

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42486 of 2016

Arising Out of PS. Case No.-60 Year-2015 Thana- SAUR BAZAR District- Saharsa

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1. Kaushalya Devi and Ors wife of Late Kari Chaudhary,
 2. Baijnath Chaudhary, son of Late Kari Chaudhary,
 3. Shambhu Kumar Chaudhary, son of Late Kari Chaudhary,
 4. Shibu Chaudhary, son of Late Kari Chaudhary, All are Resident of Village Baijnathpur, Police Station- Saurbazar, District- Saharsa.

... .. Petitioner/s

Versus

1. State of Bihar
2. Rajbindi Devi Wife of Ganga Goswami, Resident of Hatia Gachhi, Ward No. 31, Police Station Saharsa District Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Satish Kumar Singh, Advocate.
		Mr. Dinesh Maharaj, Advocate.
For O.P. No.2	:	Mr. Zeeshan Kalim, Advocate.
For the State	:	Mr. Rana Randhir Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 03-11-2025

Heard learned counsel appearing on behalf of the petitioners; learned counsel for the opposite party no.2 and learned APP for the State.

2. The present application has been filed under Section 482 of the Cr.P.C. for quashing of the order taking cognizance dated 18.12.2015 in connection with Saur Bazar P.S. Case No.60 of 2015, whereby cognizance has been taken by the learned Judicial Magistrate, Saharsa under Sections 406 and 420 of the Indian Penal Code.

3. It is alleged by the informant/complainant that she



negotiated with the petitioner No. 1 for the purchase of 01 katha of land and for that she paid a sum of Rupees 80,000/- to the petitioner No. 3 and a jarbaiynanama (Agreement for sale) was prepared, and it was agreed that after getting the rest Rupees 10,000/- she will execute the sale deed in her favour. However it has been alleged that even after repeated request and pleader's notice the petitioners allegedly refused to execute the sale deed. She further alleged that the khata of the land in question has been opened in the name of the Government of Bihar, thereafter a Panchayat was also convened but the petitioners allegedly refused to obey the Panchayat. It is further alleged that on 22.09.2014 when the informant along with her husband and son went to the house of the petitioner No. 1 and requested to execute the sale deed, on which, all the accused persons allegedly abused and assaulted them and it is alleged that the petitioner No. 2 pointed a three Not upon her and petitioner No. 4 thrown her on the ground and snatched a silver locket from her neck. On the basis of the aforesaid complaint, the police instituted and lodged Saur Bazar Police Station Case No. 60/15 dated 12.3.15, under sections 341, 323, 354, 379, 406, 504, 506, 34 of the Indian Penal Code and Section 27 of the Arms Act.

4. Learned counsel appearing on behalf of the petitioners submitted that the informant of the case herself has



committed fraud in connivance with her son. In fact, the petitioner No. 1 took some loan from the informant, for which she had taken her finger print over a plain paper and the said paper was subsequently used for preparing forged Jarbaiyana. He further submitted that the petitioners are, in fact, the real victim and no offence is made out against them. The informant/complainant to settle her pending civil dispute with the petitioners filed the present criminal case which amounts to abuse of process of law. He further submitted that in view of the dispute apparently of a civil nature, the learned Court Below in a most mechanical manner without applying his judicial mind has taken cognizance against the petitioners under Sections 406 and 420 of the Indian Penal Code on the basis of the final form / chargesheet.

5. *Per contra*, learned counsel appearing on behalf of the opposite party no.2 submitted that the allegation levelled against the petitioners in the F.I.R. is specific against them and fulfills the ingredients of Sections 406 and 420 of the Indian Penal Code, as such, the present quashing application is fit to be dismissed.

6. Heard the parties.

7. The present application was heard on 04.09.2025 and interim protection was granted to the petitioners after



hearing the parties. On the basis of the allegation made in the F.I.R. / complaint, the police upon investigation submitted chargesheet against the petitioners under Sections 406 and 420 of the Indian Penal Code, on which basis, cognizance was taken by the learned Magistrate Saharsa, under Sections 406 and 420 of the Indian Penal Code.

8. A plain and careful reading of the foregoing observations makes it clear that the offences punishable under Sections 406 and 420 of the IPC rest on fundamentally different legal foundations. To constitute the offence of criminal breach of trust, the element of deception must arise subsequent to the entrustment of property or after the accused has acquired dominion over the property followed by its dishonest misappropriation, conversion, or disposal in violation of the terms of such entrustment. In contradistinction, in the case of cheating under Section 420, the element of deception is sine qua non from the very inception of the transaction, forming the basis of the inducement by which property is delivered or an act is caused to be done. It therefore follows as a matter of settled legal principle that where the facts disclose the commission of an offence under Section 406 IPC in relation to a particular transaction, the accused cannot, at the same time and on the same set of allegations, be held liable for the offence of cheating



under Section 420 IPC and vice-versa.

9. Recently, the Apex Court in the case of ***Arshad Neyaz Khan Vs. State of Jharkhand & Anr.***, reported in (2025) ***SCC OnLine SC 2058***, upon analysis of law, has finally concluded that Sections 406 and 420 of the Indian Penal Code cannot co-exist simultaneously. The observations made by the Apex Court in Para-16, 20 and 21 are reproduced hereinafter:

“16. The contents of the complaint as well as the FIR would have to be read in light of the ingredients of Sections 406 and 420 IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated 29.01.2021, it is noted that the complainant/respondent No. 2 has filed the said complaint invoking Sections 406, 420 and 120B IPC. For ease of reference, the aforesaid Sections are extracted as under:

“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.

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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.

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120B. Punishment of criminal conspiracy.-(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with



fine or with both.”

20. On perusal of the allegations contained in the complaint, in light of the ingredients of Section 406 IPC, read in the context of Section 405 IPC, do not find that any offence of criminal breach of trust has been made out. It is trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him. In the case of criminal breach of trust, if a person comes into possession of the property and receives it legally, but illegally retains it or converts it to its own use against the terms of contract, then the question whether such retention is with dishonest intention or not and whether such retention involves criminal breach of trust or only a civil liability would depend upon the facts and circumstances of the case. In the present case, the complainant/respondent No. 2 has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/respondent No. 2 has failed to place any material on record to show us as to how he had entrusted property to the appellant. Furthermore, the complaint also omits to aver as to how the property, so entrusted to the appellant, was dishonestly misappropriated or converted for his own use, thereby committing a breach of trust.

*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 Race Club (1940) Limited v. State of Uttar Pradesh*, (2024) 10 SCC 690 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 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.”*

10. In the case of ***Paramjeet Batra v. State of Uttarakhand*** reported in (2013) 11 SCC 673, the Apex Court



observed that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. Further in para 12 the court held as under:

"12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure complaint discloses a criminal offence or not depends upon the nature of facts alleged ingredients of criminal present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court."

11. Relying upon the decision in **Paramjeet Batra (supra)**, the Apex Court in **Randheer Singh v. State of U.P.** reported in **(2021) 14 SCC 626**, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. Further, in **Usha Chakraborty & Anr. V. State of West Bengal & Anr.** reported in **2023 SCC OnLine SC 90**. It was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

12. The Apex Court has reiterated the aforesaid



proposition in recent judgment of *S.N. Vijayalakshmi & Ors. Vrs. The State of Karnataka and Anr.* reported in (2025) SCC Online SC 1575.

13. Upon proper consideration of the allegation made in the F.I.R./complaint and the order taking cognizance and the law laid down by the Apex Court, I find that the learned Magistrate has failed to consider that Sections 406 and 420 of the Indian Penal Code cannot co-exist simultaneously. Accordingly, the order taking cognizance dated 18.12.2015 in connection with Saur Bazar P.S. Case No. 60 of 2015 is hereby set aside and quashed.

14. The content of the allegation is purely civil in nature. The parties may proceed to settle their dispute amicably or avail civil remedy in accordance with law.

15. Accordingly, the present quashing application stands disposed of.

(Purnendu Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.11.2025
Transmission Date	05.11.2025

