IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25243 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- VIDYAPATINAGAR District-Samastipur

==

Ranjeet Kumar Rai @ Bablu Rai Son of Kamal Kant Rai, Resident of Village-Dadupur Wrongly Written as Dadapur in F.I.R. Tole Samastipur, P.S. Bachhwara, District-Begusarai.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Anil Kumar Chaudhary, S/o Lakshman Chaudhary, R/o Village-Sherpur, P.S.-Vidyapati Nagar, District-Samastipur.

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 68794 of 2018

Arising Out of PS. Case No.-118 Year-2016 Thana- VIDYAPATINAGAR District-Samastipur

==

Ranjeet Kumar Rai @ Bablu Rai @ Ranjeet Kumar Son of Kamal Kant Rai, Resident of Village Dadupur wrongly Written as Dadapur in F.I.R. Tole Samasipur, P.S.- Bachhwara, District- Begusarai.

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Versus

1. The State of Bihar
2. Anil Kumar Chaudhary, S/o Lakshman Chaudhary, R/o Village- Sherpur, P.S.- Vidyapatinagar, District- Samastipur.

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 25243 of 2018)

For the Petitioner/s : Mr. Suraj Narain Yadav, Advocate

For the Opposite Party/s : Mr. Binod Kumar 3, APP

(In CRIMINAL MISCELLANEOUS No. 68794 of 2018)

For the Petitioner/s : Mr. Umesh Kumar, Advocate

For the Opposite Party/s : Mr. Nitya Nand, APP

Mr. Sushil Kr. Jha, Advocate

Mr. Santosh Kr. Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

C.A.V. JUDGMENT

Date : 31-07-2026

1. Heard learned counsel for the parties and learned A.P.Ps. for the State.

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2. Since both Criminal Miscellaneous No. 25243 of 2018 and Criminal Miscellaneous No. 68794 of 2018 arise out of the same F.I.R, namely, V. Nagar (Vidyapatinagar) P.S. Case No. 118 of 2016, involve the same parties, challenging different orders passed in the very same criminal proceeding, and raise substantially identical questions of fact and law, both have been heard together and are being disposed of by this common order.

3. The present applications have been preferred under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'Cr.P.C.') seeking quashing of the orders dated 05.03.2018 and 10.09.2018 passed by the learned Additional Chief Judicial Magistrate-III, Dalsinghsarai, Samastipur (hereinafter referred to as 'Magistrate')in G.R. No. 739 of 2016, arising out of V. Nagar (Vidyapatinagar) P.S. Case No. 118 of 2016, whereby *vide* order dated 05.03.2018, cognizance for the offences punishable under Sections 406, 420, 504 and 506 of the Indian Penal Code, 1860 and Section 138 of the Negotiable Instruments Act, 1881 has been taken against the petitioner and *vide* order dated 10.09.2018, the discharge application preferred by the petitioner has been rejected.

4. The prosecution case, in brief, is that O.P. No.2 (informant), being the registered owner of a Bolero Pick-up Van

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bearing Registration No. BR-09M-4666, alleged that on 01.08.2016 the petitioner approached him with a proposal to purchase the said vehicle. The sale consideration was settled at Rs.4,21,000/-, whereupon the petitioner allegedly issued a cheque of Rs.2,50,000/- towards part payment and agreed to pay the remaining Rs.1,71,000/- within two weeks, whereafter possession of the vehicle was delivered to him. It is further alleged that when the cheque was presented for encashment on 30.09.2016, the same was dishonoured. Thereafter, on 05.10.2016, when O.P. No.2 approached the petitioner demanding either payment of the amount or return of the vehicle, the petitioner allegedly abused and threatened him with dire consequences and refused either to return the vehicle or to make payment, further stating that he would dispose of the vehicle as scrap. On the basis of the aforesaid allegations, a written report was submitted by O.P. No.2 before the SHO, Vidyapatinagar Police Station, Samastipur, pursuant to which F.I.R bearing V. Nagar (Vidyapatinagar) P.S. Case No. 118 of 2016 was registered against the petitioner for the offences punishable under Sections 406, 420, 504 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

5. Upon completion of investigation, the Investigating Officer submitted charge-sheet against the petitioner under

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Sections 406, 420, 504 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act. Thereafter, upon perusal of materials on record including F.I.R, case diary and charge-sheet learned Magistrate found sufficient materials and *vide* order dated 05.03.2018 took cognizance of the offences under Sections 406, 420, 504 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act against the petitioner. Subsequently, the petitioner preferred an application seeking discharge. The said application came to be rejected by the learned Magistrate *vide* order dated 10.09.2018. Aggrieved by the order dated 05.03.2018 taking cognizance, the petitioner has preferred Cr. Misc. No. 25243 of 2018, whereas, being further aggrieved by the subsequent order dated 10.09.2018 rejecting his discharge application, the petitioner has preferred Cr. Misc. No. 68794 of 2018.

6. Learned counsel for petitioner submitted that the entire criminal prosecution is manifestly *mala fide* and has been instituted only with a view to pressurize the petitioner and to wrongfully retain the amount already paid by him towards the proposed purchase of the vehicle. Learned counsel further submitted that prior to issuance of the cheque, the petitioner had already paid a sum of Rs.1,51,000/- to the son of O.P. No.2

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through different banking transactions, which fact has been deliberately suppressed in the F.I.R. Learned counsel further submitted that O.P. No.2 and his son had represented that the vehicle was free from encumbrance, whereas, upon verification, the petitioner discovered that the vehicle was hypothecated with the State Bank of India and substantial loan dues were outstanding and the insurance documents supplied by O.P. No.2 were also found to be forged. Learned counsel further submitted that immediately upon learning about the outstanding loan liability and other discrepancies, the petitioner requested O.P. No.2 either to furnish a 'No Due Certificate' from the financing bank or to refund the amount already received. Since O.P. No.2 failed to do so, the petitioner instructed his bank to stop payment of the cheque on 18.08.2016, much prior to its presentation for encashment. It is further submitted that several attempts were also made to amicably resolve the dispute through village Panchayati, but O.P. No.2 declined to abide by the decision of the Panchas and, instead, lodged the present criminal case.

7. Learned counsel further submitted that even if the allegations contained in the F.I.R. are accepted in their entirety, no offence under Sections 406 or 420 IPC is made out, inasmuch as the dispute arises purely out of a contractual transaction relating to

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sale of a vehicle. Learned counsel further submitted that there was neither any dishonest intention at the inception of the transaction nor any entrustment attributable to the petitioner. Learned counsel further submitted that the essential ingredients of the offences punishable under Sections 504 and 506 IPC are also conspicuously absent from the allegations made in the F.I.R. It is further submitted that so far as the offence under Section 138 of the Negotiable Instruments Act is concerned, the cheque in question was in the name of son of O.P. No.2, whereas the F.I.R. has been lodged by O.P. No.2 himself and further, prosecution under said section can only be initiated by filing complaint not by lodging F.I.R. Learned counsel for petitioner put reliance on Co-ordinate Bench of this Court in ***Lalan Kumar v. The State of Bihar (Cr. Misc No. 37503 of 2023)***, wherein it was held that prosecution under section 138 of Negotiable Instrument Act can only be initiated by filing complaint. It is further submitted that no statutory demand notice, as mandated under Section 138 of the Negotiable Instruments Act, was ever issued and, therefore, the very institution of criminal proceedings under the said provision is legally unsustainable. He further submitted that the learned Magistrate mechanically took cognizance without due application of judicial mind and that the subsequent rejection of the discharge

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application also suffers from the same infirmity. It is, thus, submitted that both the impugned orders dated 05.03.2018 and 10.09.2018 be quashed along with the entire criminal proceeding.

8. Learned counsel for O.P. No. 2 submitted that the present application is wholly devoid of merit and is liable to be dismissed. Learned counsel further submitted that the petitioner purchased the vehicle in question for a total consideration of Rs. 4,21,000/-, paid only a part of the consideration by issuing a cheque of Rs. 2,50,000/- while assuring payment of the balance amount within two weeks, but the said cheque was dishonoured on account of insufficiency of funds. Despite repeated demands, the petitioner neither paid the agreed consideration nor returned the vehicle and, instead, allegedly abused and threatened the informant with dire consequences. It is further submitted that, upon completion of investigation, the police found sufficient materials and submitted charge-sheet, whereafter the learned Magistrate rightly took cognizance and subsequently rejected the petitioner's discharge application. Refuting the petitioner's contention regarding subsisting hypothecation of the vehicle, learned counsel submits that although the vehicle was financed by the State Bank of India, the entire loan liability has since been discharged by O.P. No.2 and a No Dues Certificate has been issued by the Bank,

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thereby falsifying the petitioner's allegations. He further submitted that the trial has substantially progressed and prosecution evidence is being recorded, with the petitioner actively participating in the proceedings by cross-examining the witnesses. It is, thus, submitted that no ground for interference under the inherent jurisdiction of this Court is made out and both the applications deserve to be dismissed.

9. Learned A.P.Ps. for the State submitted that on the basis of the allegations made in the F.I.R. and the materials collected during investigation, the learned Magistrate has passed the impugned orders. However, it is submitted that appropriate order may be passed in view of facts and circumstances of the case.

10. Having heard learned counsel for the parties, learned A.P.Ps. for the State, and upon perusal of the materials available on record, the principal question which arises for consideration is *whether the impugned order dated 05.03.2018 taking cognizance of the offences under Sections 406, 420, 504 and 506 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, as well as the subsequent order dated 10.09.2018 rejecting the petitioner's discharge application, suffer from any legal infirmity*

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warranting interference by this Court in exercise of its inherent jurisdiction under Section 482 of the Code of Criminal Procedure?

11. Before adverting to the merits of the case, it is appropriate to discuss the scope and ambit of the inherent power preserved under Section 482 Cr.P.C. The inherent jurisdiction of the High Court is of wide amplitude, though it is required to be exercised sparingly, carefully and with great caution. Such power is intended to prevent abuse of the process of any Court and to secure the ends of justice. While exercising such jurisdiction, the Court is not expected to conduct a meticulous appreciation of evidence; however, it is duty-bound to examine whether the uncontroverted allegations contained in the complaint and the materials collected in support thereof, even if accepted on their face value, disclose the commission of any cognizable offence. Where the allegations are inherently improbable, fail to satisfy the essential ingredients of the alleged offences, or where a purely civil dispute has been given the colour of criminality with an oblique motive, interference under Section 482 Cr.P.C. is not only permissible but necessary to prevent misuse of the criminal process.

12. In the present case, the F.I.R itself alleges that the cheque issued by the petitioner was dishonoured upon

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presentation. However, there is not even a whisper in the F.I.R. or in the materials collected during investigation that the mandatory statutory notice demanding payment of the cheque amount, as contemplated under clause (b) of the *proviso* to Section 138 of the Negotiable Instruments Act, was ever issued to the petitioner. Issuance of such notice within the prescribed period and failure of the drawer to make payment within fifteen days thereof are statutory preconditions for constituting an offence under Section 138 of the Negotiable Instruments Act. In the absence of compliance with the mandatory requirements of Section 138 the Negotiable Instruments Act, no offence under the said provision can be said to have been made out.

13. The Hon'ble Supreme Court in ***Kaveri Plastics v. Mahdoom Bawa Bahrudeen Noorul*** reported in ***2025 SCC OnLine 2019*** has delineated the requirement for demand notice of cheque amount in prosecution of offence under Section 138 of the Negotiable Instrument Act and reiterated that the specific demand for the payment of the sum covered by the dishonoured cheque is required to be made in notice. Service of notice is imperative in character for maintaining a complaint.

14. This Court also finds that the statutory scheme itself does not permit prosecution for the offence under Section 138 of

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the Negotiable Instruments Act on the basis of a police case. Section 142 of the Negotiable Instruments Act expressly provides that no Court shall take cognizance of an offence punishable under Section 138 except upon a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque. The Hon'ble Supreme Court has consistently held that the offence under Section 138 is a special statutory offence and cognizance thereof can be taken only in the manner prescribed under Section 142 of the Negotiable Instrument Act. [*See*: ***Sangeetaben Mahendrabhai Patel v. State of Gujarat & Anr.***, reported in ***(2012) 7 SCC 621***; ***A.C. Narayanan v. State of Maharashtra & Anr.***, reported in ***(2014) 11 SCC 790***].

15. Equally untenable is the prosecution under Sections 406 and 420 of the Indian Penal Code. It is well settled that criminal breach of trust and cheating operate in distinct and mutually exclusive fields. An offence under Section 406 IPC presupposes entrustment of property followed by dishonest misappropriation, whereas Section 420 IPC contemplates deception and dishonest inducement at the very inception of the transaction. Both offences cannot be invoked simultaneously in respect of the same transaction. The Hon'ble Supreme Court has repeatedly observed that the offences of cheating and criminal

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breach of trust are distinct in their essential ingredients and ordinarily cannot go together, inasmuch as cheating involves dishonest intention from the inception, whereas criminal breach of trust contemplates subsequent dishonest misappropriation of property entrusted to the accused.

16. The Hon'ble Supreme Court in ***Delhi Race Club (1940) & Ors.*** v. ***State of Uttar Pradesh & Anr.*** reported in ***(2024) 10 SCC 690*** has distinguished between criminal breach of trust and cheating and held as under:

> ***"36.*** *What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:*
>
> ***In order to constitute a criminal breach of trust (Section 406 IPC)***
>
> *(1) There must be entrustment with person for property or dominion over the property, and*
>
> *(2) The person entrusted*
>
> *(a)Dishonestly misappropriated or converted property to his own use, or*
>
> *(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:*
>
> *(i) Any direction of law prescribing the method in which the trust is discharged; or*
>
> *(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).*

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Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

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39. *Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha [Hari Prasad Chamaria v. Bishun Kumar Surekha, (1973) 2 SCC 823 : 1973 SCC (Cri) 1082] as under : (SCC p. 824, para 4)*

"4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the

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commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

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41. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.*

42. *Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be*

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> *either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept."*

17. In the present case, neither entrustment of property nor dishonest intention at the inception of the transaction is discernible from the allegations made in the F.I.R. The dispute, at best, arises out of an alleged breach of contractual obligations relating to sale of a motor vehicle and does not disclose the commission of either offence.

18. Likewise, a plain reading of the First Information Report does not disclose the essential ingredients of Sections 503 and 504 Indian Penal Code. Except for a bald allegation of abuse and threat, there is no material to indicate intentional insult with intent to provoke breach of the peace as required under Section 504 Indian Penal Code, nor are the allegations sufficient to constitute criminal intimidation within the meaning of Section 503 Indian Penal Code punishable under Section 506 Indian Penal Code.

19. In the considered opinion of this Court, even if the allegations contained in the F.I.R are accepted in their entirety,

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they do not *prima facie* constitute the offences alleged against the petitioner. The dispute, at its core, is essentially contractual and civil in nature, which has been sought to be given the colour of a criminal prosecution. The present case, therefore, squarely falls within the parameters laid down by the Hon'ble Supreme Court in ***State of Haryana & Ors. v. Bhajan Lal & Ors.***, reported in ***1992 Supp (1) SCC 335***, particularly the categories where the allegations, even if taken at their face value, do not constitute any offence and where the criminal proceeding is manifestly attended with mala fides and instituted with an ulterior motive for wreaking vengeance or exerting pressure. Continuation of the criminal proceeding, in the facts of the present case, would amount to an abuse of the process of the Court and would warrant interference in exercise of the inherent jurisdiction of this Court.

20. Accordingly, the order dated 05.03.2018 passed by the learned Additional Chief Judicial Magistrate-III, Dalsinghsarai, Samastipur in G.R. No. 739 of 2016 arising out of V. Nagar (Vidyapatinagar) P.S. Case No. 118 of 2016 and the subsequent order dated 10.09.2018 passed by the learned Additional Chief Judicial Magistrate-III, Dalsinghsarai, Samastipur in Trial No. 1019 of 2018/G.R. No. 739 of 2016 are hereby set aside.

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Consequently, the entire criminal proceeding arising therefrom, stands quashed.

21. Both the Criminal Miscellaneous Applications are, accordingly, allowed.

22. Interim Order(s), if any, stands vacated.

23. Let a copy of this Judgment be transmitted forthwith to the Court concerned for needful and compliance.

(Sunil Dutta Mishra, J)

Utkarsh/-

AFR/NAFR	NAFR
CAV DATE	29.06.2026
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