrongful gain or wrongful loss; and when with such intention, deception is practised and delivery of property is induced then the offence under Section 420 IPC can be said to have been committed...”

15. *In Hridaya Ranjan Prasad Verma v. State of Bihar (2000) 4 SCC 168, this Court reiterated that Section 415 IPC contemplates two distinct situations; the first where a person is dishonestly induced to deliver property, and the second where a person is induced to do or omit an act which, but for the deception, he would not have done or omitted. In the former, the inducement must be fraudulent or dishonest, whereas in the latter it need only be intentional. Therefore, intention is the gist of the offence.”*

43. The Hon’ble Supreme Court in the cases of ***Vesa Holdings (P) Ltd. v. State of Kerala***, reported as ***(2015) 8***



SCC 293, *Lalit Chaturvedi & Ors. vs. State of Uttar Pradesh & Anr.*, reported as **(2024) 12 SCC 483**; and ***Mariam Fasihuddin & Anr. vs. State & Anr.***, reported as **(2024) 11 SCC 733** had settled and crystallized the position of law that in order to attract the rigors of section 420 IPC, the prosecution must *prima facie* show that there was deception practiced at the inception, and that dishonest inducement followed therefrom, with the consequence that delivery of property or alteration of position by the deceived had occurred. The Hon'ble Supreme Court in ***A.M. Mohan vs. State by S.H.O. & Anr.*** Reported as **(2024) 12 SCC 181**, had held as under :-

“20. This Court in R.K. Vijayasaratthy v. Sudha Seetharam (2019) 16 SCC 739 has culled out the ingredients to constitute the offence under Sections 415 and 420IPC, as under: (SCC pp. 745-46, paras 15-20)

“15. Section 415 of the Penal Code reads thus:

‘415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or



omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.’

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property; or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property.

17. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

18. Section 420 of the Penal Code reads thus:

‘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.'

19. The ingredients to constitute an offence under Section 420 are as follows:

19.1. A person must commit the offence of cheating under Section 415; and

19.2. 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.

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

21. A similar view has been taken by this Court in Archana Rana v. State of U.P. [(2021) 3 SCC 751], Deepak Gaba v. State of U.P. [(2023) 3 SCC 423] and Mariam Fasihuddin v. State of



Karnataka [(2024) 11 SCC 733].

22. *It could thus be seen that for attracting the provision of Section 420IPC, the FIR/complaint must show that the ingredients of Section 415IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420IPC, it must be shown that the FIR/complaint discloses:*

- (i) the deception of any person;*
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and*
- (iii) dishonest intention of the accused at the time of making the inducement.”*

44. Section 420 I.P.C. therefore stands on three indispensable pillars, *firstly*, deception at inception, *secondly*, dishonest inducement, and *thirdly*, delivery of property by the deceived as a consequence. To constitute an offence under Section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived, to deliver any property to any person, or to make, alter or destroy wholly or in part a valuable security or anything signed or sealed and which is



capable of being converted into a valuable security.

45. On perusal of the F.I.R., none of essential ingredients are made out against this petitioner. The F.I.R. does not contain any allegation that there ever existed a transaction *inter se* the informant and the petitioner. The informant further does not allege that the petitioner made any representation, false or otherwise, to the informant as a consequence of which the informant parted with any property or valuable security in consequence of any such representation. The co-accused named in the F.I.R., that is, one Osama Khurshid is alleged to have left the office with the laptop of his own accord. At its highest, the petitioner is alleged only to have used, at a later stage, the data said to have originated with the informant. None of these allegations even approaches the ingredients of section 415, and none can sustain the rigors under section 420 of the I.P.C.

46. It is not the case of the informant that any of the accused persons tried to deceive him either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit



if he were not so deceived. Nor did the informant allege that the petitioner pretended to be the informant while executing allegedly protected intellectual property. Since the essential ingredients of cheating as stated in Section 415 are absent, it cannot be said that there was an offence punishable under Sections 417, 418, 419 or 420 of the Code.

47. Coming to the offence under section 120-B IPC, when the substantive offences upon which the alleged conspiracy is said to rest are held to be not attracted, therefore, the offence of conspiracy under section 120-B could not also be sustained since it is settled law that conspiracy cannot be sustained where the substantive offence to which it is yoked is itself not made out.

48. For the foregoing discussions, this Court is of the considered view that none of the penal sections invoked in the F.I.R. are attracted against the petitioner in the facts of the present case.

49. Now, coming to the contention of the informant/ respondent no.6 that the penal provisions invoked in the F.I.R. are open to revision and subject to the final conclusion of the investigation and thereafter, further subject to independent application of judicial mind by the concerned



Magistrate and therefore, a mere non-invocation or wrong invocation of a penal section cannot be a ground for quashing. However, it is a settled position of law that when the allegations made in the F.I.R. are taken at its face value and yet, they fail to make out even a *prima facie* case then the continuation of criminal proceeding in such cases, would squarely amount to abuse of the process of the Court and a Constitutional Court must prevent such abuse of the process of the Court.

50. At this stage, it would be apposite to refer to the decision of the Hon'ble Supreme Court in the case of *R.G. Anand v. Delux Films & Ors.*, reported as (1978) 4 SCC 118 wherein it has authoritatively been held that no copyright subsists in an idea, principle, theme or subject-matter and has held as under:-

“45. Thus, the position appears to be that an idea, principle, theme, or subject-matter or historical or legendary facts being common property cannot be the subject-matter of copyright of a particular person. It is always open to any person to choose an idea as a subject-matter and develop it in his own manner and give expression to the idea by treating it differently from others. Where two writers write on the same subject similarities are bound to occur because the central idea of both are the same but the similarities or coincidences by themselves cannot



lead to an irresistible inference of plagiarism or piracy. Take for instance the great poet and dramatist Shakespeare most of whose plays are based on Greek-Roman and British mythology or legendary stories like Merchant of Venice, Hamlet, Romeo and Juliet, Julius Ceasar etc. But the treatment of the subject by Shakespeare in each of his dramas is so fresh, so different, so full of poetic exuberance elegance and erudition and so novel in character as a result of which the end product becomes an original in itself. In fact, the power and passion of his expression, the uniqueness, eloquence and excellence of his style and pathos and bathos of the dramas become peculiar to Shakespeare and leaves precious little of the original theme adopted by him. It will thus be preposterous to level a charge of plagiarism against the great playwright. In fact, throughout his original thinking, ability and incessant labour Shakespeare has converted an old idea into a new one, so that each of his dramas constitute a masterpiece of English literature. It has been rightly said that "every drama of Shakespeare is an extended metaphor". Thus, the fundamental fact which has to be determined where a charge of violation of the copyright is made by the plaintiff against the defendant is to determine whether or not the defendant not only adopted the idea of the copyrighted work but has also adopted the manner, arrangement, situation to situation, scene to scene with minor changes or super additions or embellishment here and there. Indeed, if on a perusal of the copyrighted work the defendant's



work appears to be a transparent rephrasing or a copy of a substantial and material part of the original, the charge of plagiarism must stand proved. Care however must be taken to see whether the defendant has merely disguised piracy or has actually reproduced the original in different form, different tone, different tenor so as to infuse a new life into the idea of the copyrighted work adapted by him. In the latter case there is no violation of the copyright.

46. Thus, on a careful consideration and elucidation of the various authorities and the case law on the subject discussed above, the following propositions emerge:

1. *There can be no copyright in an idea, subject-matter, themes, plots or historical or legendary facts and violation of the copyright in such cases is confined to the form, manner and arrangement and expression of the idea by the author of the copyrighted work.*
2. *Where the same idea is being developed in a different manner, it is manifest that the source being common, similarities are bound to occur. In such a case the courts should determine whether or not the similarities are on fundamental or substantial aspects of the mode of expression adopted in the copyrighted work. If the defendant's work is nothing but a literal imitation of the copyrighted work with some variations here and there it would amount to violation of the*



copyright. In other words, in order to be actionable the copy must be a substantial and material one which at once leads to the conclusion that the defendant is guilty of an act of piracy.

- 3. One of the surest and the safest test to determine whether or not there has been a violation of copyright is to see if the reader, spectator or the viewer after having read or seen both the works is clearly of the opinion and gets an unmistakable impression that the subsequent work appears to be a copy of the original.*
- 4. Where the theme is the same but is presented and treated differently so that the subsequent work becomes a completely new work, no question of violation of copyright arises.*
- 5. Where however apart from the similarities appearing in the two works there are also material and broad dissimilarities which negative the intention to copy the original and the coincidences appearing in the two works are clearly incidental no infringement of the copyright comes into existence.*
- 6. As a violation of copyright amounts to an act of piracy it must be proved by clear and cogent evidence after applying the various tests laid down by the case-law discussed above.*
- 7. Where however the question is of the*



violation of the copyright of stage play by a film producer or a director the task of the plaintiff becomes more difficult to prove piracy. It is manifest that unlike a stage play a film has a much broader prospective, wider field and a bigger background where the defendants can by introducing a variety of incidents give a colour and complexion different from the manner in which the copyrighted work has expressed the idea. Even so, if the viewer after seeing the film gets a totality of impression that the film is by and large a copy of the original play, violation of the copyright may be said to be proved.”

51. This Court has noted that the Hon’ble Supreme Court in the case of **Krishika Lulla (supra)** wherein a script writer had alleged that his story synopsis had been appropriated by the producer of a film and consequently, an F.I.R. was lodged under sections 63 of the Copyright Act read with section 406 and 420 of the Indian Penal Code. The Hon’ble Supreme Court had quashed the F.I.R. and held as under:-

“12. The decisions cited on behalf of the appellants show that it is well settled that copyright does not subsist in a title of work.

xxxxx

19. We are thus, of the view that no copyright



subsists in the title of a literary work and a plaintiff or a complainant is not entitled to relief on such basis except in an action for passing off or in respect of a registered trade mark comprising such titles. This does not mean that in no case can a title be a proper subject of protection against being copied as held in Dicks v. Yates (1881) LR 18 Ch D 76 (CA)] where Jessel M.R. said “there might be copyright in a title as for instance a whole page of title or something of that kind requiring invention” or as observed by Copinger (supra).

20. *In the present case, we find that there is no copyright in the title “Desi Boys” and thus, no question of its infringement arises. The prosecution based on allegations of infringement of copyright in such a title is untenable.*

21. *The learned counsel for the respondents indeed contended that the applications under Section 482 CrPC were rightly dismissed since these facts alleged by the appellants depend on evidence at the trial. It is not possible to agree since it has throughout been the case of Respondent no. 1 Devkatta that he is claiming copyright only in the title of the synopsis of his story “Desi Boys” and he has not even seen the film of the appellants nor does he know the story. The learned counsel for the respondent was, however, right in his*



submissions that it is not necessary to furnish all the ingredients of the complaint and failing which the complaint is liable to be dismissed on that ground. It is not necessary to consider the decisions cited by the respondents on this point.”

52. Further again, from reading of the F.I.R., it appears that the data asserted by the informant does not fall in any of the categories of protected intellectual property much less under the Copyright Act. The informant has not stated that the subject concept note developed by the informant was registered and therefore, its unauthorized usage would attract penal provisions. Further, from reading of the F.I.R., it appears that nowhere it suggests that any copyright was created for aforesaid campaign, designs, workflow and the algorithms in favour of the informant. The concept note, campaign design, workflow or algorithms prepared by the informant and stored on his laptop are incorporeal in nature and as such, *de hors* a specific legal fiction and therefore, no offence of theft is made out.

53. It is reiterated that, from the reading of the F.I.R. it appears that the allegation against the petitioner is of appropriating the intellectual property of the informant asserted to be his protected intellectual property, however, no assertion is



made with respect to the protected nature of the concept note, campaign design, workflow or algorithms. The analogy drawn by the informant with respect to the academic thesis drawing from several published sources is also, in the considered opinion of this Court, not of any consequence since a doctoral candidate develops a novel hypothesis and generates a fresh analysis and thereafter prepares data and analysis which is also fixed by the unique expression of the author. A derivative work drawing heavily from the public sources such as census reports and economic surveys does not and could not qualify for the protection as asserted by the informant. It is already crystallised that there can be no copyright in an idea, subject matter or themes. The informant can not use the phrase ‘intellectual property’ as an incantation to invoke the rigours of criminal law.

54. It has also not escaped the attention of this Court that the informant has already preferred a civil action on the very same subject matter. The informant can not therefore be permitted to give criminal colour to the proceedings.

55. In view of the aforesaid discussions, this Court is of the considered view that continuation of the criminal prosecution against the petitioner is nothing but an abuse of the process of the Court and accordingly, this petition is allowed



and the F.I.R. vide Patliputra P.S. Case No.94 of 2020 and all consequential proceeding arising therefrom are quashed and set aside qua the petitioner.

(Sandeep Kumar, J)

pawan/-

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