

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11341 of 2021**

Arising Out of PS. Case No.-446 Year-2015 Thana- MUZAFFARPUR SADAR District-
Muzaffarpur

Prof. Chandrasekhar Rai @ Chandrasekhar Rai, S/o Late Shyam Bihari Rai,
Resident of Village - Barhulia, P.S. - Siwan, District - Siwan (at present
residing in Mohalla - Indiranagar, Atardah, P.S. - Sadar, N.H.- 28, District -
Muzaffarpur).

... .. Petitioner

Versus

1. The State of Bihar.
2. Anil Kumar Singh, S/o Late Baidyanath Singh, Resident of Mohalla-
Shekhpur, Adarshnagar, Akharaghat, P.S. - Ahiyapur, District - Muzaffarpur
(At present residing in the house of Dr. C.S. Rai (Dr. Chandrasekhar Rai)
situated at Mohalla - Indiranagar Colony, Atardah, P.S. - Sadar, District -
Muzaffarpur.

... .. Opposite Parties

Appearance :

For the Petitioner/s	:	Mrs. Rashmi Jha, Advocate Mr. Nilendu Kumar Choudhary, Advocate Mr. Anish Kumar, Advocate
For the Informant	:	Mr. Manoj Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 23-07-2026

Heard learned counsel for the petitioner and learned
counsel appearing for the informant.

2. The present application has been filed by the
petitioner for quashing of the cognizance order dated
18.07.2016 passed by the learned Chief Judicial Magistrate,
Muzaffarpur in connection with Sadar (Muzaffarpur) P.S. Case
No.446 of 2015 dated 04.09.2015, G.R. No.4656 of 2015,
whereby the learned Jurisdictional Magistrate without
considering the legal aspect and finding of the police, showing



the petitioner innocent in the charge-sheet and making the case true only against other main accused, Dr. Bhagirath Chowdhary, cognizance has been taken in mechanical manner without application of judicial mind also against the petitioner jointly with other co-accused under Sections 120-B, 420 and 406 of the Indian Penal Code (in short 'IPC').

3. The prosecution case, in short, as alleged by the complainant/informant *inter alia* is that on being introduced earlier with the accused persons, who were engaged in the business of land transaction, the informant desired to purchase some pieces of land in the adjacent area of the town. In agreement of this, a proposal was put up by the accused persons to sell a plot of land belonging to the other main co-accused, Dr. Bhagirath Chowdhary (accused No.1 as per fardbeyan) situated in Mohalla-Khabra of the town area and the same was shown to him taking in trust. The informant got satisfied with the submission of accused persons including this petitioner since he was living on rent in the house of petitioner, who is accused no.2, having his dairy shop at Kachi-Pakki Chowk of the town. It was further alleged that on being satisfied, as per oral agreement with the landlord, Dr. Bhagirath Chowdhary gave an advance amount of Rs.9,50,000/- in cash towards purchase of



land to the landlord in the house of petitioner. On 17.08.2013, with further promise to give rest of the amount towards full consideration value of the plot at the time of 'Kewala'. It was further alleged that later on after getting knowledge that the land belongs to a disputed one, he denied to purchase the same and put pressure upon the landlord to refund the amount to him. The informant further alleged that on great persuasion, he was given one cheque by the landlord in his favour bearing No.601558 dated 28.04.2015 amounting to Rs.9,50,000/- drawn on S.B.I., University Branch, Muzaffarpur. Thereafter, the informant deposited cheque twice in his bank for clearance but, same got dishonoured on 28.04.2015, due to insufficiency of fund, thereafter, it was believed by him that accused persons had committed forgery and cheating. The informant sent a legal notice through his advocate to the landlord, which got no response. Lastly, it was alleged that on sudden meeting with accused no.1, he pardoned for his fault and again requested to deposit the cheque in his bank account, which was re-submitted for clearance but, same also got dishonoured on 28.07.2015 due to insufficiency of fund.

4. In compliance of order dated 01.08.2015 passed by the learned C.J.M., Muzaffarpur in Complaint Case No.2075



of 2015, the S.H.O. Sadar Police Station, Muzaffarpur drew up a formal F.I.R. and registered a case being Sadar (Muzaffarpur) P.S. Case No.446 of 2015 dated 04.09.2015 for the offences punishable under Sections 120-B, 420 and 406 of the IPC besides Section 138 of the Negotiable Instruments Act (in short 'N.I. Act') against the petitioner and others.

5. After investigation, showing the petitioner innocent, the police submitted closure report/final form bearing charge-sheet No.302/2016 dated 21.04.2016 against petitioner and found the case true against co-accused Dr. Bhagirath Chowdhary for the offences punishable under Sections 120-B, 420 and 406 of the IPC beside Section 138 of the N.I. Act.

6. It is submitted by Mrs. Rashmi Jha, learned counsel appearing for petitioner that by taking a different note *qua* closure report, the learned Jurisdictional Magistrate took cognizance against the petitioner vide order dated 18.07.2016 without assigning any reason. In this context, it is submitted that even from perusal of the complaint, which is the basis of FIR, it can be gathered safely that no case is made out against this petitioner. It is submitted that as the main co-accused Dr. Bhagirath Chowdhary is known to this petitioner as a friend and alleged land deal was done in the house of the petitioner with



informant, as admittedly, the informant was his tenant, the present false case was lodged. It is submitted that co-accused Dr. Bhagirath Chowdhary was a friend of this petitioner, as they were in same profession, who usually visit to the house of this petitioner, where the informant being tenant on one such occasion, entered into the deal.

7. It is submitted that the land in issue, which was situated near to Muzaffarpur was not finally purchased by informant namely, Anil Kumar Singh, saying the same was disputed and, therefore, Rs.9,50,000/-, which was paid by him in cash was returned to him through cheque by co-accused Dr. Bhagirath Chowdhary. It is submitted that the aforesaid cheque was dishonoured upon presentation on two different occasions and, therefore, the present case was lodged.

8. It is submitted that the allegation is made out *prima facie* for the offence punishable under Section 138 of the N.I. Act and that too, only against co-accused Dr. Bhagirath Chowdhary, who drawn the cheque, in furtherance of cancellation of land deal, where no role is attributed to this petitioner.

9. Arguing further, it is submitted that as Dr. Bhagirath Chowdhary is no more, as he died in the year 2011,



just to recover the amount of Rs.9,50,000/-, the present prosecution is pending before the court of law without any legal reasons, which is nothing but abuse of process and, therefore, the impugned cognizance order is fit to be quashed/set aside in view of legal report as available through **State of Haryana vs. Bhajan Lal [1992 Supp. (1) SCC 335]**.

10. On the other hand, Mr. Manoj Kumar, learned counsel appearing for the informant/complainant/O.P. No.2 could not disputed the aforesaid submissions to the extent that the cheque in issue was issued in favour of informant by co-accused Dr. Bhagirath Chowdhary, who is no more.

11. It would be apposite to reproduce para-102 of the **Bhajan Lal's case (supra)**, which is as under:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid



formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the



Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge”.

12. In view of aforesaid factual submissions and by taking note of fact as the materials available on record and also the cognizance order, which is non-speaking in itself, suggest no criminal liability against petitioner and he was made accused



only for the reason as land deal took shape in his house, where informant was tenant, coupled with the fact that cheque in issue was drawn by co-accused Dr. Bhagirath Chowdhary (since died), accordingly, by taking note of golden principle No. (1), (3) and (7) of Bhajan Lal’s case (supra), the impugned order dated 18.07.2016 passed by the learned Chief Judicial Magistrate, Muzaffarpur in connection with Sadar (Muzaffarpur) P.S. Case No.446 of 2015 dated 04.09.2015, G.R. No.4656 of 2015, with all its consequential proceedings, is hereby quashed/set aside so far as petitioner is concerned.

13. The application stands allowed.

14. Let a copy of this judgment be communicated to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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