

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37277 of 2017

Arising Out of PS. Case No.-292 Year-2015 Thana- ARA NAWADA District- Bhojpur

1. Braj Gopal Sandhibigraha and Anr Son of G.C. Sandhibigraha, The then Resional Manager, Oriental Bank of Commerce, South Gandhi Maidan, P.S.- Gandhi Maidan, Patna. presently Posted as General Manager Classic Vertical at Corporate Office, Gurugram, Harayana.
2. Vishwaroop Roy Son of S.K. Roy, The then Senior Manager, Oriental Bank of Commerce, Ara Branch, P.S.- Nawada, District- Bhojpur at Ara presently posted at RAG Cluster Officer of the Bank at Boring Road, P.S.- Sri Krishnapuri, Patna.

... .. Petitioner/s

Versus

1. State of Bihar
2. Sri Sunil Kumar Son of Sri Rajendra Prasad, Proprietor Raju Battery Situated at Babu Bazar, Near Mohan Cinema, P.S.- Ara Town, District- Bojpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shivendra Kishore, Sr. Adv
	:	Mr. Nishi Nath Ojha, Adv
For the Opposite Party/s	:	Mr. Khurshid Anwar, APP
For the O.P. No. 2	:	Mr. Sanjay Kumar, Adv
	:	Mr. Rahul Nath, Adv

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 22-09-2026

Heard the parties.

2. The present quashing petition has been preferred to quash the order dated 14.02.2017 passed in Nawada P.S. Case No.292/2015, where learned CJM, Ara took cognizance for the offences punishable under Sections 406, 420 and 120(B) of the IPC against the petitioners.

3. O.P. No. 2, joins the present proceedings.

4. The prosecution case, in brief, is that the complainant and his family were engaged in the business of



batteries and inverters under the name and style of M/s Raju Battery and Electronics and maintained various accounts with Oriental Bank of Commerce, South Ramna Road, Ara. The complainant alleged that on 10.03.2015, the then Branch Manager, Shravan Kumar Choudhary, taking advantage of the trust developed with the complainant, obtained two blank cheques from him on the pretext of transferring funds and paying insurance premium in view of an upcoming audit. It is alleged that, in connivance with Indrajeet Upadhyay, proprietor of M/s Om Shankar Construction Pvt. Ltd., Arun Kumar Singh and other bank officials, the Branch Manager thereafter fraudulently transferred Rs.42 lakhs from the complainant's cash-credit account, Rs.2 lakhs from his savings account and Rs.5 lakhs to the account of Arun Kumar Singh, while a further Rs.9 lakhs was transferred from the cash-credit account of the complainant's brother, Anup Kumar, to M/s Om Construction, all on 10.03.2015 without the account holders' instructions. On discovering the transactions, the complainant allegedly raised oral and telephonic objections and thereafter submitted a written complaint on 23.03.2015 to senior bank officials and also communicated through e-mail, but no corrective action was taken. Instead, on 17.04.2015, the Bank issued a notice demanding Rs.42.12 lakhs,



which was replied to by the complainant, and on 07.05.2015 he was informed that his account had been seized. The complainant thereafter issued a legal notice to the Bank, but allegedly received no response, leading him to allege that the accused persons, acting in criminal conspiracy, committed cheating and forgery and caused him a wrongful loss of approximately Rs.58 lakhs, besides mental and physical agony.

5. The written complaint was filed by the complainant as Complaint Case No. 1152(C) of 2015, which was instituted and forwarded under Section 156(3) of the Cr.P.C. to the S.H.O., Nawada Police Station, for registration and investigation. Accordingly, Nawada P.S. Case No. 292 of 2015 dated 19.08.2015 was registered against the petitioners and other accused persons under Sections 406, 420 and 120-B of the Indian Penal Code.

6. Learned counsel appearing for the petitioners submits that the allegations against the present petitioners are wholly misconceived and the petitioners have been roped in merely on account of the posts subsequently held by them in the Bank. It is submitted that the occurrence in question is alleged to have taken place on 10.03.2015, but at that point of time neither petitioner was posted at the Ara Branch.



7. It is submitted that petitioner no.1 was posted at Rajkot and petitioner no.2 was posted at Chapra on the date of the alleged occurrence. Petitioner no.1 assumed charge at the Regional Office, Patna only on 07.05.2015, whereas petitioner no.2 assumed charge on 17.08.2015, i.e., several months after the alleged transactions. Thus, according to learned counsel, at the time of occurrence neither petitioner was posted as DGM or Branch Manager at the concerned office and the alleged occurrence had already taken place before their joining.

8. Learned counsel further submits that the subsequent conduct of petitioner no.1 is of considerable significance. After financial irregularities were noticed in the audit of Ara Branch, petitioner no.1 was immediately informed vide letter dated 18.05.2015 on the very next day of joining his service and thereafter took steps for lodging an FIR before the Central Bureau of Investigation (in short CBI). On the basis thereof, the CBI instituted a case bearing Patna CBI/ACB 6/2015 dated 26.05.2015. The relevant letter dated 18.05.2015 and the CBI FIR have been brought on record.

9. It is, thus, submitted that petitioner no.1 was not only unconnected with the alleged transaction at the relevant point of time, but, upon assuming office and upon being apprised



of the financial irregularities, acted in discharge of his official responsibility and himself became the informant before the CBI. It is contended that such conduct is wholly inconsistent with the allegation of a prior conspiracy or dishonest participation in the transactions which had already taken place before he joined the concerned office.

10. Learned counsel further submits that the investigation conducted by the police also did not disclose any specific role attributable to the petitioners. The learned Chief Judicial Magistrate had specifically directed the Investigating Officer to investigate the part allegedly played by the petitioners, but even upon re-investigation no specific report regarding their role was furnished. The subsequent report of the Investigating Officer dated 04.01.2017 was also brought on record.

11. It is also submitted that the petitioners had earlier brought to the notice of the learned Magistrate that they were not present at the place of occurrence on 10.03.2015 and had supported their assertion by documentary material. The chronology placed on record support the said fact as well as the subsequent investigation and cognizance.

12. Learned counsel submits that the bona fide conduct of petitioner no.1 deserves due weight. It is urged that



an officer who, after immediately joining the office, himself brought the financial irregularities to the notice of the CBI and thereby facilitated an independent investigation cannot, without specific material of participation, be placed in the same category as those against whom the alleged transaction was actually made. The submission is that the law attaches significance to bona fide conduct and honest intention, particularly when the same is supported by contemporaneous official acts.

13. Per contra, learned counsel appearing for opposite party no.2 submits that the police, after investigation, submitted charge-sheet against the petitioners and others under Sections 406, 420 and 120(B) of the Indian Penal Code and that, upon consideration of the materials, the learned Magistrate has taken cognizance. It is, therefore, submitted that the matter ought to be permitted to proceed in accordance with law.

14. Learned counsel for opposite party no.2 submits that the allegations made in the complaint, together with the materials collected during investigation, disclose sufficient *prima-facie* material and that this Court, in exercise of its inherent jurisdiction, should not undertake appreciation of evidence or conduct a mini-trial.

15. It is further submitted that the petitioners were



senior officials of the Bank and that the allegations of conspiracy and participation are matters which can be established during trial. It is urged that the charge-sheet and the order of cognizance disclose sufficient grounds for proceeding against the petitioners.

16. Having considered the rival submissions and upon perusal of the materials placed on record, this Court finds that the controversy, so far as the present petitioners are concerned, requires examination from a narrow perspective, namely, whether the allegations and the materials on record disclose the essential ingredients of the offences alleged against these two petitioners and whether their prosecution can be sustained merely because they subsequently occupied senior positions in the Bank.

17. There is an important factual feature which cannot be lost sight of. The alleged transactions, according to the complaint itself, took place on 10.03.2015. The material placed before this Court shows that petitioner no.1 was then posted at Rajkot, whereas petitioner no.2 was posted at Chapra. Petitioner no.1 assumed office at the Regional Office, Patna only on 07.05.2015 and petitioner no.2 on 17.08.2015. Thus, on the date when the alleged withdrawals/transfers took place, neither



of the petitioners was posted at the concerned Ara Branch.

18. The aforesaid circumstance assumes significance because the principal allegations regarding the actual transactions are directed towards the then Branch Manager and the persons who allegedly participated in the transfer of the amounts. There is no specific allegation in the complaint demonstrating that either of the present petitioners was physically present at the Branch, participated in the preparation or issuance of the cheques, authorized the disputed transfers, received any part of the alleged amount or derived any personal benefit therefrom.

19. The allegation of conspiracy also cannot be sustained merely by referring to the official designation subsequently held by the petitioners. Criminal conspiracy requires an agreement or meeting of minds to do an illegal act or to do a legal act by illegal means. The fact that a person subsequently occupies an office connected with the institution in which the alleged transaction had earlier taken place, by itself, cannot furnish the necessary foundation for such an inference.

20. In the present case, the subsequent conduct of petitioner no.1 is particularly material. The record indicates that when the financial irregularities were detected in audit, he was informed on 18.05.2015 and thereafter he himself took steps to



lodge a case with the CBI, resulting in registration of case bearing no. Patna CBI/ACB 6/2015 on 26.05.2015.

21. Such conduct cannot be brushed aside as an insignificant circumstance. The Court is conscious that, at the stage of consideration of a petition under Section 482 Cr.P.C., it would not be appropriate to conduct a mini-trial or conclusively determine the evidentiary value of individual documents. Nevertheless, where the surrounding and undisputed circumstances placed before the Court demonstrate that the concerned officer came into the relevant office only subsequent to the alleged transaction and, thereafter, himself set the investigative machinery in motion upon detection of irregularities, such conduct is certainly a relevant circumstance while examining whether the foundational allegation of dishonest participation or conspiracy is prima facie sustainable.

22. The principle that bona-fide conduct and honest intention are relevant while examining criminal culpability is well recognized. In the present factual setting, the subsequent conduct of petitioner no.1 in bringing the irregularities to the notice of the CBI is a circumstance which substantially militates against the allegation that he was acting pursuant to a pre-existing dishonest design. The same is being considered along



with the other surrounding circumstances and not as a substitute for the statutory ingredients of the offences.

23. The *maxim-acta-exteriora* indicant *interiora-secreta*, namely, that external acts may indicate the intention behind them, may also be kept in view as an aid to appreciation of the surrounding circumstances. The maxim is not being applied as an independent rule of criminal liability, but only to the extent that the contemporaneous conduct of petitioner no.1 is relevant to assess whether the allegation of dishonest intention or participation has any foundational basis.

24. Hon'ble Supreme Court in **Dr. Anil Khandelwal & Ors. v. Phoenix India & Anr., (2025 SCC OnLine SC 1883)** , has emphasized the necessity of examining the precise role attributed to a Bank officer before criminal prosecution is permitted to continue merely on the basis of his official designation. It would be apposite to reproduce paragraph nos. 20, 22, 24, 27 of **Anil Khandelwal Case supra**, which are as under :-

20. Suffice it to say that the appellants have been summoned in capacity of the officers of the Bank for the offences punishable under the [IPC](#). However, there is no concept of vicarious liability of the officers or directors for the offences under the [IPC](#) as is provided under special Penal Statutes



such as The [Negotiable Instruments Act, 1881](#), The [Food Safety and Standards Act, 2006](#), The [Drugs and Cosmetics Act, 1940](#), etc. which specifically creates such liability.

22. Accordingly, before any officer of a Bank or a body corporate can be prosecuted for an offence under the [IPC](#) on the allegation of having acted on behalf of the institution, it is incumbent upon the complainant to produce unimpeachable material indicating the precise role of the officer in the commission of the alleged offence. Mere bald assertions of vicarious liability, without foundational facts to show active participation, authorization, or deliberate omission on the part of the officer, are insufficient to justify issuance of process in such a situation. The law does not permit automatic prosecution of directors or officers merely because of their designation or official status.

24. Hence, in the absence of any specific statutory provision under the [IPC](#) creating vicarious liability, coupled with the lack of concrete allegations or material demonstrating the individual role or culpability of the appellants for the alleged defamatory notice, their prosecution cannot be sustained. To permit continuation of criminal proceedings merely on the basis of their official designation in the Bank would amount to a misuse of judicial process, contrary to the settled principles laid down by this Court. Accordingly, the appellants have been wrongly impleaded, and the proceedings against them are liable to be quashed.

27. In such circumstances, the prosecution initiated against the officers of the Bank (appellants herein) on the foundation of said clerical error is untenable both in facts as well as in law.

25. In paragraph 20 of **Dr. Anil Khandelwal** (**supra**), the Supreme Court reiterated that criminal liability under the IPC cannot ordinarily be fastened upon officers merely by invoking vicarious liability on account of their official position.



In paragraph 22, the Court emphasized the requirement of material indicating the precise role of the concerned officer. Paragraph 24 reiterates that continuation of prosecution merely on the basis of designation cannot be sustained in absence of concrete material demonstrating individual culpability.

26. In the present case, the principle assumes greater significance because the petitioners were not even posted at the concerned Branch on the date of the alleged transaction. Their subsequent designation cannot retrospectively create participation in an occurrence which, on the prosecution's own showing, had already taken place.

27. Hon'ble Supreme Court in **HDFC Bank Ltd. v. State of Bihar & Ors., (2024 SCC OnLine SC 2995)**, considered prosecution concerning Bank officials and offences under the IPC. The judgment reiterates that the allegations must disclose the essential ingredients of the offence and that inherent jurisdiction can be exercised where continuation of the proceedings would amount to abuse of process. It would also be apposite to reproduce para nos. 20 and 28 of **HDFC Bank Case Supra** which is as under:-

20. For bringing out the offence under the ambit of section 420 of the Penal Code, 1860,



the first information report must disclose the following ingredients:

- (a) That the appellant-bank had induced anyone since inception;
- (b) That the said inducement was fraudulent or dishonest; and
- (c) That mens rea existed at the time of such inducement.

28. It will be relevant to refer to the following observations of this court in the case of *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335; 1992 SCC (Cri) 426.] :

"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.”

28. Paragraphs 20 and 21 of **HDFC Bank Case (supra)** are relevant with regard to Section 420 IPC, particularly the requirement of deception, dishonest or fraudulent inducement and the requisite *mens-rea*. The Court emphasises that the necessary dishonest intention must accompany the relevant inducement.

29. Paragraphs 22 to 24 of the aforesaid judgment



deal with criminal breach of trust and the requirement of entrustment or dominion over property followed by dishonest misappropriation, conversion, use or disposal. In the present case, the materials do not disclose entrustment of the complainant's property to either of the present petitioners or their dominion over the property in question.

30. Paragraph 27 of **HDFC Bank case (supra)** is also material in relation to Section 120(B) IPC. The existence of common intention or intentional cooperation cannot be presumed merely from official status; the material must disclose a connecting link between the concerned accused and the alleged criminal act.

31. Hon'ble Supreme Court in **Delhi Race Club (1940) Ltd. & Ors. v. State of Uttar Pradesh & Anr., 2024 SCC OnLine SC 2248**, has reiterated that each penal provision has to be examined with reference to the overt act stipulated by the provision and the state of mind required in respect of the accused. Paragraph 8 of the said judgment is useful for this purpose.

32. In paragraph 13 of **Delhi Race Club Case (supra)**, the Supreme Court reiterated that summoning an



accused is a serious matter and that criminal law cannot be set into motion as a matter of course. In paragraph 14, the Court further emphasised that the Magistrate is required to apply his mind to the allegations and the material placed before him.

33. Paragraph 25 of **Delhi Race Club Case (supra)** sets out the specific ingredients of criminal breach of trust under Section 406 IPC and cheating under Section 420 IPC. Paragraph 26 is particularly relevant regarding the requirement of the requisite state of mind, while the succeeding discussion explains the distinction between the two offences.

34. Thus, so far as Section 406 IPC is concerned, the necessary foundation is entrustment of property or dominion over property followed by dishonest misappropriation, conversion, use or disposal in violation of the obligation attached to such entrustment. The materials placed before this Court do not disclose such entrustment or dominion qua the present petitioners.

35. Likewise, Section 420 IPC requires deception and fraudulent or dishonest inducement, coupled with the requisite dishonest intention. There is no specific allegation that either petitioner induced the complainant to part with his property



or personally participated in the alleged transfer of funds.

36. The allegation under Section 120(B) IPC also requires material indicating an agreement or meeting of minds. In the present case, no foundational material has been brought to the notice of this Court demonstrating such agreement between the petitioners and the persons who allegedly executed the transaction at the Ara Branch.

37. The decision of the Supreme Court in **State of Telangana v. Jerusalem Mathai & Anr., 2025 SCC OnLine SC 2086**, is also of relevance. Paragraphs 7 and 8 of the said judgment examine the absence of the accused at the relevant occurrence and the absence of material connecting him with the alleged crime. The principle is relevant to the present factual situation, where neither petitioner was posted at the concerned Branch when the alleged transaction took place.

38. The chronology placed before this Court also assumes significance. The occurrence is shown as having taken place on 10.03.2015; petitioner no.1 joined the Regional Office only on 07.05.2015; financial irregularities were thereafter noticed and communicated to him on 18.05.2015; the CBI case was instituted on 26.05.2015; petitioner no.2 joined only on 17.08.2015; and thereafter the police proceedings culminated in



the charge-sheet and ultimately the order of cognizance dated 17.02.2017.

39. Thus, the chronology itself creates a fundamental difficulty in sustaining the allegation that these petitioners had participated in the transaction dated 10.03.2015 or had entered into a conspiracy with the persons who allegedly executed the transaction at the Ara Branch.

40. The conduct of petitioner no.1, after joining the concerned office, deserves particular consideration. Instead of suppressing the irregularities, the record shows that he brought the matter before the CBI and thereby facilitated an investigation into the very financial irregularities which form the subject matter of the present prosecution. Such conduct is a relevant surrounding circumstance while examining the allegation of dishonest intention.

41. This Court is not holding that every subsequent act of an accused officer would, by itself, exonerate him from criminal liability. The question has to be examined in the facts of each case. Here, however, the subsequent conduct of petitioner no.1 is not an isolated circumstance. It operates cumulatively with the fact that he had joined the concerned office only after



the alleged transaction, that petitioner no.2 had joined still later, that neither was posted at Ara on 10.03.2015, and that the allegations do not disclose their individual participation in the alleged transfers.

42. It is also significant that the investigation was specifically directed to ascertain the role of the petitioners, but the subsequent report did not furnish any specific material establishing their role in the alleged occurrence. The record indicates that the petitioners had also placed before the learned Magistrate the specific fact that they were not present at the place of occurrence on 10.03.2015.

43. In such circumstances, continuation of the criminal proceeding against the petitioners would amount to permitting criminal liability to arise merely from their subsequent official position, without there being foundational material showing their participation in the alleged offence.

44. The Court is conscious of the settled principle that at the stage of cognizance the Court is not required to conduct a meticulous appreciation of evidence. However, the power under Section 482 Cr.P.C. is available where the uncontroverted allegations, even if accepted in their entirety, do not



disclose the essential ingredients of the offences alleged or where continuation of the proceeding would amount to abuse of the process of Court.

45. In the present matter, the order of cognizance, insofar as these petitioners are concerned, cannot be sustained merely because their names find place in the charge-sheet. The charge-sheet itself cannot substitute the requirement of foundational facts disclosing the commission of the offence by the particular accused. The Court must examine whether the materials disclose the ingredients of the offence qua the person sought to be prosecuted.

46. The Supreme Court has consistently held that inherent jurisdiction is not to be exercised to conduct a mini-trial, but at the same time the High Court is entitled to intervene where the allegations and materials, even if taken at their face value, fail to disclose the ingredients of the alleged offence or where continuation of the prosecution would result in abuse of the process of law. The present case, in the considered view of this Court, falls within that limited category.

47. This Court, therefore, finds that the allegations against the present petitioners, even if taken at their face value,



do not disclose the necessary ingredients of Sections 406 and 420 IPC. The allegation of conspiracy under Section 120(B) IPC is also not supported by any foundational allegation or material indicating an agreement or meeting of minds involving the present petitioners.

48. The cumulative effect of the materials is that the alleged occurrence preceded the joining of both petitioners; neither petitioner was posted at the concerned Branch at the relevant time; no specific overt act or personal benefit has been attributed to them; and, significantly, petitioner no.1, after joining, himself acted upon the detection of irregularities and informed the CBI on the very next day of his joining. These circumstances, taken together, do not furnish the requisite foundation for continuation of the criminal prosecution against the present petitioners.

49. Consequently, this Court finds that continuation of the criminal proceeding against the present petitioners would serve no legitimate purpose and would amount to permitting the criminal process to continue in absence of the foundational material required in law.

50. Accordingly, the order dated 14.02.2017 passed



by the learned Chief Judicial Magistrate, Bhojpur at Ara, in connection with Nawada P.S. Case No.292 of 2015, is hereby quashed and set aside *qua* both above named petitioners with all its consequential proceedings.

51. Hence, this application stands allowed.

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

(Chandra Shekhar Jha, J.)

S.Tripathi/-

AFR/NAFR	AFR
CAV DATE	N/A
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