IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45242 of 2016

Arising Out of PS. Case No.-27267 Year-2014 Thana- PATNA COMPLAINT CASE District- Patna

==

Prabhat Kumar S/o Late Narayan Prasad, residing of Diwan Mohallah Pato Ki Bagh, Gwal Toli Police Station Kajekalan, District- Patna.

... ... Petitioner/s

Versus

1. State Of Bihar and Anr.
2. Sanjay Kumar, Son of Sri Jawahar Lal Choudhary Resident of Krishna Savitri Wala Je Enclave Flat No. 102, Railway Hunder Road, P.S. Kadam Kuan, District Patna.

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr. Vikas Mohan, Adv.
For the Opposite Party/s : Mrs. Archana Sinha, Sr. Adv.
Mr. Alok Kumar, Adv.
Mr. Manish Kumar Paswan, Adv.

==

CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
ORAL JUDGMENT
Date : 17-07-2026

By preferring the present application under section 482 of the Code of Criminal Procedure, the petitioner has assailed the order dated 12.09.2014 passed in Complaint Case No. 27267 (C) of 2014 whereby learned Judicial Magistrate 1st Class, Patna, finding *prima facie* case under Sections 420, 379 and 323 of the Indian Penal Code, had issued processes for appearance of the accused persons as named in the complaint including the petitioner herein.

2. The afore-mentioned Complaint Case No. 27267 (C) of 2014 was filed by complainant on 29.05.2014 alleging *inter alia* therein :-

"(a) The complainant entered into an agreement on 28.04.2013 with Sudhir Prasad Singh for purchase of 1.5 katha of land appertaining to Thana No. 16, Tauzi No. 9/12, Khata No. 14, Survey Plot No. 659 at the rate of Rs. 51 lakhs per katha.

(b) The total consideration amount for the aforesaid land was fixed as Rs. 70 lakhs, out of which Rs. 50 lakhs were paid in the bank account of Lilawati Devi and Prabhat Kumar (co-accused) and Rs. 20 lakhs were given in cash to Sanjiv Kumar, Dipak Kumar and Lilawati Devi.

(c) The accused persons in-spite of having received the consideration amount for sale of the aforesaid piece of 1.5 katha land, neither executed the sale deed, nor did they return the amount which was received as consideration amount for the aforesaid piece of land.

(d) It was further alleged that having received the entire consideration amount, the accused persons drafted a sale deed dated 16.11.2013 on which accused no. 3, 4 and 5 signed, but accused no. 2 (Lilawati Devi) did not put her signature. In-spite of incessant request, the accused persons neither executed the sale deed, nor returned the amount received.

*(e) On **05.04.2014**, a legal notice was given to the accused persons, but that went unheeded and all of a sudden on 26.05.2014, all the accused persons as named in the complaint application, barged into the shop of complainant at Exhibition Road and indulged in slapping and assaulting him, in course of which accused no. 1 removed chain of gold from the complainant, while accused no. 3 and 5 forcibly snatched Rs. 5,000 from the cash counter and accused no. 4 (petitioner herein) took out Rs. 2,000 from his diseased brother".*

3. The complainant approached the police, but police did not register a case, whereafter the complaint case was filed in the Court of learned Chief Judicial Magistrate, Patna who transferred it to the Court of learned Judicial Magistrate, 1st Class, Patna, for enquiry and disposal.

4. The solemn affirmation of complainant was

recorded on 04.07.2014, whereafter statement of enquiry witnesses, namely Chandrabhanu Jha and Ajay Kumar were recorded in course of enquiry.

5. Thereafter learned Judicial Magistrate, 1st Class, Patna finding *prima facie* case under Sections 420, 379 and 323 of the Indian Penal Code vide order dated 12.09.2014 issued processes against the accused persons for their appearance.

6. Learned counsel for the petitioner vociferously submits that the perusal of the complaint petition and the statements recorded in course of inquiry clearly discloses that the dispute between the parties are purely of civil nature where non-execution of sale deed in-spite of payment of money has been alleged and this criminal proceedings has been resorted in order to get the consideration amount refunded for the aforesaid piece of land, for which no sale deed was executed or otherwise to compel and coarse the accused persons to execute sale deed in favour of the complainant, on the strength of, the instant criminal prosecution.

7. He further submits that the entire complaint is replete with allegations which do not make out any criminal offences, on the contrary, it shows the ulterior motive of the complainant who has used the judicial process to satiate his ill-

intention of getting the land of the accused persons against their will. He also points out that the Hon’ble Supreme Court of India as well as this Hon’ble Court has deprecated this kind of practice resorted to by the complainant, who instead of approaching the competent Court of civil jurisdiction, has attempted to give the civil dispute between the parties, the color of criminality, with a motive to adopt a short-cut method to get their money back.

8. Learned Senior Counsel appearing on behalf of the O.P. No. 2 though supports the allegations as levelled in the complaint application, but in the face of the statements made in the complaint application as well as the statement of witnesses recorded in course of inquiry, she candidly admits that no specific role of committing any crime could be attributed to the petitioner. It has also been pointed out on behalf of the complainant that the accused persons has deliberately, willfully and intentionally cheated the complainant by not executing sale deed in his favour, in-spite of having received the full consideration amount and this act of accused persons positively comes in the category of an offence as defined under Section 415 of the Indian Penal Code read with Section 420 of the Code.

9. Learned Additional Public Prosecutor appearing for

the State adopts the argument so advanced on behalf of the complainant (i.e. O.P. No. 2) and submits that the case is fit to be dismissed as it does not warrant interference at this stage, and that too after more than a decade of order of cognizance.

10. However, learned Senior Counsel appearing on behalf of the complainant points that though the amount of Rs. 20 lakh had been transferred to the account of the petitioner, at the instruction of accused no. 1 and not on asking of the petitioner, but she fairly accepts that in the agreement to sale executed on 28.04.2013, the petitioner is not a party. Learned Senior Counsel also accepts that for the amount so received, the petitioner had already executed a sale deed on 24.10.2013 on his part, which is appended to the quashing application as Annexure 5.

11. Heard learned counsel for the petitioner, learned Senior Counsel for the O.P. No. 2 as well as learned Additional Public Prosecutor for the State.

12. The instant application for quashing the order dated 12.09.2014 taking cognizance was preferred in the year 2016 wherein vide order dated 06.09.2017, this Court allowed three weeks time to the O.P. No. 2, who appeared *suo moto,* for filing counter affidavit in the matter and further proceeding in the aforesaid complaint case had been stayed. However, no

counter affidavit has been filed till date.

13. Having heard the respective parties and perused the averments made in the complaint petition as well as the statements of complainant and inquiry witnesses so recorded in course of inquiry, certain vital facts, germane to decide the issue at hand, comes to the fore:-

> *(i) An agreement to sale was executed on 28.04.2013 between Sanjay Kumar (complainant) and Sudhir Prasad Singh (accused No. 1) for sale of land appertaining to Thana No. 16, Tauzi No. 9/12, Khata No. 14, Survey Plot No. 659 at the rate of Rs. 51 lakhs per katha.*
>
> *(ii) As evident from paragraph no. 2 of the complaint that accused No. 1, i.e., Sudhir Prasad Singh is a land broker who entered into an agreement with the complainant for the sale of the aforesaid piece of land.*
>
> *(iii) The petitioner was not a party to the aforesaid agreement.*
>
> *(iv) An amount of Rs. 20 lakh was transferred to the account of petitioner, on the instruction of accused No. 1, through RTGS in between 08.05.2013 to 10.05.2013, but petitioner has already executed a sale deed on 24.10.2013 in favour of Sudhir Prasad Singh for the amount of Rs. 20,00,000/- so received from the complainant.*
>
> *(v) The allegation of snatching Rs. 2,000/- from the pocket of diseased brother of complainant in the broad day light, appears to be super-addition in order to give a color of criminality to a dispute, which is otherwise civil in nature.*

14. The offence of cheating has been defined under Section 415 read with Section 420 of the I.P.C. and the '<u>ingredients constituting an offence</u>' is evident from the bare

perusal of the aforesaid Sections itself :-

> *(i) Fraudulent or dishonest inducement of a person by deceiving him,*
>
> *(ii) The person so induced should be intentionally induced to deliver any property, or*
>
> *(iii) Person so induced shall be intentionally induced to do so or to omit to do anything which he would not do or omit if he was not so deceived,*
>
> *(iv) The aforesaid acts or omissions should be one which causes or likely to cause damage or harm to the person so induced in body, mind, reputation or property,*
>
> *(v) A fraudulent and dishonest inducement is an essential ingredient of cheating.*

15. The Hon'ble Supreme Court of India, has in no uncertain terms, judicially propounded the ingredients constituting an offence under Section 415 read with Section 420 in copious of judgments *viz.* ***Prof. R.K. Vijayasarathy & Anr. v. Sudha Seetharam & Anr.***, reported in (***2019) 16 SCC 739***, ***A.M. Mohan v. State Represented by SHO & Anr,*** reported in ***(2024) 12 SCC 181***.

16. Put succinctly, to constitute an offence under Sections 415 and 420 of the I.P.C., ingredients as enumerated and discussed hereinabove are lacking in the present case and by no stretch of imagination, the offence under Section 420 of the I.P.C. could be said to have been made out in the case at hand,

as the entire gamut of documents, statements and averments brought on record, do not disclose that the accused persons, especially the petitioner, has any intention of cheating the complainant since the beginning i.e. from the date of execution of agreement between accused No. 2 and complainant, in which the petitioner was not a party.

17. Further the facts as enumerated and detailed in the case at hand as well as the statement recorded in course of inquiry do not evince the commission of any criminal offence, especially by the petitioner. On the contrary, factual matrix as detailed indisputably disclose that the entire idea, by filing the instant complaint case, was to convert a civil dispute into a criminal one by the complainant, just in order to put pressure on the accused persons so named in the complaint, either to return the earnest money allegedly paid in relation to proposed execution of sale deed or to get the sale deed executed under coercion and duress of criminal proceeding initiated against the accused persons.

18. The Hon'ble Supreme Court has deprecated this kind of practice of converting civil dispute into a criminal one and has unequivocally held that Criminal Courts are not meant to be used for settling scores or pressurize parties to settle civil

dispute. Allowing such sort of proceeding to continue would be a absolute abuse and misuse of the process of Court as has been laid down in the case of ***Sarabjit Kaur v. State of Punjab and Anr.*** reported in ***(2023) 5 SCC 360***.

19. Similarly, in ***Inder Mohan Goswami and Anr. v. State of Uttaranchal & Ors.*** reported in ***AIR 2008 SC 251***, it was emphasized that criminal prosecution must not be permitted as an instrument of harassment or private vendetta. In ***Ganga Dhar Kalita v. State of Assam*** reported in ***(2002) 1 SCC 555***, the Hon'ble Supreme Court again reiterated that criminal complaints in respect of property disputes of civil nature, filed solely to harass the accused or to exert pressure in civil litigation, constitute an abuse of process and in ***Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh and Ors.*** reported in ***2025 SCC OnLine SC 1462***, 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 and predominantly civil in nature.

20. This Court is very conscious of its power to be exercised under Section 482 of the Cr.P.C. which is inherent and plenary in nature. The same is to be exercised with all

circumspection and self-restraint, keeping in mind the parameters evolved through judicial pronouncement, for exercise of such power, which is enumerated in para 11.5 of the Judgement of ***Anukul Singh V. State of Uttar Pradesh and Anr.*** reported in ***2025 SCC OnLine SC 2060*** which is reproduced hereinbelow:-

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

21. In one of the most celebrated judgments viz: ***State of Haryana v. Bhajan Lal*** reported in ***1992 Supp.(1) SCC 335*** in para no. 102 the Hon'ble Supreme Court has laid down illustrative categories where the quashing of criminal proceedings is justified.

Though the categories in ***Bhajan Lal*** *(supra)* are illustrative and not exhaustive, but they provide guiding principles to balance two competing considerations:–

(a) preventing abuse of process of law, and

(b) ensuring that criminal proceedings are not stifled at the threshold on disputed questions of fact.

22. The category No. 7, so laid down in ***Bhajan Lal's*** case *(supra)* :-

> *"(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."*

23. Thus, initiation of the present criminal proceeding therefore amounts to a clear abuse of the process of law squarely falling within the illustrative categories, specially the category no. 7, delineated in ***Bhajan Lal's*** case *(supra),* particularly where the dispute is manifestly civil in nature and the prosecution is maliciously instituted with an ulterior motive.

24. A mere breach of an agreement between two parties where the petitioner does not comes into picture, as a prelude to the proposed contract to be executed thereafter, does not give rise to a 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 proceeding.

25. Order of cognizance dated 12.09.2014 for the offences under Sections 420, 379 and 323 of the I.P.C. appears to be misconceived and reflects total non-application of judicial mind in view of the nature of allegations as set out in the

complaint.

26. Hence, this Court does not find the order dated 12.09.2014 passed by learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 27267 (C) of 2014 taking cognizance of offences under Section 420, 379 and 323 of the Indian Penal Code, tenable in the eye of law and accordingly, the same is quashed and set aside with respect to the petitioner only.

27. Thus, this application is allowed in the aforesaid terms.

28. All pending interlocutory application(s), if any, stand/s disposed off.

(Rana Vikram Singh, J)

Supratim/
Saurabh.kr-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	24.07.2026
Transmission Date	NA