IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52986 of 2017

CNR No. BRHC010741912017

Arising Out of PS. Case No.-3446 Year-2012 Thana- PATNA COMPLAINT CASE District- Patna

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Niraj Kumar Panday S/o Kamalapati Pandey, M/S Subham Electronics Malti Kunj Market, Chandmari Road, P.S.- Kankarbagh, R/o Village- Brahampur, P.S.- Brahampur, District- Buxar.

... ... Petitioner/s

Versus

1. The State Of Bihar Bihar
2. THE TATTVA ENERGY PVT. LTD. COMPANY Now Associated Composite Materials Pvt. Ltd., Office situated at 10, Bharat Nagar, Near Mata ka Mandir, New Friends Colony, New Delhi - 110025.
3. Arjun Nath Managing Director, THE TATTVA ENERGY PVT. LTD., Office situated at 10, Bharat Nagar, Near Mata ka Mandir, New Friends Colony, New Delhi - 110025.
4. Pramod kumar Mishra (CPO) Circle Financial officer. THE TATTVA ENERGY PVT. LTD., Office situated at 10, Bharat Nagar, Near Mata ka Mandir, New Friends Colony, New Delhi - 110025.
5. Rupesh Kumar Jaiswal Regional Sales Manager, C/o- Gayatri Electrical Agencies, 22, Ravindra Sarani 3rd. Floor, Room no. F/5 30, opposite Poddar Court building, Kolkata- 700063, W.B.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Umesh Kumar Singh, Adv.
For the Opposite Party/s : Mr. Abhay Kumar Roy, APP

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CORAM: HONOURABLE MR. JUSTICE ANSUL
ORAL JUDGMENT
Date : 27-10-2026

This is a petition under Section 482 of the Code of Criminal Procedure, 1973, arising from a complaint filed under Sections 120B, 409 and 420 of the Indian Penal Code.

1. Heard learned counsel for the petitioner and learned A.P.P. for the State.

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2. The petitioner is the complainant of Complaint Case No. 3446(C) of 2012 of the court of the learned Chief Judicial Magistrate, Patna. The complaint was dismissed under Section 203 of the Code of Criminal Procedure, 1973 by the learned Judicial Magistrate, 1st Class, Patna on 24.07.2013. Criminal Revision No. 565 of 2013 against that order was dismissed by the learned Additional Sessions Judge VIII, Patna on 25.03.2017. The revisional order was later corrected twice on the clerical side, on 27.04.2017 because the name of the revisionist had been typed as Dhiraj Kumar in place of Niraj Kumar Panday and on 16.11.2017 because the date of the order under revision had been typed as 14.07.2013 in place of 24.07.2013. The present application under Section 482 of the Code seeks quashing of the revisional order and of the order of dismissal of the complaint.

3. By order dated 25.08.2026 the petitioner was given liberty to add the four accused of the complaint as opposite parties and they stand added as opposite party nos. 2 to 5. Notice has not been issued to them. On going through the record this Court found that the application could be disposed of at the threshold and that no order adverse to the added opposite parties was going to be passed. Their presence was therefore not required.

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4. The complaint was filed for offences under Sections 120B, 409 and 420 of the Indian Penal Code against the company and three of its officers. Its case is this. The petitioner was earlier a distributor of the company. Impressed by his dealings, the company through its Regional Sales Manager and a sales officer persuaded him to become its consignment agent for the whole of Bihar and an agreement was executed at Patna on 20.05.2011 for a period ending on 31.03.2012. The company supplied goods under the agreement. The petitioner says he paid Rs. 33,34,500 in cash on various dates between 30.06.2011 and 02.05.2012 and sent back defective goods worth Rs. 17,00,902 for replacement. Under the agreement every distributor appointed by him was to deposit Rs. 10,000 with the company as security, to be adjusted in his account. He appointed nine distributors who deposited Rs. 90,000 in all, which was never adjusted. He then sets out a list of items said to be due to him, the security money, dues under a 9+1 gift scheme, cash discount which the distributors deducted from his account because the company had not passed it on, quarterly discount, replacement pending with distributors, stock in hand, commission and margin. On that computation he arrives at a figure of Rs. 7,77,640. The agreement was not renewed. A legal notice was sent on 18.08.2012. The accused called him to Delhi,

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misbehaved with him and refused payment. On these facts the complaint says that the accused conspired to cheat him and misappropriated Rs. 7,77,640.

5. The petitioner was examined on solemn affirmation and three witnesses were examined under Section 202 of the Code. All three were distributors appointed by the petitioner. Their evidence is that they had deposited Rs. 10,000 each as security with the company, that the company did not return it and that they recovered the amount from the petitioner. One of them adds that the scheme benefits and replacement were not given by the company. None of them says anything about the petitioner having been deceived into entering the agreement or into parting with money.

6. The learned Magistrate dismissed the complaint on two grounds. The first was that clause 52 of the agreement, which the petitioner himself had placed on record, provides that any suit arising out of the agreement shall be instituted in the city of Delhi, so that the Patna court had no jurisdiction. The second was that clause 38 required the previous written consent of the company for appointing any sub agent and no such consent had been produced. On these the learned Magistrate recorded that no case was made out against any of the accused. The revisional

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court did not rest on the forum clause. It held that the entire case of the petitioner arises out of the agreement, that it is a claim for money said to be due under the agreement and that the petitioner had tried to give a criminal colour to a dispute of a civil nature, which could not be allowed.

7. Learned counsel for the petitioner has submitted that a clause in a private agreement about the place of suit cannot take away the jurisdiction of the criminal court of the place where the offence was committed. He also submitted that the agreement covers only the civil obligations of the parties and cannot shield the accused from prosecution for cheating. He further submitted that all three enquiry witnesses supported the complaint and that the learned Magistrate ignored the purchase details, Form 26, the letter dated 19.04.2012 and the legal notice dated 18.08.2012 which were on the record. Learned A.P.P. has supported the orders of the courts below.

8. This Court has gone through the complaint, the statement on solemn affirmation, the evidence of the enquiry witnesses, the agreement and the two orders. The conclusion reached is that the complaint, read as a whole and taken at its face value, discloses a dispute of accounts between a principal and its

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consignment agent at the end of the term of their agreement and nothing else.

9. Section 177 of the Code provides that every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed. A forum clause in a private agreement governs civil litigation only and cannot take away the jurisdiction of a criminal court. The learned Magistrate's reliance on clause 52 cannot therefore be supported. Clause 38 bears on whether the company was answerable for deposits taken by distributors appointed without its consent. That is a question in the civil dispute between the parties and does not by itself decide whether an offence is disclosed. But the order also contained a finding that no case was made out against the accused and the revisional court placed its dismissal on that ground. The test is whether the allegations disclose an offence.

10. Section 409 requires entrustment as its first ingredient. The cash paid became the company's money when paid, the security deposits were paid by distributors under a contractual term for adjustment, and scheme benefits and discounts are sums claimed as due under the agreement. None of these constitutes property entrusted to the accused. In **Indian Oil Corporation v. NEPC India Ltd., (2006) 6 SCC 736** (R.V.

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Raveendran J), the Hon'ble Supreme Court, at para 26, quoted with approval the following passage from **Central Bureau of Investigation v. Duncans Agro Industries Ltd., (1996) 5 SCC 591** (para 26):

> *...."It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit."....*

The Court then held as follows (para 31):

> *"31. We accordingly hold that the basic and very first ingredient of criminal breach of trust, that is, entrustment, is missing and therefore, even if all the allegations in the complaint are taken at their face value as true, no case of 'criminal breach of trust' as defined under Section 405 IPC can be made out against NEPC India."*

11. Section 420 requires deception and dishonest inducement at the inception. The complaint does not allege that the petitioner was induced by false representation or that the company never meant to perform. The company supplied goods under the agreement and performed until the term expired. The refusal to pay a disputed sum at the end is not cheating. The passage from **Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168** (D.P. Mohapatra J, para 15), as quoted with approval in Indian Oil Corporation (supra) at para 35, reads:

> *"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent*

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> *conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."*

12. In **Deepak Gaba v. State of Uttar Pradesh, (2023) 3 SCC 423** (Sanjiv Khanna J), the Hon'ble Supreme Court dealt with a dealer's complaint against a paint company for goods and a disputed demand. It quashed the summoning order, holding that a dispute pertaining to settlement of accounts does not constitute an offence under Sections 405 or 420. The Court deprecated attempts to camouflage pure civil claims as criminal complaints and held that these should be dismissed at the threshold. Each observation applies here. The relevant observations (paras 17, 27 and 28) are these:

> *"17. ... A mere wrong demand or claim would not meet the conditions specified by Section 405 IPC in the absence of evidence to establish entrustment, dishonest misappropriation, conversion, use or disposal, which action should be in violation of any direction of law, or legal contract touching the discharge of trust. Hence, even if Respondent 2 complainant is of the opinion that the monetary demand or claim is incorrect and not payable, given the failure to prove the requirements of Section 405 IPC, an offence under the same section is not constituted…."*

> *"27. It is evident from the pre-summoning evidence led and the assertions made in the criminal complaint that the dispute raised by Respondent 2 complainant primarily pertains to settlement of*

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> *accounts. ... These assertions, even if assumed to be correct, would not fulfil the requirements of Section 405 IPC, or for that matter Sections 420 or 471. The material on record does not reflect and indicate that JIPL indeed had the dishonest/culpable intention for the commission of the alleged offences under the IPC. Unless the ingredients of aforesaid Sections of the IPC are fulfilled, the offence under Section 120-B IPC, for criminal conspiracy, would not be made. The complaint discloses a civil dispute and grievance relating to the claim made by JIPL...."*
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> *"28. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by Respondent 2 complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420 and 471 IPC, as the allegations pertain to alleged breach of contractual obligations. Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold...."*

13. The availability of a civil remedy is not by itself a ground to quash a complaint if the allegations disclose an offence. Here they do not. But the Supreme Court has deprecated the growing tendency to convert civil disputes into criminal cases. The observations of the Hon'ble Supreme Court in **Indian Oil Corporation** (supra) at para 13 on this tendency deserve to be set out:

> *"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure*

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through criminal prosecution should be deprecated and discouraged. ..."

14. The enquiry witnesses speak of money owed by the company to them which the petitioner made good; that is debt, not deception. The documents are account documents only. The charge under Section 120B stands on the same footing. Beyond saying that the accused conspired, the complaint describes no agreement among them. With Sections 409 and 420 not attracted, there is nothing for the conspiracy to attach to.

15. Two courts have declined to proceed. The order of the learned Magistrate reaches the correct result although its reasoning cannot be fully approved. The revisional court has given the correct reason.

16. The application is accordingly dismissed. It is made clear that nothing said in this order shall stand in the way of the petitioner pursuing such civil remedy as may be available to him in law for the amount claimed. No observation made here shall be treated as an expression of opinion on the merits of that claim.

(Ansul, J)

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