IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59941 of 2017

CNR No. BRHC010399922017

Arising Out of PS. Case No.-2240 Year-2014 Thana- BHAGALPUR COMPLAINT CASE District- Bhagalpur

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1. Manoj Kumar Mandawewala, S/o Late Shankar Lal Mandawewala, Resident of Village- Barahat, P.S.- Ishopur Barahat, District- Bhagalpur.
2. Alok Kumar, S/o Ramjeevan @ Ramjeevan Lal Mandawewala, R/o Village- Barahat, P.S.- Ishopur Barahat, District- Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Kailashnee Devi, W/o Late Satyanarayan Ram, R/o Village- Shadipur, P.S.- Pirpanti, District- Bhagalpur.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N. K. Agrawal, Sr. Advocate Mr. Vijay Anand, Advocate Mr. Kumar Rajdeep, Advocate Mr. Kaushal Kumar, Advocate
For the State	:	Mr. Iftekhar Mahmood, APP
For the Informant	:	Mr. S. Azeem, Advocate

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
Date : 20-11-2026

The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 *(in short **Cr.P.C.**)*, seeking quashing of the order dated 28.10.2016 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur, in Complaint Case No. 2240 of 2014, whereby the learned Trial Court, upon finding a *prima facie* case under Sections 420 and 120-B of the Indian Penal Code *(in short **I.P.C.**)*, proceeded to summon the petitioners to face trial.

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2. The prosecution case, as disclosed in the complaint petition, is that the complainant, *i.e.*, Kailashanee Devi, had entered into an agreement for purchase of land with co-accused, namely, Ajay Verma, on 06.06.2014. The land in question belonged to the petitioners, who had allegedly agreed to sell the same for a consideration of Rs. 69,00,500/-. It is alleged that pursuant to the said transaction and at the instance of Ajay Verma, the complainant (Opposite Party No. 2 herein) issued a cheque for a sum of Rs. 2,51,000/- in the name of petitioner No. 1, namely, Manoj Kumar Mandawawala, towards earnest money.

It is further alleged that, in terms of the agreement, the sale-deed was required to be executed within five months and twenty-five days from the date of the agreement. However, despite the expiry of the stipulated period and issuance of a legal notice dated 23.10.2014, the sale-deed was not executed in favour of the complainant/Opposite Party No. 2. The complainant alleged that the accused persons had thereby cheated her.

The complaint further discloses that the complainant/Opposite Party No. 2 had entered into the agreement with Ajay Verma and that the amount of Rs.

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2,51,000/- was paid by cheque in the name of petitioner No. 1. It is alleged that upon making enquiries regarding execution of the sale-deed, the complainant came to know that Ajay Verma was not the owner of the land and that the petitioners were its actual owners. The complainant further alleged that the amount paid towards the transaction was not returned and the sale-deed was not executed, leading her to institute Complaint Case No. 2240 of 2014.

On the basis of the aforesaid complaint and the materials placed before him, the learned Judicial Magistrate, 1st Class, Bhagalpur, by order dated 28.10.2016, found a *prima facie* case under Sections 420 and 120-B of the I.P.C. and directed issuance of summons against the petitioners. The said order has been challenged in the present application under Section 482 of the Cr.P.C.

3. Mr. N. K. Agrawal, learned Senior Counsel appearing on behalf of the petitioners submits that the impugned order dated 28.10.2016 is unsustainable in the eyes of law as the allegations made in the complaint do not disclose the essential ingredients of the offence punishable under Section 420 of the I.P.C. It is contended that the petitioners are the owners of the land in question and had entered into a separate agreement for

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its sale with Ajay Verma, whereas the complainant/Opposite Party No. 2 had entered into an agreement with said Ajay Verma. No agreement for sale was executed directly between the petitioners and the complainant.

3.1. It is argued that the amount of Rs. 2,51,000/- was paid by the complainant/Opposite Party No. 2 through cheque in the name of petitioner No. 1 at the instance of Ajay Verma, pursuant to the agreement between them. Learned Senior Counsel contends that the dispute essentially arises out of a contractual transaction concerning the sale of land and that mere non-execution of the sale-deed does not constitute cheating in the absence of dishonest intention from very inception. It is also pointed out that the petitioners, in their reply dated 03.11.2014 to the legal notice dated 23.10.2014, expressed their willingness to execute the sale-deed, subject to fulfillment of the stipulated terms. Accordingly, it is prayed that the impugned order, taking cognizance, dated 28.10.2016 and the consequential criminal proceedings be quashed.

4. Mr. S. Azeem, learned counsel appearing on behalf of the complainant/Opposite Party No. 2 submits that the impugned order dated 28.10.2016 has been passed upon consideration of the materials available on record and that the

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complaint discloses a *prima facie* case against the petitioners. It is contended that the complainant/Opposite Party No. 2 had paid a sum of Rs. 2,51,000/- by cheque in the name of petitioner No. 1 towards the proposed purchase of land, but the sale-deed was not executed despite the expiry of the stipulated period and issuance of legal notice.

4.1. It is further contended that the petitioners' plea that no direct agreement existed between them and the complainant involves disputed questions of fact, which cannot be adjudicated in a proceeding under Section 482 of the Cr.P.C. at this stage. Learned counsel contends that the allegations require proper examination during the course of trial and that the petitioners cannot seek quashing of the criminal proceedings merely by describing the dispute as civil in nature. Accordingly, it is prayed that the present application be dismissed.

5. Learned Additional Public Prosecutor for the State submits that the impugned order dated 28.10.2016 has been passed by the learned Magistrate upon finding a *prima facie* case against the petitioners. It is contended that the allegations in the complaint relate to non-execution of the sale-deed despite payment of Rs. 2,51,000/- towards the proposed purchase of land and, therefore, the matter requires proper

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examination on the basis of the materials available on record.

5.1. Thus, it is submitted that the defence taken by the petitioners involves factual issues, which ought not to be adjudicated in the exercise of inherent jurisdiction under Section 482 of the Cr.P.C., at this stage. Accordingly, the State opposes the prayer for quashing and submits that the present application, being devoid of merit, is fit to be dismissed.

6. Heard rival submissions advanced on behalf of the respective parties and perused the documents brought on record.

7. In order to have proper grasp of the matter and to determine the true nature of dispute between the parties, it appears to be germane, at this stage, to cull out some of the relevant facts having direct bearing on the issues raised in this application. For the aforesaid purpose, certain facts are enumerated hereunder, which will shed important light in deciding the knotty issues raised hereinabove :-

> *(i) The petitioners entered into an agreement on 06.06.2014 with one Ajay Verma for sale of their land having an area of 44 decimals. It is agreed between them that the land would be sold at the rate of Rs. 2.7 lakh per kathha.*
>
> *(ii) The complainant/Opposite Party No. 2, for purchase of land, entered into a separate agreement with said Ajay Verma on 06.06.2014 and the price for the aforesaid land was fixed as a*

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whole Rs. 69,00,500/-.

(iii) It is evident from Annexure 2, the agreement executed between the complainant and said Ajay Verma, that an advance amount Rs. 2,51,000/- was paid to petitioner No. 1, namely, Manoj Kumar Mandawewala, through a cheque vide Cheque No. 805754 dated 06.06.2014 and the aforesaid cheque was handed over to Ajay Verma for forwarding it to the land owner.

(iv) It is evident from the agreement that the complainant is required to pay the whole consideration amount of Rs. 69,00,500/- within the period of five months twenty-five days, whereafter the registered sale-deed was to be executed by the land owners through Ajay Verma in favour of the complainant/Opposite Party No. 2.

(v) Even after lapse of stipulated period within which the entire consideration amount was to be paid, no further payment was made to the land owners through Ajay Verma.

(vi) The legal notice notice (Annexure-5) dated 23.10.2014, was sent by the complainant to the accused persons, also reflect the fact that the entire consideration amount was not paid except the amount of Rs. 2,51,000/-, which was paid as an advance amount. In the said legal notice, the complainant has expressed her desire to make further payment if the sale-deed was executed with respect to the aforesaid land.

(vii) The aforesaid legal notice was duly responded by the petitioners on 03.11.2014, highlighting all facts including the factum of non-payment of the consideration amount within the stipulated time.

(viii) The complainant/Opposite Party No. 2 filed the instant case on 01.11.2014, alleging non-execution of registered sale-deed with respect to the area of land as agreed between the complainant and one Ajay Verma and cheating on the part of the

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petitioners, this complaint case was filed.

8. From the perusal of the aforesaid facts and the documents brought on record in the form of various annexures, it becomes indisputably evident that the petitioners entered into an agreement with one Ajay Verma for selling their land through him and the said Ajay Verma entered into an agreement with the complainant/Opposite Party No. 2 for sale of land to her on payment of Rs. 69,00,500/-. The complainant, in-spite of making payment of an advance amount of Rs. 2,51,000/-, did not pay single farthing to the land owners through Ajay Verma, who was acting as a go-between, for negotiating the sale of land of the petitioners to the complainant.

9. It is also not in dispute that having made payment of advance amount of Rs. 2,51,000/-, the complainant did not pay a single farthing within stipulated time as agreed between her and one Ajay Verma. Even from reply dated 03.11.2014 to the legal notice sent by the complainant, the petitioners have shown unwavering willingness to sell their land, if the entire consideration amount is paid, but in-spite of the same, the complainant did not pay any amount.

10. The documents appended to the instant application unequivocally reflect that there was no direct

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agreement between the complainant/Opposite Party No. 2 and the petitioners nor is there any direct negotiations of sale and purchase of land between them. The complainant/Opposite Party No. 2 was dealing through Ajay Verma for purchasing the land of the petitioners and Ajay Verma, a co-accused in the case at hand, has refused to get the sale-deed executed in her favour unless the entire consideration amount is paid to the owner of the land through him.

11. Even from the averments made in the complaint application, it becomes manifestly evident that the complainant/Opposite Party No. 2 has specifically alleged non-execution of sale-deed, in-spite of having made payment of Rs. 2,51,000/- as an advance against the total agreed consideration amount of Rs. 69,00,500/-. From the averments of the complaint petition, it is also reflected that her only interest is, of getting the advance refunded from the petitioners, which was paid to them through Ajay Verma.

12. In this backdrop of dispute between the parties, it becomes imperative at this stage to consider as to

> *"whether any ingredients of the offence as alleged under Section 420 of the I.P.C., for which cognizance has been taken by the learned Trial Court, is attracted and satisfied in the case in order to allow the instant criminal prosecution to continue against the petitioners ?"*

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13. Section 420 of the I.P.C. provides for the offence of cheating and dishonestly inducing the delivery of property. For attracting the offence under Section 420 of the I.P.C., the essential ingredients of the offence of cheating enumerated in Section 415 of the I.P.C. have to be satisfied. The said provisions are extracted as under for ready reference :-

> ***"415. Cheating.-*** *Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".*
>
> *Explanation.- A dishonest concealment of facts is a deception within the meaning of this section.*
>
> *XXX*
>
> ***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."*

14. For the invocation of Section 420 of the I.P.C., which provides for cheating and dishonestly inducing the delivery of property, the ingredients of Section 415 of the I.P.C. have to be established. To constitute the offence under Section 415 of the I.P.C., it is essential that, by way of certain acts, a fraudulent or dishonest inducement is made and the person so

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deceived was made to deliver any property on account of such inducement.

15. The said provision lays down two separate classes of acts which the person deceived may be induced to do, as follows :-

> *(i) In the first class of acts, he may be induced fraudulently or dishonestly to deliver the property to any person or consent that any person shall retain any property.*
>
> *(ii) The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived.*

16. While explaining the contours of the said provision, the Hon'ble Supreme Court in the case of ***Deepak Gaba Vs. State of U.P.***, reported in ***(2023) 3 SCC 423,*** observed that the *sine qua non* of Section 415 of the I.P.C. is "fraudulence", "dishonesty", or "intentional inducement" and that the absence of the said elements, would debase the offence of cheating.

17. Now coming to the facts of the case at hand, where the complainant/Opposite Party No. 2 has alleged non-execution of registered sale-deed in her favour, despite having made payment of Rs. 2,51,000/- as an advance amount. Here the complainant has also alleged that she had to purchase 44

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decimals of land through Ajay Verma, at the total consideration amount of Rs. 69,00,500/-, but since Ajay Verma was not the owner of the said land and he could not execute sale-deed in her favour, suspecting the foul play at his hand, the complainant instituted the instant complaint case, thereby setting the criminal Court in motion against the petitioners.

In the present case some facts are glaring which are as follows :-

> *(i) The complainant entered into an agreement to purchase the land of the petitioners through a broker;*
>
> *(ii) The payment of Rs. 2,51,000/- was made as an advance to the land owners through the said broker;*
>
> *(iii) The remaining consideration amount of Rs. 66,49,500/- was to be paid within the period of five months and twenty-five days through said broker, i.e., Ajay Verma; and*
>
> *(iv) During the stipulated time, no further amount was paid by the complainant to the land owner through Ajay Verma, i.e., the broker.*

All these facts are discernible from the agreement dated 06.06.2014 executed between the complainant/Opposite Party No. 2 and said Ajay Verma (co-accused) and the complaint case and other documents brought on record.

18. It is trite law that for establishing the offence of cheating, the complainant/Opposite Party No. 2 was required to show that the accused had a fraudulent or dishonest intention at

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the time of making a promise or representation of not fulfilling the execution of registered sale-deed. Such a culpable intention, right at the beginning, when such promise was made, cannot be presumed, but has to be made out with cogent facts.

But in the present case, the complainant/Opposite Party No. 2 has failed to make out, in no uncertain terms, a case that petitioners have any fraudulent and dishonest intention, right at the very inception of agreement between her and the said broker, *i.e.*, Ajay Verma, rather there was no agreement, at all, between the complainant and the petitioners for purchase and sale of about 44 decimals of land, but this deal was being negotiated through said co-accused, *i.e.*, Ajay Verma, so the complainant, by no stretch of imagination, can allege that the accused petitioners have dishonest intention since the inception of entering into an agreement with the co-accused, *i.e.*, Ajay Verma.

Thus, it cannot be said that the petitioners, at the time of entering into an agreement with said broker, acted with at a fraudulent and dishonest intention, to induce the complainant to part with the advance consideration amount, out of the total agreed consideration amount.

19. On a *prima facie* view of the allegations as

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contained in the instant complaint case, it is evident that the complainant/Opposite Party No. 2 has attempted to hold the accused persons, *i.e.*, the petitioners criminally liable for breach of a contract. The Hon'ble Supreme Court in the case of ***Hridaya Ranjan Prasad Verma Vs. State of Bihar***, reported in ***(2000) 4 SCC 168***, held that a mere breach of contract cannot give rise to criminal prosecution, unless a fraudulent and dishonest intention of the accused is proved from the very inception of the transaction. The relevant portion of the judgment reads as follows :-

> *"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. 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 fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."*

20. The aforesaid dictum was reiterated by the Hon'ble Supreme Court in the case of ***Dalip Kaur Vs. Jagnar Singh***, reported in ***(2009) 14 SCC 696***, wherein it was held as hereunder :-

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> *"10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code."*

21. Thus, viewed in the backdrop of the totality of the circumstances, the mere allegation that the accused persons did not execute a sale deed in-spite of having received the advance amount, where the entire consideration amount was never paid within the stipulated time, it displays a classic example of an attempt to give a criminal colour to a purely civil dispute and as such, the mere breach of contractual obligation or non-payment of money *per se* does not constitute an offence of cheating or breach of trust. Even from the recital of the agreement executed between the complainant/Opposite Party No. 2 and the co-accused, namely, Ajay Verma, it is evident that she had to pay the entire consideration amount within the stipulated period, but she failed to do so. Instead of making payment, she started questioning competence of the co-accused, *i.e.*, Ajay Verma, through whom she had negotiated the purchase of land of the petitioners in absence of having any direct

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agreement with the petitioners for purchase of their land.

22. Thus, on perusal of the material available on record as well as from the discussions made above, I find that continuation of criminal proceedings instituted against the accused persons by the complainant, would be nothing but a sheer abuse of the process of law inasmuch as, on a consideration of the allegations, none of the offences invoked in the complaint case, appear to be made out against the accused persons, *i.e.*, the petitioners herein.

23. The Hon'ble Supreme Court in the case of ***Indian Oil Corporation Vs. NEPC India Ltd.***, reported in ***(2006) 6 SCC 736***, while taking judicial notice of the surge of civil disputes being given a criminal flavour, observed as follows :-

> *"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated discouraged. In* ***G. Sagar Suri Vs. State of U.P., [(2000) 2 SCC 636 : 2000 SCC (Cri) 513]*** *this*

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> *Court observed: (SCC p. 643, para 8)*
>
> *"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."*
>
> *14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."*

24. At this juncture, I find it expedient to refer to the judgment in the case ***State of Haryana Vs. Bhajan Lal***, reported in ***1992 Supp (1) SCC 335***, ***("Bhajan Lal")***, wherein the Hon'ble Supreme Court enumerated the categories of cases warranting exercise of extraordinary judicial powers under Article 226 of the Constitution of India or the inherent powers under Section 482 of the Cr.P.C. by the Courts either to prevent the abuse of the process of law or otherwise to secure the ends of justice. The relevant para 102 of the said judgment reads as

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follows :-

> *"**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 have given 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.*
>
> *…….*
>
> ***(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 any offence and make out a case against the accused.*
>
> *…….*
>
> ***(5)** Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *…….*
>
> ***(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."*

25. I find that the categories (1), (3), (5) and (7) enlisted in para 102 of ***Bhajan Lal's case*** *(supra)* are squarely applicable to the facts of the present case, making it a fit case

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for quashing of the criminal proceedings pending against the accused persons.

26. *Ex-consequenti*, the order impugned in the present application dated 28.10.2016 passed by the learned Judicial Magistrate, 1st Class, Bhagalpur in connection with Complaint Case No. 2240 of 2014, whereby the learned Trial Court, upon finding a *prima facie* case under Sections 420 and 120-B of the I.P.C. proceeded to summon the petitioners to face trial, being wholly unsustainable in the eyes of law, is, hereby, quashed and set aside, *qua* the petitioners.

27. Consequently, all criminal proceedings emanating from Complaint Case No. 2240 of 2014, *qua* the petitioners, are also, hereby, quashed and set aside.

28. The application is, accordingly, allowed.

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

(Rana Vikram Singh, J)

saurabh.kr/-

AFR/NAFR	AFR
CAV DATE	29-08-2026
Uploading Date	20-11-2026
Transmission Date	20-11-2026

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