

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9713 of 2018

Arising Out of PS. Case No.-1170 Year-2016 Thana- SASARAM NAGAR District- Rohtas

Sameer Kumar, S/o Late Shoukin Singh, The Assistant Godown Manager,
CMR cum Child Protection Officer, Sasaram, Incharge of CMR Godown,
situated at Sasaram Takiya Bazar Samiti Premises, P.S.- Sasaram Model
District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Bihar State Food and Civil Supply Department.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ravi Shankar Sahay, Advocate Mr. Kanhaiya Rao, Advocate
For the State	:	Mr. Uday Chand Prasad, APP
For the BFSC	:	Mr. Niraj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

- 9 29-06-2026 1. Heard learned counsel for the petitioner as well as
learned counsel for the O.P. No.2 and learned APP for the State.
2. The present application has been filed under
Section 482 of the Code of Criminal Procedure, 1973
(hereinafter referred to as 'Cr.P.C.') for quashing the order dated
09.01.2018 passed by the learned A.C.J.M.-V cum Sub-Judge-
XIII, Rohtas at Sasaram (hereinafter referred to as 'Trial Court')
in connection with Sasaram (Model) P.S. Case No.1170 of 2016,
wherein the learned Trial Court rejected the discharge petition
filed by the petitioner.
3. Briefly stated, the prosecution case is that an F.I.R.
being Sasaram (Model) P.S. Case No.1170 of 2016 dated



21.10.2016 was instituted on the written report of the District Manager, State Food Corporation, Sasaram, pursuant to directions received from the Head Office, Patna. The allegation against the petitioner, who was posted as Godown Manager and was entrusted with the custody of Custom Milled Rice (CMR) stored in the concerned godown, is that during an inspection conducted by a special team, he was found absent despite being directed to remain present with all relevant records. During such inspection, it was allegedly noticed that about 300 bags of CMR had been shifted from the bags supplied by the State Food Corporation to bags bearing the markings of the Government of India, Government of Haryana and Government of Punjab, which was stated to be in violation of the departmental guidelines and circulars governing storage of food grains. It was further alleged that the absence of the petitioner caused obstruction in the discharge of official duties by the inspecting team. On the basis of the aforesaid allegations, the present case was registered under Sections 353, 420, 406, 409 read with Section 34 of the Indian Penal Code, 1860.

4. Upon completion of investigation, charge-sheet was submitted and the learned C.J.M., Rohtas took cognizance of the offence under Sections 353, 420, 406, 409 read with Section 34



of the Indian Penal Code. Thereafter, the petitioner filed an application for discharge contending, *inter alia*, that the CMR stock was found intact during investigation, no shortage or misappropriation of rice was detected and, at best, the allegations disclosed a departmental lapse. The aforesaid discharge application having been rejected by the learned Trial Court *vide* the impugned order dated 09.01.2018, the present Criminal Miscellaneous Application has been preferred before this Court.

5. Learned counsel for the petitioner submits that the entire prosecution case, even if accepted in its entirety, does not disclose the commission of any offence under Sections 353, 420, 406 or 409 of the Indian Penal Code. He submits that during investigation the police found the entire stock of Custom Milled Rice (CMR) intact in the godown and no shortage, defalcation, misappropriation or wrongful loss to the State Food Corporation was detected. Referring to the statements of the Account Officer and Assistant Account Officer recorded during investigation, learned counsel submits that the bags supplied by the Corporation was damaged and, there being no provision for replacement thereof, the petitioner had shifted the rice into bags purchased from the market only with a view to preserving the



stock entrusted to him in good faith. Learned counsel for the petitioner further submits that the mere replacement of bags, without any allegation of loss or misappropriation of the stored rice, may at best amount to violation of departmental guidelines and cannot constitute the ingredients of the offences alleged.

6. Learned counsel for the petitioner further submits that the allegation under Section 353 of the Indian Penal Code is wholly misconceived inasmuch as there is no accusation of assault, use of criminal force or any overt act on the part of the petitioner to deter a public servant from discharging his official duties. It is submitted that mere absence of the petitioner at the time of inspection cannot attract the provisions of Section 353 of the India Penal Code. It is also submitted that the materials collected during investigation do not disclose any dishonest intention or criminal breach of trust or wrongful gain so as to justify framing of charges under Sections 406, 409 or 420 of the Indian Penal Code. Learned counsel thus submits that continuation of the criminal proceeding would amount to abuse of the process of the Court and that the learned Trial Court failed to appreciate the absence of any *prima facie* material while rejecting the discharge application filed by the petitioner. He lastly prays that the impugned order passed by the learned



Trial Court warrants interference by this Court.

7. Learned counsel for the O.P. No.2, while opposing the application, submits that the allegations against the petitioner are serious in nature and relate to defalcation and mismanagement of public food grains entrusted to the custody of the petitioner. It is submitted that despite prior directions, the petitioner neither produced the relevant stock registers nor cooperated with the inspection team, and during physical verification it was found that a substantial quantity of CMR had been stored in bags other than those supplied by the Corporation. Reliance has also been placed upon the directions issued by the Hon'ble Supreme Court in SLP (Cr.) No. 1779 of 2016 concerning expeditious trial of cases relating to defalcation of public food grains, and it is submitted that the learned Trial Court has rightly rejected the discharge application filed by the petitioner. Moreover, learned APP for the State adopts the submissions advanced on behalf of O.P. No.2 and submits that the appropriate orders may be passed by this Court in the interest of justice.

8. I have heard learned counsel for the petitioner, learned counsel appearing on behalf of O.P. No.2 and learned APP for the State and have carefully perused the materials



available on record. It is well settled that while exercising jurisdiction under Section 482 of the Cr.P.C., this Court does not undertake a meticulous appreciation of the evidence collected during investigation nor does it adjudicate upon the truthfulness of the allegations. At the stage of framing of charge or considering a prayer for discharge, the Court is only required to examine whether the materials collected during investigation, if taken at their face value, disclose the ingredients of the offences alleged. Interference in exercise of inherent jurisdiction is warranted only where the allegations made in the F.I.R., the charge-sheet and the materials on record, even if accepted in their entirety, do not constitute any offence or where continuation of the criminal proceeding would amount to an abuse of the process of the Court. Therefore, while considering the challenge to the order refusing discharge, this Court is required to examine whether a *prima facie* case under Sections 353, 420, 406 and 409 read with Section 34 of the Indian Penal Code is made out from the materials collected during investigation.

9. Upon perusal of the F.I.R., the case diary and the materials collected during investigation, this Court finds that the gravamen of the allegation against the petitioner is not that any



quantity of CMR rice was found missing from the godown, but that a number of bags containing the stored rice were found to have been shifted from the gunny bags supplied by the Corporation to bags bearing the markings of other governmental agencies. Significantly, the investigating agency, upon physical verification of the godown, found the CMR stock intact and there is no allegation in the charge-sheet of any shortage, disappearance or misappropriation of the rice entrusted to the petitioner.

10. It further transpires from the statements recorded during investigation, as noticed in the case diary, that the gunny bags initially supplied by the Corporation often become damaged due to prolonged storage and are also susceptible to damage by rodents. It has been stated that there exists no provision for supply of replacement bags by the Corporation and, in such circumstances, the responsibility of preserving the food grains and arranging substitute bags falls upon the Godown Manager. The materials collected during investigation indicate that the petitioner had shifted the rice from the damaged bags to other available bags procured from the market with the object of safeguarding the stock stored in the godown. Thus, even from the prosecution materials, it *prima facie* appears that the rice



entrusted to the petitioner remained available in the godown and what is attributed to him is the replacement of damaged gunny bags without obtaining prior permission from the authorities concerned. Whether such conduct amounts to violation of departmental instructions or administrative guidelines is a matter distinct from the question as to whether the essential ingredients of the penal offences alleged are disclosed from the materials on record.

11. The Hon'ble Supreme Court in ***Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr.*** reported in ***(2024) 10 SCC 690*** has elaborately explained *sine qua non* requirement for the offence of cheating, which is as under:

“36.....Similarly, in respect of an offence under Section 420 IPC, 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 persons 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, (2009) 7 SCC 712 : (2009) Cr.L.J. 3462 (SC))

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.

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39. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 as under:

“4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating.”

12. The Hon'ble Supreme Court in *Arshad Neyaz*



Khan v. State of Jharkhand and Anr., reported in 2025 SCC

Online SC 2508 has held as under:

“17. In Inder Mohan Goswami vs. State of Uttaranchal, (2007) 12 SCC 1 (“Inder Mohan Goswami”), while dealing with Section 420 IPC, this Court observed thus:

“42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning.”

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19. It is settled law that for establishing the offence of cheating, the complainant/respondent No.2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made cannot be presumed but has to be made out with cogent facts.....”



13. So far as the allegation under Section 353 of the Indian Penal Code is concerned, this Court finds that neither the F.I.R. nor the materials collected during investigation disclose any allegation of assault or use of criminal force by the petitioner against any public servant while discharging his official duty. The gravamen of the accusation is that the petitioner was not present at the godown at the time of inspection and did not produce the relevant records as directed. Mere absence from the place of inspection or failure to produce documents, without anything further, may constitute negligence or disobedience of departmental instructions, but the same, by itself, does not satisfy the essential ingredients of Section 353 of the Indian Penal Code, which contemplates assault or use of criminal force with the intention of deterring a public servant from discharge of his duties.

14. Having regard to the aforesaid facts, this Court is of the considered view that the allegations made in the F.I.R. and the materials collected during investigation, even if accepted at their face value, primarily disclose a case of alleged violation of departmental norms relating to storage of food grains and replacement of damaged gunny bags. The investigation itself reveals that the entrusted stock of CMR was



found intact and no material has been brought on record to *prima facie* establish dishonest misappropriation, criminal breach of trust, cheating or obstruction of a public servant by use of assault or criminal force. In such circumstances, permitting the criminal prosecution to continue would amount to giving a criminal colour to what is essentially an administrative or departmental lapse. The case, therefore, appears to fall within the parameters laid down by the Hon'ble Supreme Court in ***State of Haryana and Ors. v. Bhajan Lal and Ors.***, reported in ***1992 Supp (1) SCC 335***, particularly the category where the allegations made in the F.I.R. and the materials collected in support thereof, even if taken at their face value and accepted in their entirety, do not *prima facie* constitute the offences alleged, thereby warranting interference in exercise of the inherent jurisdiction of this Court.

15. It is trite that every irregularity, negligence or breach of departmental instructions does not *ipso facto* constitute a criminal offence. Criminal law can be set in motion only when the foundational ingredients of the offence alleged are disclosed from the materials on record. In the present case, the prosecution materials themselves indicate that the stock entrusted to the petitioner was found intact and that the



replacement of the damaged gunny bags was undertaken in order to preserve the stored food grains in good faith. In absence of any material suggesting dishonest intention, wrongful gain, wrongful loss, misappropriation of entrusted property or use of assault or criminal force against any public servant, continuation of the criminal proceeding against the petitioner would not serve the ends of justice and would amount to abuse of the process of the Court.

16. Accordingly, for the reasons aforesaid, the impugned order dated 09.01.2018 passed by the learned A.C.J.M.-V-cum-Sub Judge-XIII, Rohtas at Sasaram in connection with G.R. Case No.2382 of 2016 arising out of Sasaram (Model) P.S. Case No.1170 of 2016 is hereby set aside. Consequently, the entire criminal proceeding against the petitioner arising therefrom also stands quashed.

17. The present Criminal Miscellaneous Application is, accordingly, allowed.

18. Let a copy of this order be communicated to the Court concerned forthwith for needful.

(Sunil Dutta Mishra, J)

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