IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.921 of 2020

Arising Out of PS. Case No.-95 Year-2019 Thana- EAST CHAMPARAN COMPLAINT District- East Champaran

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1. RAJA SRIVASTAVA Son of Shashi Bhushan Prasad Resident of Village- Pankha Toli, P.S.- Mushari, District- Muzaffarpur, At present- Lion Motions Pictures Pvt. Ltd. Gautam Budh Nagar, P.S.- Gautam Budhh Nagar, District- Noida (Uttar Pradesh).
2. Awishkar Srivastava @ Awishkar Ashutosh Son of Shashi Bhushan Prasad Resident of Village- Pankha Toli, P.S.- Mushari, District- Muzaffarpur.
3. Ashish Kumar Son of Hare Ram Prasad Resident of Village- Panchrukhi, P.S.- G.B. Nagar, District- Siwan.

... ... Petitioners

Versus

1. The State of Bihar
2. Janmejay Kumar Pandey Son of Keshav Pandey Resident of Village- Aadarsh Nagar Kaurihar, Road No.- 19, P.S.- Raxaul, District- East Champaran.

... ... Opposite Parties

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Appearance :

For the Petitioner/s	:	Mrs. Archana Sinha, Sr. Adv.
		Mr. Alok Kumar @ Alok Kr Shahi, Adv.
For the Opposite Party/s	:	Mr. Shyameshwar Dayal, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 25-02-2026

Heard the parties.

2. The present quashing petition has been preferred to quash the order dated 28.05.2019 passed in Complaint Case No. 95 of 2019, where learned SDJM, Raxual at Motihari took cognizance for the offence punishable under Sections 406, 420, 467, 468 of IPC.

3. The Brief case of prosecution speaks that the petitioners induced OP No. 2 to invest money on the assurance of allotment of hand-pump installation work in Ara district, Bihar, through a Delhi-based trust. On their representation, OP No. 2 paid Rs. 10 lakhs as security, partly in cash and partly through cheques issued by his friend, but no work as promised was given to petitioners and finally O.P. No.2 returned only Rs. 4,50,000/- in installments to his friend. The remaining amount of Rs. 5,50,000/- is alleged to have been misappropriated by the accused persons under criminal conspiracy.

4. Mrs. Archana Sinha, learned senior counsel appearing for the petitioners submitted that the company/ trust has not been arrayed as an accused in present case and, therefore, on this score alone entire prosecution is liable to be quashed. In support of her submission learned counsel relied upon the legal report of Hon'ble Supreme Court as available through ***Sanjay Dutt and Ors. vs. State of Haryana and Anr.*** reported in ***2025 SCC OnLine SC 32***.

5. It is also submitted that allegation as raised through complaint petition is not appearing legally sustainable as it is not supported with affidavit and therefore, the cognizance taken by learned Magistrate is bad in eyes of law and same deserves to be set aside/ quashed. In support of her submission, Mrs. Sinha, relied upon the legal report of Hon'ble Supreme Court as available through ***Priyanka Srivastava Vs. State of Uttar Pradesh [2015 (6) SCC 287].*** It is also pointed out that even from the complaint petition no *prima-facie* case for the offence punishable under Sections 406, 420, 467, 468 of IPC for which the learned Jurisdictional Magistrate took cognizance appears made out. It is submitted that the amount Rs. 4,50,000/- which was said to be paid by one Jaypraksh Mishra, the friend of complainant was admittedly returned to his account, whereas allegation to pay Rs. 5,50,000/- is unfounded without any documentary support. It is submitted that from this narrations itself, it can be gathered safely that petitioners were not under intention to cheat from the very inceptions of business deal and, moreover, this matter appears more or less *qua* recovery of alleged payment of Rs. 5,50,000/- for which present criminal petition is completely unoccassioned and unwarranted. In support of her submissions, learned senior counsel relied upon the legal reports of Hon'ble Supreme Court as available through ***Gulam Mustafa vs. State of Karnataka and Anr. [2023 SCC OnLine SC 603]*** and also upon ***Inder Chand Bagri vs. Jagadish Prasad Bagri and Anr. [2025 SCC OnLine SC 2529].***

6. Learned counsel appearing for O.P. No. 2/ complainant submitted that Rs. 5,50,000/- was not returned to the complainant and even after the assurance, to give order for installations of five thousand hand pipe same was not secured by the petitioners. However, it is conceded that company/ trust not appears alleged as an accused through present complaint petition.

7. It would be apposite to reproduce cognizance order dated 28.05.2019 which is as under:-

> ***"28-05-2019***
>
> ***In the court of the S.D.J.M. Raxaul at Motihari***
>
> ***C-95/2019***
>
> *Complainant is in attendance. Record put up for order. Perused the case record.*
>
> *Complainant has filed the complaint petition against the accused persons as named in complaint petition.*
>
> *The statement of complainant as solemn affirmation has been recorded. During the enquiry, complainant has adduced and*

examined I.W-1 Jay Prakash Mishra and I.W-2 Amit Upadhyay.

After going through the complaint petition, statement of complainant on S.A., evidence of enquiry witnesses and other evidence available on the record the court comes to the conclusion that a prima-facie case is made out again the accused persons as named in the complaint petition.

Therefore, there are sufficient materials available on record to summon the all accused persons named in complaint petition for committing the offences u/s- 406, 420, 467, 468 of I.P.C. Office is directed to issue summon on all accused persons as named in complaint petition after filing of requisites of summons by the complainant.

Put up on 28-06-2019 for appearance.

Dictated.

S.D.J.M."

8. It would be apposite to reproduce relevant Paragraph Nos. 30 and 31 of ***Priyanka Srivastava case (supra)***, which reads as:-

"30. *In our considered opinion, a stage has come in this country where Section 156(3) CrPC applications are to be supported by an affidavit duly sworn by the applicant who seeks the invocation of the jurisdiction of the Magistrate. That apart, in an appropriate case, the learned Magistrate would be well advised to verify the truth and also can verify the veracity of the allegations. This affidavit can make the applicant more responsible. We are compelled to say so as such kind of applications are being filed in a routine manner without taking any responsibility whatsoever only to harass certain persons. That apart, it becomes more disturbing and alarming when one tries to pick up people who are passing orders under a statutory provision which can be challenged under the framework of the said Act or under Article 226 of the Constitution of India. But it cannot be done to take undue advantage in a criminal court as if somebody is determined to settle the scores.*

31. *We have already indicated that there has to be prior applications under Sections 154(1) and 154(3) while filing a petition under Section*

156(3). Both the aspects should be clearly spelt out in the application and necessary documents to that effect shall be filed. The warrant for giving a direction that an application under Section 156(3) be supported by an affidavit is so that the person making the application should be conscious and also endeavour to see that no false affidavit is made. It is because once an affidavit is found to be false, he will be liable for prosecution in accordance with law. This will deter him to casually invoke the authority of the Magistrate under Section 156(3). That apart, we have already stated that the veracity of the same can also be verified by the learned Magistrate, regard being had to the nature of allegations of the case. We are compelled to say so as a number of cases pertaining to fiscal sphere, matrimonial dispute/family disputes, commercial offences, medical negligence cases, corruption cases and the cases where there is abnormal delay/laches in initiating criminal prosecution, as are illustrated in Lalita Kumari [(2014) 2 SCC 1 : (2014) 1 SCC (Cri) 524] are being filed. That apart, the learned Magistrate would also be aware of the delay in lodging of the FIR."

9. It would be apposite to reproduce relevant Paragraph Nos. 34 of ***Gulam Mustafa case (supra)***, which reads as:-

34. *Insofar and inasmuch as interference in cases involving the SC/ST Act is concerned, we may only point out that a 3-Judge Bench of this Court, in Ramawatar v. State of Madhya Pradesh, 2021 SCC OnLine SC 966, has held that the mere fact that the offence is covered under a 'special statute' would not inhibit this Court or the High Court from exercising their respective powers under Article 142 of the Constitution or Section 482 of the Code, in the terms below:*

"15. Ordinarily, when dealing with offences arising out of special statutes such as the SC/ST Act, the Court will be extremely circumspect in its approach. The SC/ST Act has been specifically enacted to deter acts of indignity, humiliation and harassment against members of Scheduled Castes and Scheduled Tribes. The SC/ST Act is also a recognition of the depressing reality that despite undertaking several measures, the

Scheduled Castes/Scheduled Tribes continue to be subjected to various atrocities at the hands of upper-castes. The Courts have to be mindful of the fact that the SC/ST Act has been enacted keeping in view the express constitutional safeguards enumerated in Articles 15, 17 and 21 of the Constitution, with a twin-fold objective of protecting the members of these vulnerable communities as well as to provide relief and rehabilitation to the victims of caste-based atrocities.

16. On the other hand, where it appears to the Court that the offence in question, although covered under the SC/ST Act, is primarily civil or private where the alleged offence has not been committed on account of the caste of the victim, or where the continuation of the legal proceedings would be an abuse of the process of law, the Court can exercise its powers to quash the proceedings. On similar lines, when considering a prayer for quashing on the basis of a compromise/settlement, if the Court is satisfied that the underlying objective of the SC/ST Act would not be contravened or diminished even if the felony in question goes unpunished, the mere fact that the offence is covered under a 'special statute' would not refrain this Court or the High Court, from exercising their respective powers under Article 142 of the Constitution or Section 482 Cr. P.C."

10. It would be apposite to reproduce relevant Paragraph Nos. 18, 19, 20, 22,23, 25, 28 of ***Inder chand Bagri case (supra)***, which reads as:-

18. *In Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 SCC 1 : (2008) 1 SCC (Cri) 259 ("Inder Mohan Goswami"), while dealing with Section 420 of the IPC, this Court observed thus:*

"42. On a reading of the aforesaid section, it is manifest that in the definition there are two separate classes of acts which the person deceived may be induced to do. In the first class of acts he may be induced fraudulently or dishonestly to deliver property to any person. The second class of acts is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducement must be

fraudulent or dishonest. In the second class of acts, the inducing must be intentional but need not be fraudulent or dishonest. 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 a fraudulent or dishonest intention at the time of making the promise. From his mere failure to subsequently keep a promise, one cannot presume that he all along had a culpable intention to break the promise from the beginning."

19. *In light of the facts and circumstances of the present case, we find that the complainant/respondent No. 1 has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 of the IPC. We fail to understand as to how the allegations against the appellant-accused herein could be brought within the scope and ambit of the aforesaid section. On a bare perusal of the complaint, we do not find that the offence of cheating as defined under Section 420 of the IPC is made out at all and we do not find that there is any cheating and dishonest inducement to deliver any property of a valuable security involved in the instant case.*

20. *It is settled law that for establishing the offence of cheating, the complainant/respondent No. 1 was required to show that the appellant-accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the partnership agreement. Such a culpable intention right at the beginning 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 material on record to attribute any dishonest and fraudulent intention to the appellant-accused at the time of creation of partnership agreement. We must hasten to add that there is no allegation in the complaint indicating either expressly or impliedly any intentional deception or fraudulent/dishonest intention on the part of the appellant-accused right from the time of formation of the partnership deed. Nothing has been said on what the misrepresentations were and how the appellant-accused intentionally deceived the complainant/respondent No. 1. Mere allegations that the appellant-accused dishonestly induced the complainant/respondent No. 1 to part with the property of the partnership firm and subsequently sold the property to a third party does not satisfy the test of dishonest inducement to deliver a property or part with a valuable security as enshrined under Section 420 of the IPC.*

22. *In the present case, the complainant/respondent No. 1 has failed to establish ingredients essential to* *constitute an offence under Section 406 of the IPC. The complainant/respondent No. 1 has failed to place any material on record to show us as to how he had entrusted the subject property to the appellant-accused. Furthermore, the complaint/respondent No. 1 also omits to aver as to how the property, so entrusted to the appellant-accused, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust. On the contrary, the bare perusal of the partnership deed dated 01.10.1976 shows that the disputed property was solely owned and enjoyed by the appellant-accused wherein as per Clause 4 of the said agreement he agreed to bring into the partnership the said disputed property. We must hasten to mention herein that upon reading of the supplementary agreement dated 03.04.1981, it becomes amply clear that all the partners including the complainant/respondent No. 1 had agreed that upon expiry of the lease period of 15 years with the Food Corporation of India i.e. 01.06.1993, the said land would revert back to the appellant-accused along with all the constructions erected upon it. In the facts of the present case, the complainant/respondent No. 1 cannot be allowed to blow hot and cold at the same time wherein on one hand, through the supplementary deed, he has agreed upon the reversion of the said disputed property back to the original owner i.e. appellant-accused and yet on the other hand has proceeded to file a complaint alleging cheating and misappropriation of said disputed property against appellant-accused.*

23. *Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No. 1 that the offence of criminal breach of trust as defined under Section 405 of the IPC, punishable under Section 406 of the 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 of the IPC. This Court in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, (2024) 10 SCC 690 : (2025) 1 SCC (Cri) 281 observed that there 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 misappropriated 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 coexist simultaneously in the same set of facts as they are antithetical to each other.*

***25.** Furthermore, in **Inder Mohan Goswami**, it was held by this Court that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused. It was further held by this Court that it is neither possible nor desirable to lay down an inflexible rule that would govern the exercise of inherent jurisdiction. In view of the above and for the reasons stated above, we are of the firm opinion that to continue the criminal proceedings against the appellant-accused herein would cause undue harassment to him because as observed hereinabove, no prima facie case for the offence under Sections 406 or 420 of the IPC is made out.*

***28.** At this juncture, we find it apposite to mention the observations of this Court in Vishal Noble Singh v. State of Uttar Pradesh, (2024) 14 SCC 112 wherein it was observed that in recent years the machinery of criminal justice is being misused by certain persons for their vested interests and for achieving their oblique motives and agenda. Courts have therefore to be vigilant against such tendencies and ensure that acts of omission and commission having an adverse impact on the fabric of our society must be nipped in the bud. We say so for the reason that while the complainant/respondent No. 1 has made grave allegations against the appellant herein, he has failed to justify the same before this Court. Such actions would create significant divisions and distrust among people, while also placing an unnecessary strain on the judicial system, particularly criminal courts.*

11. It would be appropriate to reproduce the paragraph no. 102 of Apex Court decision in the case of ***State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335],*** which reads as under:-

*"**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of*

the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

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

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

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

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

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

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

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

12. In view of aforesaid factual and legal submissions and upon perusal of record it appears that the present complaint case was registered *prima-facie* for the recovery of Rs. 5,50,000/-. Admittedly, Rs. 4,50,000/- was returned to bank account of the friend of the complainant when business deal could not finalized. It also appears that no chit of papers are available on record in support of payment of Rs. 5,50,000/- which was said to be made in cash and, therefore, these allegations as set out through complaint petition *prima-facie* not appears to made out a case for the offence punishable under Section 406, 420, 467, 468 of I.P.C., as there is no breach of trust in the present matter. Admittedly, return of money to friend of O.P. No. 2, as discussed aforesaid, categorically suggest that payment was not received with criminal intention to cheat the complainant from very inception of business deal and, therefore, the present criminal case was lodged only to harass the petitioners with oblique motive to set out private *vendetta*.

13. In view of aforesaid, the impugned cognizance is bad in eyes of law and, therefore, same appears set aside as *prima-facie* no case for the offence punishable under Section 406, 420, 467, 468 of IPC appears made out particularly in view of ***Inder chand Bagri case (supra)***, accordingly, impugned order of cognizance dated 28.05.2019 with all its consequential proceedings, *qua* all above named petitioners arising thereof as passed in connection with Complaint Case No. 95 of 2019, by learned SDJM**,** Raxual at Motihari is hereby quashed and set aside.

14. Hence, this application stands allowed.

15. TCR (Trial Court Records), if any, be returned to learned trial court alongwith the copy of this judgment.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	**AFR**
CAV DATE	**NA**
Uploading Date	**11.03.2026**
Transmission Date	**11.03.2026**