

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5203 of 2025

Arising Out of PS. Case No.-763 Year-2022 Thana- SIWAN COMPLAINT CASE District-
Siwan

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Yogesh Kumar Singh S/o Dinesh Kumar Singh Resident of Mohalla- New
Sugar Mil, Siwan, PS- Siwan Town, District- Siwan Petitioner/s
Versus

1. The State of Bihar
 2. Lalita Devi W/o Shivji Prasad R/o Mohalla - Andar Dhala Ram Nagar, P.S.-
Siwan town, Distt.- Siwan
 3. Shivji Prasad S/o Late Durga Sah R/o Mohalla - Andar Dhala Ram Nagar,
P.S.- Siwan town, Distt.- Siwan
- Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prabhakar Singh, Advocate Mr. Sumit Kumar, Advocate Ms. Ritika Kumari, Advocate Mr. Anubhav Vatsa, Advocate
For the State	:	Dr. Mrityunjaya Kr. Gautam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
Date : 07-08-2026

Heard learned counsel for the parties.

2. The present application is filed for quashing the order dated 01.10.2024 passed in Criminal Revision No. 49 of 2024 (arising out Complaint Case No.763 of 2022) by the learned Additional Sessions Judge-XI, Siwan whereby and whereunder the criminal revision application filed on behalf of the petitioner against the order dated 24.01.2024 passed in Complaint Case 763 of 2022 by which complaint case filed against O.P. Nos. 2 and 3 has been dismissed under section 203 of the Code of Criminal Procedure, has been rejected.

3. The very complaint case is based on an agreement dated 15.01.2021 between complainant i.e. petitioner Yogesh Kumar Singh on one hand and the accused opposite party nos. 2 and 3. As per the term of agreement, the petitioner/complainant, being the agent of land owner Mukundachari (Mishra), was authorized for purchase of land measuring 5 kattha of O.P. Nos. 2 and 3 and the total price of the aforesaid land was fixed at Rs. 2,26,00,000/- (Rupees Two Crore Twenty Six Lakhs). The amount of Rs. 20,00,000/- (Rupees Twenty Lakhs) was paid as advance. Later on, complainant was orally pressurized by accused person to get whole 6 kattha 6 dhur registered in favour of O.P. Nos. 2 and 3 and they will pay the rest money at earlier rates to the land owner. Accordingly, on 25.02.2022 land owner got 6 kattha and 6 dhur registered in favour of Lalita Devi (O.P. No.2) and the accused paid Rs. 1,60,00,000/- (Rupees One Crore Sixty Lakhs) in the accounts of wife and son of the land owner and promised to pay the rest amount of Rs. 46,00,000/- (Rupees Forty-six Lakhs) and Rs. 44,20,000/- i.e. the price of the extra land of 1 Kattha and 6 Dhur, in total Rs. 90,20,000/- to land owner within 15 days and accused did not pay the rest amount despite several reminders sent to them.

4. The verbatim of contract is based on agreement and it has been admitted by the complainant/petitioner that Rs.1,80,00,000/- has already been paid and remaining Rs. 90,20,000/- has not been paid for which the complaint has been filed under Sections 120(B), 406, 420, 504, 506/34 of the I.P.C.

5. Learned counsel for the petitioner has submitted that, in the present case, the only issue involved is that the remaining amount of Rs. 90,20,000/- has not been paid to the complainant/petitioner by O.P No. 2 and 3 and the complainant/petitioner is further aggrieved by the orders of two earlier courts. Learned counsel for the petitioner has submitted that after perusal of the complaint, the complainant/petitioner was examined and on S.A. and during the course of enquiry 2 enquiry witnesses, namely Dharan Kumar Singh and Gautam Kumar Yadav also supported the version of complaint and it has been submitted that, as per the agreement between the parties, O.P. nos. 2 and 3 assured to pay the total amount and on the said assurance they got the land in question registered in their names, but after execution of the sale deed they refused to pay the remaining amount. Thereby, they committed breach of trust, cheating and forgery for which they are liable to face criminal

proceeding and it has been submitted that the learned Judicial Magistrate has not considered the relevant material and without appreciating the fact and law has dismissed the petition under Section 203 Cr.P.C and in the same way learned ADJ has also not considered the relevant material and without appreciating the fact and law has dismissed the criminal revision petition filed against the impugned order passed by the Judicial Magistrate. In this way, neither the trial court nor the revisional court has appreciated the material available on record and both the courts have reached to the wrong conclusion and, hence, the petitioner, being aggrieved by the order passed by ADJ, filed the present quashing petition.

6. Learned counsel on behalf of the State has submitted that both the earlier orders rendered by two courts have similar views that the claim of money is made by the complainant/petitioner and for purpose of claim of money the case has been portrayed as a criminal case and there is no element of criminality involved in the present case. It is further submitted that while dismissing the complaint petition under Section 203 Cr.P.C. the court has elaborately recorded that even in the complainant did not make any averment regarding the incident which is said to have taken place on 22.04.2022. In the

same way, enquiry witnesses Dharan Kumar Singh and Gautam Kumar Yadav did not speak anything regarding the incident which is said to have taken place on 22.04.2022 and the complaint has been filed just to get the remaining amount i.e. Rs. 90,20,000/- from O.P. Nos. 2 and 3. Even if the allegation of non-payment of the said amount is taken into account, it is merely a civil dispute and nothing else and the concerned jurisdictional Judicial Magistrate 1st class has discussed that how the present complaint is based on civil dispute and, for the said purpose, remedy is available under civil law and it has been discussed that allegation in complaint does not disclose criminal offence and conclusion has been drawn that there is no material available on record to make out a *prima facie* case under Sections 120B, 420, 406, 504, 506/ 34 of IPC. Learned counsel further submits that, in the same way, the revisional court has also affirmed and justified the reasoning recorded by the trial court that even the complainant did not refer the incident which is said to have taken place on 22.04.2022 and how the finding of the trial court is justified as it is clear from the verbatim of complaint that the sole complaint is based on money claim. Learned counsel further submits that the views of two earlier courts are quite justified and legal. Hence, the present petition is

bereft of merit and the impugned order does not require any interference.

7. From perusal of the order passed by the learned Judicial Magistrate, it is evident that learned Judicial Magistrate, First Class, Siwan has recorded the reasoning as to why the complaint has been dismissed and it has been recorded that it is a well recognized principle of law that matter which essentially involves dispute of civil nature cannot be allowed to become the subject matter of a criminal proceeding. Hence, after considering the statement of complainant and other witnesses, the court has formed the opinion that there was no material on record to proceed further and no *prima facie* case is made out. Accordingly, the complaint petition was dismissed on 24.01.2024 under Section 203 of Cr.PC, 1973.

8. Against the order dated 24.01.2024 passed by the learned Judicial Magistrate, the petitioner approached revisional court of learned Additional Sessions Judge-XI, Siwan and the revisional court has also affirmed the view taken by learned Judicial Magistrate, First Class, Siwan and the revisional court has also recorded that it is a matter of civil nature of the breach of contract and the case relates to the simple money claim only and the revisional court has recorded that the impugned order is

a reasoned order and there is no irregularity in the said order. Hence, criminal revision stands dismissed.

9. From perusal of the order of the revisional court, it is evident that the revisional court has recorded the reasoning as to why the order passed by learned Judicial Magistrate, First Class, Siwan is justified and legal. He has recorded the reasoning that the case is related only for the money and the agreement is the gist of the case and taking into account all the materials available on record, it is crystal clear that the very case is pertaining to the claim of money and for the claim of money there is an agreement between the parties and the complainant/petitioner has not taken any step for enforcement of agreement and the same is lacking in any averment even in complaint and earlier two courts have similar views on the said issue that it is a matter related with the civil dispute.

10. It is pertinent to observe that the contents of the complaint would have to be read in light of the ingredients of Sections 406, 420 and 120(B) of IPC and the law settled by Hon'ble Supreme Court through various judicial dicta. On perusal of the complaint dated 27.04.2022, it is noted that the complainant/petitioner has filed the said complaint invoking Sections 120(B), 406, 420, 504, 506/34 of the I.P.C. For ease of

reference, Sections 406, 420 and 120(B) of I.P.C. 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.

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.

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.”

11. On a reading of Section 420 of I.P.C., 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.

12. In the light of the facts and circumstances of the

present case, it is crystal clear that the complaint has been filed to execute the agreement between the parties. In light of the facts and circumstances of the present case, I find that the complainant/petitioner has failed to make out a case that satisfies the basic ingredients of the offence under Section 420 IPC. I fail to understand as to how the allegations against the O.P. Nos. 2 and 3 herein could be brought within the scope and ambit of the aforesaid Section. On a bare perusal of the complaint, I do not find that the offence of cheating as defined under Section 420 IPC is made out and I do not find that there is any cheating and dishonest inducement to deliver any property or a valuable security involved in the instant case. In the present case, the substantial part of the consideration money has already been paid and only remaining amount of consideration money has not been paid by which the complainant/petitioner is aggrieved.

13. It is settled law that for establishing the offence of cheating, the complainant/petitioner was required to show that O.P. Nos. 2 and 3 had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property. Such a culpable intention right at the beginning when the promise was made

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 dishonest and fraudulent intention on the part of O.P. Nos. 2 and 3 during the agreement for sale. It is also admitted by petitioner/complainant that amount of Rs. 1,80,00,000/- has already been paid and there is nothing to show any intentional deception or fraudulent or dishonest intention on the part of O.P. Nos. 2 and 3 from the time of making promise or representation. Mere allegation by complainant/petitioner that O.P. Nos. 2 and 3 failed to give the remaining amount of consideration money does not satisfy the test of 'dishonest inducement'.

14. 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, I 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 them. In a 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 agreement, 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/petitioner has failed to establish the ingredients essential to constitute an offence under Section 406 IPC. The complainant/petitioner has failed to place any material on record to show as to how he had entrusted property to O.P. Nos. 2 and 3. Furthermore, the complainant/petitioner has also omitted to aver as to how the property, so entrusted to the O.P. Nos. 2 and 3, was dishonestly misappropriated or converted for their own use, thereby committing a breach of trust.

15. It is pertinent to mention that if it is the case of the complainant/petitioner that the offence of criminal breach of trust, as defined under Section 405 IPC, punishable under Section 406 IPC, is committed by the accused persons, then in the same breath it cannot be said that the accused persons have also committed the offence of cheating as defined in Section 415, punishable under Section 420 IPC. The Hon'ble Supreme Court, in **Delhi Race Club (1940) Limited vs. State of Uttar Pradesh**, reported in **(2024) 10 SCC 690**, has 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.

16. In **Vesa Holdings Private Limited and Another v. State of Kerala and others**, reported in **(2015) 8 SCC 293**, The Hon'ble Supreme Court held that every breach of contract would not give rise to an offence of cheating. **Only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later, the same cannot amount to cheating.** In other words, for the purpose of constituting an offence of cheating, the complaint is required to show that the accused had fraudulent or dishonest intention at

the time of making promise or representation. Even in a case where allegations are made about failure on part of the accused to keep his promise, in absence of a dishonest intention at the time of making the initial promise, no offence under Section 420 of IPC is made out.

17. The present case is based on a complaint which has been dismissed under Section 203 and against the order of dismissal of the complaint, the petitioner, being the complainant, approached the revisional court and the said court has also dismissed the revision of complainant/revisionist/petitioner. The very complaint case is based on an agreement between the parties and there is an allegation by the complainant/petitioner that he has received Rs. 1,80,00,000/-, but he has not received Rs. 90,20,000/-. For the said purpose, he has filed complaint case showing that remaining amount has not been paid. In the complaint petition, it is alleged that on 22.04.2022, the complainant went to O.P. Nos. 2 and 3 and demanded the remaining amount upon which O.P. Nos. 2 and 3 refused to pay the amount, but during the course of enquiry, enquiry witnesses 1 and 2 did not refer the incident of 22.04.2022. Even the complainant did not refer the incident of 22.04.2022. Both the courts have recorded the finding that how,

during enquiry, the event of 22.04.2022 has not been referred either by the complainant or by the enquiry witnesses and Revisional court has also discussed the finding of Jurisdictional Magistrate while deciding the revision. The reasoning as quoted by the revisional court is not, in any way, in derogation of law.

18. The contention of learned counsel for the State is justified and legal that there was no substance in the complaint petition for the purpose of initiating a criminal proceeding and the view taken by the revisional court is not, in any way, in derogation of law. He has already affirmed the sound reasoning recorded by the trial court. Accordingly, the contention of learned counsel for the petitioner that the present is a fit case for initiation of a criminal proceeding is not tenable and sustainable as the petitioner has not made out a case in his favour.

19. After hearing the parties concerned, taking into account material available on record, it is crystal clear that there is only claim of the petitioner in the complaint is regarding non-payment of Rs. 90,20,000/- and the claim of money does not substantiate any allegation of criminal proceeding and the view taken by revisional court is justified and legal and there is nothing on record to differ from the finding of the revisional

court as the petitioner has not made out any case warranting interference with the impugned order passed by the revisional court. Hence, the present quashing application is bereft of merit.

20. Considering the facts and circumstances of the case, the settled proposition of law as laid down by The Hon’ble Supreme Court in **Vesa Holdings Private Limited (supra)** that every breach of contract would not give rise to an offence of cheating, only in those cases breach of contract would amount to cheating where there was any deception played at the very inception, if the intention to cheat has developed later, the same cannot amount to cheating, argument advanced on behalf of the parties, nature of accusations in the complaint and the material available on record, the impugned order passed by the revisional court does not warrant any interference.

21. Hence, the present quashing application stands dismissed.

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

(Alok Kumar Pandey, J)

Nilmani/-

AFR/NAFR	AFR
CAV DATE	NA
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