IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.52120 of 2016

CNR No. BRHC010665782016

Arising Out of PS. Case No.-1323 Year-2013 Thana- PURNIA COMPLAINT CASE District- Purnia

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Nalini Lall, Wife of Late Pradip Chand Lall, resident of Mohalla- Purnea City, P.S.- Purnea Sadar, District- Purnea at present residing at 12, PENN Court, 5B Pen Road, Alipur Kolkata-21 West Bengal.

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Nilima Kumari, wife of Ghashyam Chaudhary, resident of Mohalla- Purnea City, P.S. Purnea Sadar, District- Purnea.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Patanjali Rishi, Adv.
		Mr. Kundan Kumar, Adv.
For the State	:	Mr. Ataur Rahman, APP
For the O.P. No. 2	:	None

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

C.A.V. JUDGMENT

Date : 27-10-2026

The present application has been filed under Section 482 of the Code of Criminal Procedure (*in short* ***Cr.P.C.***) seeking quashing of the order dated 17.04.2014 passed by the learned Sub-Divisional Judicial Magistrate, Purnea in Complaint Case No. 1323 of 2013, whereby cognizance has

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been taken against the petitioner for the offences punishable under Sections 406 and 420 of the Indian Penal Code (*in short* ***I.P.C.***) and summons have been directed to be issued for her appearance.

2. The prosecution case, as emerging from the complaint petition, is that the petitioner approached opposite party no. 2 for sale of a piece of land situated at Mauza Alamganj, Mohalla-Nagarganj, Revenue Thana No. 239, Ward No. 19 (Old), 27 (New), Tauzi No. 8/5, Pargana-Haweli, P.S. Sadar, District Purnea, presently falling within the limits of Purnea Municipal Corporation, measuring an area of 13 Kattha 7 Dhur. It was alleged that the petitioner was in urgent need of money and, therefore, agreed to sell the aforesaid land to the complainant.

The consideration for the said land was fixed at Rs. 1,24,300/- and an agreement for sale was executed between the complainant and the petitioner, along with the petitioner's late husband, on 15.04.2004. According to the complainant, she paid Rs. 55,100/- on 15.04.2004, and the remaining consideration amount was agreed to be paid within six months. The complainant further alleged that she, thereafter, paid Rs. 19,000/- on 20.05.2004, Rs. 25,000/- on 15.07.2004 and Rs.

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6,000/- on 26.09.2004, besides a draft of Rs. 20,000/-, and asserted that the payment towards the consideration had accordingly been made.

Despite having made the aforesaid payments, she did not immediately insist upon registration of the sale deed on account of the good relationship between her family and the family of the petitioner. In the year 2007, the husband of the petitioner died, whereafter the complainant approached the petitioner and requested her to execute the sale deed in respect of the land in question, but the petitioner thereafter adopted dilatory tactics and did not execute the sale deed.

On 12.05.2013, the complainant, again, requested the petitioner to execute the sale deed, but she allegedly refused to execute the sale deed and threatened the complainant that she would neither return the money nor execute the sale deed and if the complainant approaches the Court, she would face dire consequences. Thus, the accused/petitioner had dishonestly taken an amount of Rs. 1,25,100/- from her on the pretext of selling the land but failed to execute the sale deed, thereby committed an offence punishable under Section 420 of the I.P.C.

On the basis of the aforesaid allegations, the complainant/opposite party no. 2 instituted Complaint Case No.

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1323 of 2013 before the learned Chief Judicial Magistrate, Purnea on 15.05.2013, alleging commission of the offences on 15.04.2004, 22.04.2012 and 12.05.2013 onwards. After institution of the complaint, the solemn affirmation of the complainant and the statement of four enquiry witnesses, namely Kashi Lall Choudhary, Shashi Bhushan Jaiswal, Saifulla Khan and Kashi Lall Choudhary, son of Late Fakira Choudhary, were recorded.

Upon consideration of the complaint and the materials available during the enquiry, the learned Sub-Divisional Judicial Magistrate, Purnea, by order dated 17.04.2014, finding *prima facie* case punishable under Sections 406 and 420 of the I.P.C., issued summons to the petitioner to face trial.

Hence, the present application under Section 482 Cr.P.C. was preferred for quashing of the same and consequential criminal prosecution.

3. Mr. Patanjali Rishi, learned counsel appearing on behalf of the petitioner submits that the entire dispute arises out of a transaction concerning an agreement for sale of immovable property which is essentially civil in nature and the instant criminal proceeding has been instituted by giving a

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criminal colour to a dispute relating to performance of contractual obligations.

4. It is further submitted that the agreement for sale was entered into on 15.04.2004 and, according to the terms pleaded in the petition, the consideration was to be paid within the stipulated period. It is the case of the petitioner that the complainant did not pay the entire consideration within the stipulated period and, consequently, the petitioner disputed her obligation to execute the sale deed.

The complainant subsequently approached the civil court for enforcement of the very same transaction. A civil Suit, bearing Title Suit No. 148 of 2012, was filed concerning the subject matter of the agreement and the property in question. A copy of plaint of the Suit has also been brought on record.

5. Thus, it is contended that the existence of the civil proceeding demonstrates that the real controversy between the parties concerns enforcement of the agreement for sale and the respective rights of the parties arising therefrom. The institution of the criminal case for a purely civil dispute is an abuse of the process of law.

6. None appeared on behalf of the complainant/opposite party No. 2, in-spite of valid service of

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notice and consequent appearance of learned Advocate by filing *Vakalatnama* on her behalf.

7. However, Mr. Ataur Rahman, learned Additional Public Prosecutor appearing for the State opposes the present application and submits that the allegations made in the complaint, taken at their face value, discloses a *prima facie* case against the petitioner. The complainant has alleged payment of money pursuant to the agreement for sale and failure on the part of the petitioner to execute the sale deed despite receipt of the consideration amount.

8. He submits that at the stage of cognizance, the Court is not required to undertake a meticulous appreciation of the evidence or adjudicate the disputed questions of fact. The defence of the petitioner regarding the terms of the agreement, payment of consideration and her subsequent conduct are matters which may appropriately be examined during trial. Merely because the dispute has a civil dimension or a civil remedy is available, the criminal proceeding cannot be quashed if the allegations *prima facie* disclose commission of a criminal offence. The question whether the ingredients of Sections 406 and 420 I.P.C. are ultimately established is a matter to be determined on the basis of evidence.

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9. It is, therefore, argued that the learned Magistrate has committed no error in taking cognizance of the offences on the basis of the materials available on record and that no exceptional circumstance warranting exercise of the inherent jurisdiction under Section 482 of the Cr.P.C. is made out. The application is accordingly fit to be dismissed.

10. This Court has considered the submissions advanced on behalf of the petitioner as well as learned additional public prosecutor for the state and have carefully perused the materials available on record.

11. The *"primal legal nodus"*, which crops-up for consideration is:-

> *"Whether, on the allegations contained in the complaint, the basic ingredients of the offences punishable under Sections 406 and 420 of the I.P.C. are disclosed so as to justify continuation of the criminal proceeding against the petitioner?"*

12. At this stage, it would be germane and apt to consider the basic ingredients of the offences under Sections 406 and 420 of the I.P.C., in order to have proper appreciation and adjudication of the issue formed hereinabove.

13. Section 405 of the I.P.C. defines offence of "criminal breach of trust" which stipulates that:-

> *"**405. Criminal breach of trust**.—Whoever, being in any manner entrusted with property, or*

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> *with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."*

The offence under Section 405 of the I.P.C. is made punishable under Section 406 of the I.P.C., which reads as follows:-

> *"**406. Punishment for criminal breach of trust**.— Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."*

Thus, for Section 406 of the I.P.C. to get attracted, there must be a criminal breach of trust in terms of Section 405 of the I.P.C. The essential ingredients for invoking Section 405 of the I.P.C. are enumerated hereunder :-

> *"(a) the accused was entrusted with property, or entrusted with dominion over property;*
>
> *(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and*
>
> *(c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person had made, touching the discharge of such trust.*
>
> *In other words, for the invocation of the offence of criminal breach of trust, it is expedient*

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> *that the use of disposal of the property is made by a persons entrusted with or who has dominion over the property. Furthermore, such an act must not only be done dishonestly but also in violation of any direction of law or any contract, express or implied, relating to carrying out the trust."*

14. In the context of Section 406 of the I.P.C., proceedings of any criminal prosecution may be quashed if the complaint or F.I.R., even if taken at the face value, does not disclose the essential ingredients of the offence. A clear absence of allegations regarding entrustment or dishonest misappropriation can be a ground for quashing.

15. The Hon'ble Supreme Court in the case of ***Anand Kumar Mohatta & Anr. Vs. State (N.C.T. of Delhi), Department of Home and Anr.***, as reported in ***(2019) 11 SCC 706***, emphasized the need to ascertain if the facts make out an offence under Section 406 of the I.P.C.

16. Section 406 of the I.P.C. prescribes the punishment for the offences of criminal breach of trust. This provision plays a crucial role in upholding fiduciary relationship and ensuring accountability for the misappropriation of property entrusted to another. Criminal breach of trust, as defined under Section 405 of the I.P.C., is a nuanced offence, requiring a careful examination of the elements of entrustment, dishonest misappropriation and the violation of legal or contractual duties.

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17. The Hon'ble Supreme Court in the case of ***Radheyshaym & Ors. Vs. State of Rajasthan & Anr.***, as reported in ***(2024) SCC OnLine SC 2311***, ***Rashmi Kumar (Smt) Vs. Mahesh Kumar Bhada***, as reported in ***(1997) 2 SCC 397***, has culled out the aforesaid ingredients as discussed herein to constitute the offence of criminal breach of trust and has laid down that:-

> *"The word 'Entrustment' carries with its implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. 'Entrustment' is not necessarily a term of law. It may have different implications in different contexts. In its most general significance, all its imports is handing over the possession for some purpose which may not imply the conferment of any propriety right therein"*.

18. Further, in view of allegation and order of cognizance under Section 420 of the I.P.C., it becomes imperative, at this stage, to consider the offences, ingredients and scope of Section 420 of the I.P.C.

19. 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.

20. Section 420 I.P.C. defines "cheating and dishonestly inducing delivery of property" which reads as

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under:

> *"**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."*

21. Section 420 I.P.C. is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

22. The basic and essential ingredients of the offence of cheating as defined under Section 420 of the I.P.C. are:-

> *"1. The ingredients to constitute an offence of cheating are as follows:*
>
> *1.1. There should be fraudulent or dishonest inducement of a person by deceiving him:*
>
> *1.1.a. 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*
>
> *1.1.b. The person so induced should be intentionally do or omit if he were not so deceived; and*

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> *1.2. In cases covered, 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.*
>
> *2. 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.*
>
> *Thus,*
>
> *3. The ingredients to constitute an offence under Section 420 are as follows:*
>
> *3.1. A person must commit the offence of cheating under Section 415; and*
>
> *3.2. 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."*

Thus, to constitute an offence under Section 420 of the I.P.C., 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 or to make or alter or destroy wholly and in part a valuable security.

23. At this juncture, the averments made in the complaint petition assumes significance, which reveals the following facts:-

> *(i) For purchase of 13.7 Katthas of land situated at Mauza Alamganj, Mohalla-Nagarganj, Revenue Thana No. 239, Ward No. 19 (Old), 27 (New), Tauzi No. 8/5, Pargana-Haweli, P.S. Sadar, District Purnea, an agreement was executed between the complainant, namely, Nilima Kumari, W/o Ghanshyam Chaudhary, and*

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the petitioner, along with her deceased husband, on 15.04.2004;

(ii) For the aforesaid sale, the consideration amount was fixed at Rs. 1,46,850/- (Rupees One Lac Forty Six Thousand Eight Hundred Fifty only) and at the time of execution of agreement to sale, the earnest money of Rs. 55,100/- was paid as an advance to the petitioner and her late husband;

(iii) It was stipulated in the aforesaid agreement that between the period of six months henceforth, the complainant would deposit the remaining amount and thereafter, a registered sale deed will be executed in her favour by the petitioner and her late husband;

(iv) In the last part of the agreement of sale (Annexure-2), it had been stated that "if the executant either fail to registered sale deed or any other breach of contract, purchaser (complainant) had liberty to deposit the balance consideration money in the competent Court and get it registered by the order of the Court";

(v) Thereafter, Rs. 70,000/- more were deposited by the complainant, in which, Rs. 50,000/- was given in cash on different dates and a demand draft of Rs. 20,000/- was also given to the petitioner;

(vi) In-spite of having received the entire amount within the stipulated time, the petitioner failed to execute absolute Deed of Sale in favour of complainant;

(vii) Hence, the present complaint case was instituted when the police refused to take up the matter.

24. It also appears from the record that the aforesaid agreement to sale was executed on 15.04.2004 between the complainant and the petitioner, along with her late husband, but when the rest of the consideration money was not paid till 2012, the petitioner gave a legal notice to the complainant on 25.04.2012, *i.e.*, after almost eight years of the

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execution of agreement to sale, informing the complainant that till date, only Rs. 1,25,000/- has been paid and the rest of the consideration money, out of the total agreed amount, i.e., Rs. 1,46,850/-, has not been paid. Thus, failure of the complainant to pay the remaining consideration amount within the stipulated period of time, has the effect of rescinding and repudiating the agreement made between them. It has also been stated in the aforesaid legal notice that the complainant has already entered into an agreement to sell the aforesaid piece of land to one Sardar Anand Gopal Singh, for which, she had already executed an agreement with the petitioner and her late husband. The Title of the land in question still has not been transferred, but even then, the complainant executed an agreement for selling six Katthas of land, for which, there was only an agreement to sale and this agreement has been executed by the complainant only with a view to secure money to repay the remaining consideration amount to the petitioner and her late husband. This fact also becomes evident from Annexure-4 to this application brought on record on behalf of the petitioner.

25. Perusal of the record also reflects that even prior to filing the instant complaint case, which was filed on 15.05.2013, the complainant had already filed Title Suit No. 148

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of 2012, impleading the petitioner as defendant, on 21.05.2012 in the Court of learned Subordinate Judge-I, Purnia (Annexure-5 to this application).

26. In the aforesaid Title Suit, bearing No. 148 of 2012, filed almost a year prior to the institution of the present complaint case, the subject matter, *i.e.*, the Suit land, was same as detailed in the complaint case. It is also pertinent to point out that in the aforesaid Title Suit, the complainant has stated that the consideration amount for the land in question was fixed at Rs. 1,46,850/-, whereas in the complaint case, she has alleged that the consideration amount was fixed for the sale of aforesaid land to the tune of Rs. 1,24,300/- for the same piece of land.

27. In course of argument, learned counsel appearing on behalf of the petitioner produced the certified copy of the order dated 02.06.2025 passed in the aforesaid Title Suit No. 148 of 2012 (C.I.S. No. 2832/2013) by the learned Sub-Judge-V, Purnea, in order to show that even the aforesaid Title Suit, preferred by the complainant, has already been dismissed for want of prosecution.

28. Thus, it becomes manifestly evident from the factual matrix discussed hereinabove that just in order to put pressure upon the petitioner to part with her land in favour of

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the complainant, the present complaint case, with distorted facts, has been filed and that too after filing of the Title Suit with respect to same piece of land in May, 2012.

29. The facts discussed hereinabove does not leave an iota of doubt regarding the predominantly civil nature of the dispute between the parties. The complainant herself having failed to honour the terms of the agreement to sell by not paying the entire consideration amount within the stipulated period of six months, resorted to setting the criminal Court in motion with the sole intent of wreaking vengeance upon the petitioner and coercing her into acceding to the complainant's terms and conditions, thereby compelling her to sell her land in favour of the complainant at her diktat.

30. The averments made in the complaint, the nature of the allegations levelled therein and the imputations emerging from the evidence brought on record, indisputably demonstrate that the essential ingredients of the offences punishable under Sections 406 and 420 of the I.P.C. are not made out so as to justify the order taking cognizance and summoning the petitioner to face trial. Rather, the aforesaid facts unequivocally reflect a serious lapse on the part of the learned Magistrate, indicating a manifest non-application of

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judicial mind while passing the summoning order. In doing so, the learned Magistrate appears to have permitted the judicial process to be employed as an instrument of persecution, instead of allowing the Court to function as a forum for the administration of justice to parties, approaching it with genuine and *bona fide* grievances.

31. Thus, the foundational ingredients necessary to attract the penal provisions of Sections 406 and 420 of the I.P.C. are found to be wholly absent in the case at hand.

32. The allegations, as levelled in the present complaint case, does not satisfy any of the ingredients of the offence of “criminal breach of trust” as defined under Section 405 of the I.P.C., so as make an offence punishable in terms of the provision as contained under Section 406 I.P.C. thereof, as there is absolutely neither any entrustment of any kind of property, valuable security or movable property/money nor is there dishonest misappropriation of the same with fraudulent intention.

33. The averments made in the complaint application, in the form of allegation, does not make out a case of ‘cheating’ either as defined under Section 420 of the I.P.C. or the ingredients of the offences of “criminal breach of trust” as

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defined under Section 405 of the I.P.C., punishment of which provided under Section 406 of the I.P.C.. The averments made in the complaint application, if placed side by side the averments made in the title suit, indisputably reflect the *mal*-intention of the complainant in prosecuting the petitioners frivolously and maliciously by setting the judicial process in motion.

34. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by Hon'ble the Supreme Court in the case of ***Hridaya Ranjan Prasad Verma v. State of Bihar***, reported in ***(2000) 4 SCC 168***, the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed the complainant/opposite party No. 2 does not disclose dishonest or fraudulent intention of the petitioner.

35. In ***Vesa Holdings (P) Ltd. v. State of Kerala***, reported in ***(2015) 8 SCC 293***, the Hon'ble Supreme Court made following observation in paragraph 13, which reads as hereunder:

*"**13.** It is true that a given set of facts may*

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> *make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed an error in refusing to exercise the power under Section 482 CrPC to quash the proceedings."*

36. Further, in the case of ***Uma Shankar Gopalika Vs. State of Bihar***, reported in ***(2005) 10 SCC 336***, the Hon'ble Supreme Court, faced with the identical situation, has held in paragraph 7 as follows:-

> *"**7.** In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 CrPC which it has erroneously refused."*

37. In the case of ***Sarabjit Kaur Vs. State of***

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Punjab & Anr., reported in ***(2023) 5 SCC 360***, the Hon'ble Apex Court has held in paragraph 13 as follows:-

> *"**13.** A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.*
>
> *……..*
>
> *The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court."*

38. Recently, in the case of ***Shailesh Kumar Singh @ Shailesh R. Singh Vs. State of Uttar Pradesh & Ors.***, reported in ***2025 INSC 869***, the Hon'ble Supreme Court disapproved the practice of using criminal proceedings as a substitute for civil remedies, observing that money recovery cannot be enforced through criminal prosecution where the dispute is essentially civil in nature.

39. At this stage, another important aspect comes to the notice of this Court:-

> "*As to whether the offence under Sections 406 and 420 of the I.P.C. can co-exist simultaneously or they are antithetical to each*

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other in the same set of facts?"

40. It is evident from the judgment of the Hon'ble Supreme Court rendered in ***Arshad Neyaz Khan Vs. State of Jharkhand & Another***, reported in ***2025 SCC OnLine SC 2058,*** while referring to ***Delhi Race club(1940) Limited Vs. State of Uttar Pradesh,*** reported in ***(2024) 10 SCC 690***, wherein the Hon'ble Supreme Court has held in paragraph 21 as follows:-

> *"**21.** Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.2 that the offence of criminal breach of trust as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. This Court in Delhi here is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriates the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot co-exist simultaneously in the same set of facts as they are antithetical to each other."*

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

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Khan *(supra)* noticed that, in a case of criminal breach of trust, the accused is lawfully entrusted with property or dominion over property and thereafter dishonestly misappropriates or converts the same to his own use in violation of the terms of such entrustment. On the other hand, in a case of cheating, the accused, by deception and fraudulent or dishonest intention existing at the inception, induces the complainant to deliver property or to do or omit to do something which he would not otherwise have done.

42. Thus, the foundational ingredients of the two offences are materially different. As observed by the Hon'ble Supreme Court, where the allegation is of criminal breach of trust, there has to be lawful entrustment followed by dishonest misappropriation or conversion whereas, for cheating, the dishonest or fraudulent intention must exist at the inception of the transaction and must result in inducement by deception. The Hon'ble Supreme Court has further held that the two offences, on the same set of facts, are antithetical to each other and cannot co-exist simultaneously.

43. The Hon'ble Supreme Court in ***Arshad Neyaz Khan*** *(supra)*, while examining the allegation of cheating, reiterated that the intention of the accused at the inception of the

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transaction is the gist of the offence of cheating. A mere subsequent failure to keep a promise does not, by itself, establish that the accused had a dishonest or fraudulent intention from the very beginning.

44. The Hon'ble Supreme Court further in ***Arshad Neyaz Khan*** *(supra)* has held in paragraph 19 as hereunder:-

> *"**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. In the facts of the present case, there is a clear absence of dishonest and fraudulent intention on the part of the appellant during the agreement for sale. We must hasten to add that there is no allegation in the FIR or the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing has been said on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent No.2. Mere allegations by the complainant/respondent No.2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent No.2 does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 IPC."*

45. Thus, the principle laid down in ***Arshad Neyaz Khan*** *(supra)* requires this Court to distinguish between a mere breach of a contractual obligation and a transaction allegedly

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founded upon deception from its inception. The Court must also ascertain whether the allegations concerning criminal breach of trust independently disclose lawful entrustment followed by dishonest misappropriation. The mere invocation of Sections 406 and 420 of the I.P.C. in respect of the same monetary transaction cannot dispense with the requirement of establishing the essential ingredients of each offence. At the same time, the mere fact that both provisions have been invoked does not, in isolation, conclude the question of quashing; the substance of the allegations and the specific acts attributed to the accused must be examined.

46. Applying the aforesaid principle to the facts of the present case, it is evident that the allegations under Sections 406 and 420 of the I.P.C. are founded upon the same transaction and the same set of circumstances. The complainant's case essentially is that pursuant to the agreement for sale, certain amounts were paid to the petitioners, but the petitioners thereafter failed to execute the sale deed in favour of the complainant. The very same alleged payment and the alleged failure to complete the sale transaction have been made the basis for alleging both cheating and criminal breach of trust.

47. Thus, on a careful consideration of the

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aforementioned judicial dictum, I find that none of the offences alleged against the accused-petitioners herein is made out. The present case squarely falls under the categories, particularly Category Nos. (1) (3) (5) and (7) of paragraph 102, illustrated in the case of ***State of Haryana vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***, which reads as hereunder:

> *"**102.** ……. **(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.*
>
> ***(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.*
>
> ***(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.*
>
> ***(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."*

48. The Hon'ble Supreme Court subsequently in the case of ***Anukul Singh Vs. State of Uttar Pradesh & Anr.***, reported in ***2025 SCC OnLine SC 2060***, has held in paragraphs 11.5 and 20 as follows:-

> *"**11.5.** Thus, the cumulative principles that emerge are: while the jurisdiction under Section*

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> *482 Cr.P.C is extraordinary and must be exercised sparingly, it is the duty of the High Court to intervene where continuation of criminal proceedings would amount to an abuse of process of law, or where the dispute is purely of a civil nature and criminal colour has been artificially given to it. Conversely, where disputed questions of fact arise requiring adjudication, the matter must ordinarily proceed to trial.*
>
> ……..
>
> ***20.*** *Applying the above principles to the facts of the present case, it is manifest that the dispute - concerning repayment of loan money and the alleged coercion in execution of documents is purely civil in character. The essential ingredients of cheating or forgery are not prima facie made out. The institution of multiple FIRs in quick succession, particularly after the appellant had already initiated lawful proceedings, reinforces the inference of mala fides."*

49. Further, the Hon'ble Apex Court in case of ***Inder Mohan Goswami & Anr. vs. State of Uttaranchal & Ors.***, reported in ***(2007) 12 SCC 1*** has consistently held as follows:

> *"……. criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused……..".*

50. Similarly, in the case of ***Ganga Dhar Kalita Vs. State of Assam***, reported in ***(2015) 9 SCC 647***, the Hon'ble Supreme Court, again, reiterated that criminal complaints with respect to property disputes of civil nature, filed only to harass the accused or to exert pressure in civil litigation, constitute an abuse of process.

51. Thus, the *"primal legal nodus"*, as framed in

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paragraph No. 11 hereinabove, is answered in the ***negative***, as no offences under Sections 406 and 420 of the I.P.C. are made out. Consequently, the continuation of the criminal proceedings, being unsustainable in law, amounts to an abuse of the process of the Court.

52. Thus, in the conspectus of the aforesaid factual and legal analysis, the impugned order dated 17.04.2014, taking cognizance of the offences under Sections 406 and 420 of the I.P.C. against the petitioner in connection with Complaint Case No. 1323 of 2013, is fit to be set aside.

53. *Ex-consequenti*, the order impugned in the present application dated 17.04.2014 passed by the learned Sub-Divisional Judicial Magistrate, Purnea in connection with Complaint Case No. 1323 of 2013, whereby cognizance of the offences under Sections 406 and 420 of the I.P.C. has been taken against the petitioner, being wholly unsustainable in the eyes of law, is, hereby, quashed and set aside, *qua* the petitioner.

54. Consequently, all criminal proceedings emanating from Complaint Case No. 1323 of 2013, *qua* the petitioner, is also, hereby, quashed and set aside.

55. The application is, accordingly, allowed.

56. Interlocutory application(s), if any, also stand

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disposed of accordingly.

(Rana Vikram Singh, J)

Rakesh/Praveen-II

AFR/NAFR	AFR
CAV DATE	29.07.2026
Uploading Date	05.11.2026
Transmission Date	05.11.2026

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