IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53364 of 2016

CNR No. BRHC010869682016

Arising Out of PS. Case No.-874 Year-2016 Thana- PATNA COMPLAINT CASE District-Patna

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Nitesh Bidasaria, s/o Mahabir Prasad Bidasaria, r/o Rajendra Path, P.S. Gandhi Maidan, District - Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Subrata Basu, s/o Late G.C. Basu, Proprietor of M/s Bose Electricals, 3rd Floor, Puspak Complex, Opposite PNB, Frazer Road, P.S. Kotwali, District - Patna.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Singh, Sr. Advocate Mr. Harsh Singh, Advocate
For the State	:	Mr. Aditya Narayan Singh 1, APP
For the O. P. No. 2	:	Mr. Rajiv Ranjan Kr. Pandey, Advocate

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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, 1973 (*in short* ***Cr.P.C.***), seeking quashing of the order dated 07.06.2016 passed by the learned Judicial Magistrate, 1st Class, Patna, in Complaint Case No. 874(C) of 2016, whereby cognizance of the offence punishable under Section 406 of the Indian Penal Code (*in short* ***I.P.C.***) has been taken against the petitioner and summons have been issued to him.

2. The prosecution case, as set out in the complaint petition, in brief, is that the complainant/opposite party No. 2,

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had entered into a contractual arrangement with the petitioner, who was the proprietor/signatory of the firms M/s Bidasaria Fenster Solutions and M/s Bidasaria Cucine, for execution of furniture and partition work at the premises of Madhya Bihar Gramin Bank. Pursuant to the tender and the agreements dated 25.11.2015, the total value of the work was fixed at Rs.72,88,000/-. As per the agreed terms, 30 per cent of the contractual amount was payable in advance, 30 per cent at the time of installation, and the remaining amount was to be paid in accordance with the progress of the work. The work was required to be completed within 45 days, subject to the conditions stipulated in the agreements.

It is further alleged that the complainant/opposite party No. 2 made payments to the petitioner towards execution of the aforesaid work, including payments of Rs.9,10,000/- on 25.11.2015, Rs.12,75,000/- on 25.11.2015 through RTGS and Rs.15,00,000/- on 22.01.2016 by cheque, aggregating to Rs.36,85,000/-. According to the complainant, despite receiving the aforesaid amount, the petitioner failed to complete the work in accordance with the contractual terms and allegedly demanded further payment. It is alleged that, upon being requested to commence and complete the work, the petitioner

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demanded more money and then the complainant issued a post-dated cheque bearing No.529986, dated 14.02.2016, for Rs.12,00,000/-, on the assurance of petitioner that the work would be completed by 13.02.2016. However, the said cheque was presented for encashment by the petitioner, then it was returned unpaid on 16.02.2016 with the endorsement that the account had been frozen.

Despite repeated requests and reminders, the petitioner failed to fulfill his contractual obligations and had dishonestly induced the complainant/opposite party No. 2 to part with money without completing the agreed work. Thus, the petitioner had misappropriated an amount of approximately Rs.14,00,000/- over and above the value of the work allegedly executed.

Levelling the aforesaid allegation, the complainant filed a complaint case on 14.03.2016 in the Court of learned Chief Judicial Magistrate, Patna under Sections 406 and 420 of the I.P.C., whereupon the solemn affirmation of the complainant was recorded on 28.04.2016 and the statement of inquiry witnesses, namely, Manoj Kumar was recorded on 02.05.2016.

Upon consideration of the complaint and the statement of the complainant and his witness recorded during

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the inquiry, the learned Judicial Magistrate, 1st Class, Patna finding *prima facie* case under Section 406 of the I.P.C., by order dated 07.06.2016, issued summons to the petitioner for his appearance.

3. Mr. Jitendra Singh, learned senior counsel appearing for the petitioner, submits that the impugned order dated 07.06.2016, passed by the learned Judicial Magistrate, 1st Class, Patna, taking cognizance of the offence punishable under Section 406 of the I.P.C., is unsustainable in the eyes of law, as the allegations made in the complaint petition, even if accepted in its entirety, do not disclose the essential ingredients of the alleged offence.

3.1. He submits that dispute between the parties arises out of contractual agreements dated 25.11.2015 relating to the execution of furniture and partition work at the premises of Madhya Bihar Gramin Bank. The controversy essentially concerns the execution of work, the payment schedule and the alleged failure to discharge contractual obligations, which, according to the petitioner, is predominantly civil in nature.

3.2. It is contended that the amounts received by the petitioner, were paid pursuant to the contractual arrangements between the parties and cannot, merely by reason

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of the alleged non-completion of work, be construed as property entrusted to the petitioner within the meaning of Section 405 of the I.P.C. Moreover the complaint does not disclose any specific act of dishonest misappropriation or conversion of the alleged entrusted property, which is indispensable for constituting the offence punishable under Section 406 of the I.P.C.

3.3. The complainant/opposite party No. 2 has incorrectly alleged, as submitted, that the cheque for Rs.12,00,000/- was dishonoured pursuant to instructions for stoppage of payment. The cheque was returned unpaid on 16.02.2016 on account of the complainant's bank account having been frozen. He contends that the allegations made by the complainant/opposite party No. 2 arises from the parties' contractual and financial disputes, which do not, in itself, establishes the commission of any criminal offence.

3.4. Thus, he vociferously argues that the instant criminal proceeding has been initiated maliciously with a view to exert pressure upon the petitioner in relation to the contractual dispute and to pre-empt the proceedings arising out of the dishonour of the cheque. The continuation of the proceeding, in the absence of the essential ingredients of the alleged offence, would amount to an abuse of the process of the

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Court. Accordingly, he prays that the impugned order dated 07.06.2016 and the consequential criminal proceeding against the petitioner be quashed.

4. Mr. Rajiv Ranjan Kr. Pandey, learned counsel appearing on behalf of opposite party No. 2 vehemently opposes the present application and submits that the impugned order dated 07.06.2016, whereby cognizance has been taken against the petitioner for the offence punishable under Section 406 of the I.P.C., has been passed upon consideration of the complaint petition and the materials available on record. It is contended that the allegations made in the complaint disclose a *prima facie* case against the petitioner, warranting his prosecution before the learned Trial Court.

4.1. It is submitted that opposite party No. 2 had entered into contractual agreements dated 25.11.2015 with the petitioner for execution of furniture and partition work at the premises of Madhya Bihar Gramin Bank for a total consideration of Rs.72,88,000/-. Pursuant to the said agreements, the complainant paid an aggregate amount of Rs.36,85,000/- to the petitioner. However, despite receiving the aforesaid amount, the petitioner allegedly failed to commence and complete the work in accordance with the agreed terms and

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conditions, thereby causing financial loss to the complainant/opposite party No. 2.

4.2. It is argued that the complainant had issued a cheque bearing No.529986, dated 14.02.2016, for a sum of Rs.12,00,000/- in favour of the petitioner, on his assurance that the agreed work would be undertaken and completed within the stipulated period. However, the said cheque was returned unpaid on 16.02.2016 with the endorsement that the complainant's account had been frozen. It is contended that the conduct of the petitioner, viewed in the background of the payments received and the alleged failure to execute the work, gives rise to serious allegations of dishonest conduct and misappropriation of the complainant's money.

4.3. It is emphatically argued that the allegations made in the complaint petition cannot be brushed aside merely on the ground that the parties had entered into contractual arrangements. The circumstances surrounding the receipt of money, the failure to perform the agreed work and the subsequent events, disclose matters requiring examination of the same during the trial. It is, therefore, contended that the disputed questions of fact cannot appropriately be adjudicated in an application seeking exercise of the inherent jurisdiction of this

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Court.

4.4. The learned counsel submits that the petitioner has sought to portray the dispute as purely civil in nature, whereas the complaint specifically alleges dishonest conduct in relation to the money received from the complainant. So, the defence raised by the petitioner, regarding the contractual dispute concerning payments, cannot be conclusively accepted at this stage without examination of the materials in accordance with law. Accordingly, it is prayed that the present application be dismissed and the criminal proceeding pending before the learned Trial Court be permitted to continue.

5. Mr. Aditya Narayan Singh I, learned Additional Public Prosecutor for the State, submits that the impugned order dated 07.06.2016 has been passed by the learned Trial Court upon consideration of the complaint petition and the materials available on record. It is contended that the allegations relate to the receipt of money by the petitioner pursuant to contractual agreements and the alleged failure to execute the work in accordance with the agreed terms and conditions.

5.1. It is submitted that the rival claims concerning the contractual obligations, payments made and the circumstances involve disputed questions of fact which require

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due consideration and examination during trial. Accordingly, it is prayed that the present application be dismissed.

6. Having heard the rival submissions advanced on behalf of the respective parties and perused the evidence, documents, materials placed on record, I find it, expedient in the interest of justice to examine the nature of allegation as levelled in the complaint petition and supported during inquiry *vis-a-vis* the ingredients of the offence as alleged under Section 406 of the I.P.C. and the authoritative judicial pronouncement in this regard in order to find out as to whether the offence as alleged, has actually been made out or not.

7. The very nature of dispute between the parties concerning allegations as levelled in the criminal prosecution initiated by the complainant and the consideration of the definition and ingredients of Section 406 of the I.P.C., at this stage assume significance in order to examine the veracity and to test the true nature of dispute and allegations, since the offence under Section 406 of the I.P.C. is the main offence on which the petitioner has been summoned.

8. Section 405 of the I.P.C. defines the 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"."*
>
> *(**Note**:- Explanation 1 & 2 of Section 405 is not relevant for the purpose of this case.)*

The offence under Section 405 of the I.P.C. is made punishable under Section 406 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.*

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> *In other words, for the invocation of the offence of criminal breach of trust, it is expedient 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."*

As per **Black's Law Dictionary**, the definition of the term "**Entrustment**" means to give (a person), responsibility for something, usually after establishing a confidential relationship.

9. 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.

10. 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.***, 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.

11. 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

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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.

12. 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*”.

13. Now examining the present case, in the context of legal propositions both statutory as well as judicial pronouncement, as discernible from the preceding paragraphs, certain aspects of the case, at hand, requires consideration in

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order to decide whether offence under Section 406 of the I.P.C. is made out or not.

14. The plain reading of the averments made in the complaint petition as well as the statement of the complainant/opposite party No. 2 and witnesses recorded during the inquiry, besides the documents *viz.* the quotation for the work of partition, quotation for furniture work inside the premises, the exchange of mails between the parties, the statement of account and the letters exchanged between the parties appended to this application, unequivocally reveal the following facts:-

(i) On 04.11.2015 an agreement was executed between the complainant and the Madhya Bihar Gramin Bank for wooden partition and furniture work in the building of the Bank pursuant to a tender floated by the Bank.

(ii) The complainant, thereafter, appointed the petitioner as petty contractor to execute the work in terms of the agreement in the Bank.

(iii) In terms of the agreement the petitioner was to complete the said work within 45 days from the date of work order dated 25.11.2015 and after completion of the work, the complainant/opposite party No. 2 had to pay Rs. 72,88,000/- (Seventy Two Lakh Eighty Eight Thousand rupees only) to the petitioner.

(iv) The payments to the petitioner was to be made by the opposite party No. 2 as per the stages and

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progress of the work.

(v) The total payment of Rs. 36,85,000/- (Thirty Six Lakh Eighty Five Thousand rupees only) had been paid to the petitioner by the complainant but the work was not completed.

(vi) The complainant/opposite party No. 2 states that Rs. 14,00,000/- excess payment has been received by the petitioner.

(vii) Several reminders were given to the accused by the opposite party No. 2 to complete the work till 13.02.2016 but instead of completing the work, the petitioner stopped the work and started making undue pressure upon the opposite party No. 2 to make further payment of Rs. 12,00,000/- with assurance that after this payment, the work will be completed by 13.02.2016.

(viii) The cheque given to the accused persons by the opposite party No. 2 was never honoured and the accused persons did not complete the work.

15. Thus, it appears that the instant prosecution has been launched against the petitioner on the premise that Rs. 14,00,000/- excess were received by him without completing the work as agreed between them.

16. It is evident from the records that the petitioner's firm was required to complete the work within the stipulated time and the complainant/opposite party No. 2 has accepted to make payment in terms of the agreement between them. The petitioner has accepted the proposal of the

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complainant/opposite party No. 2 to complete the work within 45 days on 27.11.2015 by making two endorsements and categorical stipulations which are as follows:-

(a) Time limit for hand over, subject to availability of finalised drawings and timely availability of site for installation of work.

(b) Time limit effective from the date of availability of working measurement at site.

17. It appears on account of delay on part of the complainant/opposite party No. 2 to hand over and to provide the drawing outlay, availability of site and necessary approval, the work of installation of partition, wood work and furniture work started only thereafter, *i.e.*, with effect from 04.01.2016.

18. As the work progressed, the total amount of Rs. 36,85,000/- were paid to the petitioner out of total agreed amount of Rs. 72,88,000/-. Thereafter, the petitioner made a request for payment of further Rs. 14,00,000/- for completing the work within time for which a cheque of Rs. 12,00,000/- were issued in favour of the petitioner’s firm by the complainant but the said cheque was dishonoured by the Bank on the ground that the complainant/opposite party No.2 has got his account forzen, so this amount of Rs. 12,00,000/- was never paid to the

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petitioner.

19. In this backdrop, the allegation of the complainant/opposite party No. 2 that Rs. 14,00,000/- excess had been received by the petitioner without doing the work for the same, unquestionably reflects the true nature of dispute with respect to the accounting between the parties. The complainant claims that Rs. 14,00,000/- excess had been received by the petitioner's firm whereas the petitioner claims that they have already executed the work of Rs. 36,00,000/- and odds which had been paid to them and thereafter they had to complete the work for which they requested for release of payment of Rs. 12,00,000/- which was never paid to them by opposite party No. 2, in-spite of having issued a cheque in their favour. The cheque could not be honoured on account of the deliberate act of the complainant/opposite party No. 2 who got his account forzen in the bank, for which the cheque had been drawn in favour of the petitioner.

20. The aforesaid factual profile discussed hereinabove indisputably reflects the civil nature of dispute between the parties where both sides are making claim and counter claim with respect to the completion of work and for release of fund respectively. This kind of dispute can never be

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decided by setting the Court of criminal jurisdiction in motion, since this dispute arises out of pure commercial transaction wherein on account of agreement executed between the parties certain work was being performed by one of the parties, *i.e.*, the petitioner and claiming non-performance on their part, the complainant/opposite party No. 2 instituted the criminal prosecution. This type of criminal proceedings are totally uncalled for and unwarranted because no element of criminal breach of trust nor any kind of entrustment is found.

21. On the touchstone of ingredients to make out an offence under Section 406 of the I.P.C., from the facts disclosed in the the complaint and documents place on record, it is evident that there is no entrustment of any property nor is their any misappropriation after consequent breach. None of the allegations made in the instant complaint case satisfy any of the ingredients of the offences of ‘Criminal Breach of Trust’ as defined under Section 405 of the I.P.C. so as to make it an offence punishable under Section 406 of the I.P.C. thereof. Neither is there entrustment of any kind of property, valuable security or movable property/money nor is there dishonest misappropriation of the same with fraudulent intention.

22. On the contrary, the instant case presents a

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perfect illustration of *inter se* dispute of commercial nature regarding breach of terms of the agreement which is essentially civil in nature but the proceedings of the criminal Court have been set in motion just in order to settle the dispute relating to the accounting and non-performing and non-completing the contractual work as agreed between the parties.

23. The Hon'ble Supreme Court in copious of its decisions has severely deprecated and disapproved these kind of criminal prosecution at the hands of disgruntled element. In ***Kunti and Another Vs. State of Uttar Pradesh and Another***, reported in ***(2023) 6 SCC 109***, by referring to the judgment of Hon'ble Supreme Court in ***Sarabjit Kaur Vs. State of Punjab and Another***, reported in ***(2023) 5 SCC 360***, the Hon'ble Supreme Court has held that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent and dishonest intention is shown right at the beginning of this transaction.

24. In the case of ***Deepak Gaba and Others Vs. State of Uttar Pradesh and Another***, reported in ***(2023) 3 SCC 423***, the Hon'ble Supreme Court has observed that :-

> *"……this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie*

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> *outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in Thermax Limited and Others v. K.M. Johny and Others, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs….."*

25. Further, in the case of ***Sharif Ahmed and Another Vs. State of Uttar Pradesh and Another***, reported in ***2024 SCC OnLine SC 726***, the Hon'ble Supreme Court has held in the following terms:-

> *"36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out."*

26. The ratio of the aforesaid judgments squarely covers the present case and applies with full force by making it amply clear that for breach of contractual obligation concerning commercial dispute, criminal prosecution would not be allowed since ingredients of offence as defined under Sections 405 and 406 are not satisfied in these cases.

27. Thus, this Court finds that the categories (1), (3), (5) and (7) enlisted in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.*** reported in ***1992 Supp. (1) SCC 335***, are

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squarely applicable to the facts of the present case, making it a fit case for quashing of the criminal proceedings pending against the accused, which reads as hereinbelow:-

> *"(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."*

28. In this conspectus of factual legal discussion hereinabove, the instant prosecution of the petitioner is not only malicious but also appears to have been launched for recovery of amount arising out of *inter se* dispute of civil nature between the parties, which is simply impermissible in the eyes of law, in terms of the settled judicial pronouncements of the Hon'ble Supreme Court as well as of this Court.

29. Further the summoning order reflects total non-application of judicial mind on the part of the learned Magistrate, who without examining the true nature of complaint

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and allegation, passed the order taking cognizance in the most mechanical manner and as such the same warrants interference by this Court in order to prevent the abuse and misuse of the judicial process.

30. *Ex-consequenti*, the order impugned dated 07.06.2016 passed by the learned Judicial Magistrate 1st Class, Patna in connection with Complaint Case No. 874(C) of 2016, whereby cognizance of the offences under Section 406 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. Consequently, all criminal proceedings emanating from Complaint Case No. 874 of 2016 are also, hereby, quashed and set aside with respect to the petitioner.

31. The application is, accordingly, allowed.

32. Interlocutory application(s), if any, shall also stand disposed of accordingly.

(Rana Vikram Singh, J)

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AFR/NAFR	AFR
CAV DATE	31.07.2026
Uploading Date	09.11.2026
Transmission Date	09.11.2026

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