IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.42866 of 2016

Arising Out of PS. Case No.-3415 Year-2014 Thana- SARAN COMPLAINT CASE District-Saran

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1. Akshay Sinh Dalpat Sinh Chauhan @ Akshay Singh Dalpat Singh Chauhan, Son of late Dalpat Sinh Pratap Sinh Chauhan @ Late Dalpat Singh Pratap Singh Chauhan;
2. Pratima Akshay Sinh @ Pratima Akshay Singh Chauhan, Wife of Akshay Sinh Dalpat Sinh Chauhan @ Akshay Singh Dalpat Singh Chauhan.;

   Both are resident of Pratimjee, 124, Poonam Nagar Society, Near-Sharkar Bhawan Marriag Hall, Bhator Road, P.S.-Surat District-Surat (Gujrat).

... ... Petitioner/s

Versus

1. The State of Bihar.
2. Pramod Kumar Singh, Son of late Ram Naresh Singh, resident of Village-Satasi, P.S.-Isuapur, District-Saran, at present residing at Prabhunath Nagar, P.S.-Chapra Muffasil, District-Saran.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ajit Kumar, Advocate
For the State	:	Mr. Manoj Kumar-1, Addl. Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE RANA VIKRAM SINGH

C.A.V. JUDGMENT

Date : 12-08-2026

This application has been preferred under Section 482 of the Code of Criminal Procedure, 1973, assailing the order dated 03.10.2015 passed by the learned Judicial Magistrate-Ist Class, Saran at Chapra in connection with Complaint Case No. 3415 of 2014, whereby finding *prima facie* case under Sections 403 and 417 of the Indian Penal Code (in short the ***IPC***), processes have been issued against the petitioners for their appearance to face trial.

2. In nutshell, the complainant/opposite party No. 2, for the first time, come in contact with the accused persons (the petitioners herein) at Surat, who were devotees of *Sant Param Jee Maharaj* and thereafter, they started meeting frequently. It is further alleged that after some time, the accused persons asked the complainant/opposite party No. 2 to invest Rs. 2,00,000/- (Rupees Two Lakhs) in their business, whereupon, on 20.04.2014 (Sunday), the accused persons visited the complainant/opposite party No. 2 at Chapra and on their persuasion, the father of the complainant/opposite party No. 2 gave Rs. 2,00,000/- in cash to them. The accused persons assured that money would be returned within a period of six months. After a lapse of six months, in-spite of repeated request of the complainant/opposite party No. 2 to return the money so taken, the accused persons did not return the same and started threatening him of dire consequences, if he persist with his demand of returning the money.

3. Hence, the present complaint was filed on 19.11.2014 in the Court of learned Chief Judicial Magistrate, Saran at Chapra, which was registered as Complaint Case No. 3415 of 2014.

4. In course of enquiry, solemn affirmation of the complainant/opposite party No. 2 was recorded on 01.12.2014 and the statements of the enquiry witnesses, namely, Rajiv Kumar Singh and Kundan Singh were recorded on 05.01.2015 and 20.04.2015 respectively.

5. After having perused the solemn affirmation, the statements of the enquiry witnesses and the materials brought on record, the learned Chief Judicial Magistrate, Saran at Chapra *vide* order dated 03.10.2015 finding *prima facie* case under Sections 403 and 417 of the IPC, issued processes against the accused persons, *i.e.*, the petitioners herein, for their appearance to face trial.

6. Heard Mr. Ajit Kumar, learned counsel appearing on behalf of the petitioners and Mr. Manoj Kumar-1, learned Addl. Public Prosecutor for the State.

7. Learned counsel for the petitioners submits that the averments made in the complaint are not only bundle of lies but are far from the truth where the

complainant/opposite party No. 2 has conceived a story in which the petitioners have falsely been implicated. It has been submitted on behalf of the petitioners that they had never ever visited Chapra before 08.08.2016, *i.e.*, the date on which they appeared before the learned Court at Chapra for bail. It has further been submitted that both the petitioners are husband and wife, who are disciples of *Sant Param Jee Maharaj* since 1994 and the present complaint case is an attempt to extort money.

8. At this stage, learned counsel for the petitioners highlights that petitioner No. 1 has been working as a permanent employee on the post of Senior Science Assistant in Man Made Textiles Research Association (MANTRA), (a Government Organization under the Ministry of Textile, Govt. of India) at Surat, since 01st of July, 1993 and as such, he does not need any money and that too from a stranger, *i.e.*, the complainant/opposite party No. 2, without having any kind of business related issues with him.

9. Learned counsel for the petitioners submits that the petitioners have never visited Chapra, especially on the date as alleged in the complaint, *i.e.*, 20.04.2014, which is evident from Annexure-2 enclosed with this application,

wherein a certificate has been issued by the Director of the aforesaid Man Made Textiles Research Association on 04.08.2016, certifying that petitioner No. 1 was very much present in the Office from 19.04.2014 to 21.04.2014. By referring to this Annexure, the learned counsel for the petitioners vehemently reinforces his argument, highlighting the concoctions of the instant prosecution, terming it to be malicious one instituted with ulterior motive.

10. Mr. Manoj Kumar-1, the learned Addl. Public Prosecutor for the State submits that the averments made in the complaint has duly been supported by the complaint/opposite party No. 2 in his solemn affirmation, which also finds substantiation from the statements of the enquiry witnesses recorded in course of enquiry. He also submits that the learned Trial Court having considered the entirety of evidence and having found *prima facie* case against the accused persons, took cognizance of the offences and issued processes against them. Thus, it has been argued that there is no illegality in the order taking cognizance.

11. There is no appearance on behalf of the complainant/opposite party No. 2 in-spite of having already entered appearance through a lawyer.

12. The order-sheets of the instant case reflect the true conduct of the complainant and learned counsel appearing on his behalf, as this Court *vide* order dated 22.02.2017, while issuing notice to the complainant/opposite party No. 2, stayed the further proceedings in the present complaint case, pending in the Court of learned Judicial Magistrate-Ist Class, Saran at Chapra, whereafter, on 14.08.2019, no one appears on behalf of the complainant/opposite party No. 2 despite filing *Vakalatnama* on his behalf. Seeing the conduct of the learned counsel appearing on behalf of the complainant/opposite party No. 2, this Court, *vide* order dated 24.10.2019, was constrained to issue a Court notice to him to appear on the next appointed date for arguing the case on behalf of the complainant/opposite party No. 2. Again, on 17.07.2026, when the case was taken up for hearing, in-spite of repeated calls, Mr. Dineshwar Pandey, learned Advocate representing the complainant/opposite party No. 2, having already filed *Vakalatnama* on his behalf, did not appear.

13. In aforesaid view of the matter, this Court has been left with no option but to proceed to hear the matter and after having heard learned counsel for the petitioners and

learned Addl. Public Prosecutor for the State, reserved the judgment on 17.07.2026.

14. Heard the learned counsel for the respective parties and perused the complaint petition, solemn affirmation as also the statements of the enquiry witnesses besides the documents brought on record.

15. From the perusal of the allegations made in the complaint petition as well as the solemn affirmation of the complainant/opposite party No. 2 and the statements of the enquiry witnesses recorded on oath, it is manifestly evident that save and except making bald allegations, no supporting documents have been annexed therewith to substantiate and support the allegations of demand of Rs. 2,00,000/- and the payment made thereof. There is no chit of paper on the record which could, indisputably, evince the transaction of money between the petitioners and the complainant/opposite party No. 2.

16. The averments made in the complaint petition are very general and unspecific and it appears that a story has been contrived just in order to implicate the petitioners by making a demand of Rs. 2,00,000/-, in absence of any proof of the said amount having been paid to the

accused persons, *i.e.*, the petitioners herein.

17. Perusal of Annexure-2, as appended to the present application, totally falsifies the allegations of the complainant/opposite party No. 2. In paragraph 2 of the complaint petition, it has been averred that on 20.04.2014, *i.e.*, Sunday, the accused persons visited the house of the complainant/opposite party No. 2 at Chapra and received the amount of Rs. 2,00,000/-, which was paid by the father of the complainant/opposite party No. 2, but it appears from Annexure-2 (presence certificate), which is a letter/certificate issued by the Director of Man Made Textiles Research Association, Surat, Gujarat, an Institute linked to the Ministry of Textiles, Govt. of India, that petitioner No. 1 is the permanent employee, posted there as Senior Science Assistant, has been in the office from 01.04.2014 to 15.11.2014. The aforesaid certificate, so issued by the Director of the Institute, shows undeniable presence of petitioner No. 1 at his work place during the period as alleged by the complainant/opposite party No. 2 in his complaint petition, which not only contradicts the allegations but also falsifies the same.

18. Thus, it is very much evident that the

petitioners had never visited Saran at Chapra on the date as alleged and if they, at all, visited, it becomes seriously doubtful in view of the unimpeachable document annexed as Annexure-2 and then, the question of payment of Rs. 2,00,000/- becomes equally questionable.

19. In the wake of aforesaid evidence on record, the entire allegation of visiting Saran at Chapra by the accused persons (the petitioners herein) for receiving the amount of Rs. 2,00,000/- appears to be not only patently false and frivolous but also exposes the true intent of the complaint/opposite party No. 2 of falsely implicating the petitioners with mal-intention and ulterior motive to extort money from them.

20. The case in hand is the perfect illustration of the malicious prosecution where without an iota of evidence, merely on the basis of bald oral allegations, which remain uncorroborated from any undeniable and unflinching evidence, a criminal proceeding has been instituted against the petitioners by setting the Court of criminal jurisdiction in motion on the basis of unsubstantiated allegations.

21. The manner in which the learned trial Court has issued processes against the petitioners equally appears to

be a reflection of pure mechanical order, wherein, in the absence of any clinching evidence with respect to payment of money and visitation by the accused persons to the place at Chapra, the learned Trial Court, without examining the said allegations in right perspective, mechanically passed the order of cognizance and, thereby, setting the criminal proceedings in motion against the petitioners, who, otherwise, appear to be innocent and *bona fide*.

22. Even taking the allegations on its face value, it is a question of recovery of money which has been given as loan to the accused persons and for seeking re-payment of the same, this criminal proceeding has been instituted with ulterior motive. It is a settled proposition of law that if a person has advanced loan to any person, then the only way/option available to him/her is to have recourse to the proper civil remedy by filing an appropriate suit/application before the competent Court of civil jurisdiction for recovery of the loan amount, if one could prove in course of the proceeding that money has been paid. Instead of having recourse to the proper and appropriate proceedings for recovery of the loan amount, the complainant/opposite party No. 2 has adopted a much faster route by setting the criminal

proceedings in motion to recover the amount of loan alleged to have been given to the accused persons/petitioners without there being any proof of giving the same as loan.

23. At this juncture, it would be apposite to consider the basic ingredients of Section 403 and Section 417 of the IPC, under which, the learned Magistrate, in the case at hand, has taken cognizance.

24. In order to examine whether the ingredients of the aforesaid two sections of the IPC are satisfied in the present case, so as to fasten the criminal liability on the petitioners, it would be relevant to first quote Section 403 of the IPC, which deals with *"dishonest misappropriation of property"*:-

> *"**403. Dishonest misappropriation of property**.-Whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."*
>
> *[Note: Explanation 1 and Explanation 2 are not being quoted here as the same are not relevant in the facts of the case at hand].*

25. Thus, the basic requirements for attracting this section are:-

> *(i) the movable property in question should belong to a person other than accused;*
>
> *(ii) the accused should wrongly appropriate or convert such property to his own*

use; and

(iii) there should be dishonest intention on the part of the accused.

And here, the basic requirement is that the subject matter of dishonest misappropriation or conversion should be someone elses movable property.

26. In the case at hand, none of the ingredients of Section 403 of the IPC is satisfied as neither is there any movable property belonging to another person than the accused and the accused has wrongly appropriated or converted his property to their own use with dishonest intention. In the present case, the allegation relates to taking of Rs. 2,00,000/- in cash as a loan with a promise to return the same within six months' time, but there is no proof with respect to such loan being given to the accused persons, *i.e.*, the petitioners herein, neither is there any evidence that the accused persons had visited Chapra at Saran from Surat in Gujarat on that very day to induce the accused persons to deliver such money.

27. The aforesaid ingredients as discussed hereinabove of Section 403 of the IPC has been judicially propounded by the Hon'ble Supreme Court in the case of ***Indian Oil Corporation Vs. NEPC India Ltd. & Ors.***,

reported in ***(2006) 6 SCC 736***.

28. Thus, Section 403 of the IPC is not attracted in the case at hand.

29. Section 417 of the IPC prescribes *"punishment for cheating"*, which reads as hereunder:-

> *"**417. Punishment for cheating**.- Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."*

Whereas, *"cheating"* itself has been defined under Section 415 of the IPC, which reads as thus:-

> *"**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"."*

30. From the bare perusal of the aforesaid provisions of law, it is manifestly evident that cheating simpliciter is punishable under Section 417 of the IPC. To bring home an offence under Section 415 of the IPC punishable under Section 417 of the IPC, there must be:-

(1) deception of any person;

(2) that person must have been fraudulently or dishonestly induced - (i) to deliver any property to any person, or (ii) to consent with any person relating to any property; or (2)(a) that person must have been induced intentionally 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 likely to cause damage or harm to that person in body, mind, reputation or property.

31. The basic difference between Section 417 and Section 420 of the IPC is that where in pursuance of the deception, no property passes, the offence is one of cheating punishable under Section 417 IPC, but where, in pursuance of the deception, property is delivered, the offence is punishable under Section 420 IPC. There cannot be any doubt with respect to the position that when the ingredients to attract the offence punishable under Section 417 IPC are not satisfied, there cannot be any question of such allegations/accusations attracting Section 420 IPC, for the simple reason that to bring a case within the ambit of Section 420 IPC, not only cheating is simpliciter but also by dishonest inducement of that person sought to be deceived to deliver any property must have delivered that property or made alteration or destruction of any valuable security.

32. The aforesaid ingredients as discussed hereinabove of Section 417 of the IPC has also been judicially propounded by the Hon’ble Supreme Court in the cases of ***Ram Jas Vs. State of U.P.***, reported in ***(1970) 2 SCC 740***; ***Mohammed Ibrahim & Ors. Vs. State of Bihar & Anr.***, reported in ***(2009) 8 SCC 751***; and ***Payal Sharma Vs. State of Punjab & Anr.***, reported in ***2024 SCC OnLine SC 3473***.

33. The aforesaid ingredients of Section 417 IPC, as set-out hereinabove, are not satisfied by any stretch of imagination in the case at hand. The allegations so levelled in the present complaint case is devoid of any factual and documentary support to substantiate and corroborate the allegations so levelled with respect to giving loan to the petitioners without having any kind of acknowledgment or receipt thereof.

34. In the backdrop of the aforesaid factual legal aspects, order taking cognizance, under Sections 403 and 417 of the IPC, does not qualify the test of legal scrutiny.

35. The Hon’ble Supreme Court, in umpteen number of times, very categorically and emphatically deprecated the tendency to convert civil disputes into criminal proceedings. In the case of ***Indian Oil Corporation*** *(supra)*,

the Hon’ble Supreme Court has held that criminal law cannot be used as a tool to settle scores in commercial, contractual or in money matters and that such misuse, amounts to abuse of the process of law.

36. In a very recent case of ***Shailesh Kumar Singh Vs. State of U.P.***, reported in ***2025 SCC OnLine SC 1462***, the Hon’ble Supreme Court has very strongly disapproved the practice of using criminal proceeding as a substitute of civil remedy, observing that money recovery cannot be enforced through criminal prosecution where the dispute is itself civil in nature.

37. The factual conspectus of the case at hand, unequivocally, exposes the true motive of filing such a complaint case where merely levelling an allegation of giving loan of Rs. 2,00,000/- to the petitioners without having any proof in support thereof, a criminal prosecution has been launched and the same has been allowed by the learned Trial Court to proceed ahead, without even properly appreciating the true nature of content as averred in the complaint petition.

38. The present complaint case has been initiated merely in order to extort money from the petitioners while using the criminal proceedings, whereas the proper

remedy could have been available to the complainant/opposite party No. 2 is to approach the competent Court of civil jurisdiction by filing a proper suit for recovery of the loan amount as claimed to have been given to the petitioners.

39. The criminal prosecution must not be permitted as an instrument of harassment or settling private vendetta. Regular complaints with respect of property/money disputes are purely of civil nature, which are filed solely to harass the persons either to extort money or the put pressure in civil litigation and all these constitute an abuse of the process of law.

40. The aforesaid proposition of law has already been laid down by the Hon'ble Supreme Court in the cases of ***Inder Mohan Goswami & Anr. Vs. State of Uttaranchal & Ors.***, reported in ***(2007) 12 SCC 1*** and ***Ganga Dhar Kalita Vs. State of Assam & Ors.***, reported in ***(2015) 9 SCC 647***.

41. This Court finds that the categories (1), (3), (5) and (7) enlisted in the case of ***State of Haryana & Ors. Vs. Bhajan Lal & Ors.***, reported in ***1992 Supp. (1) SCC 335***, are squarely applicable to the facts of the present case, making it a fit case for quashing of the criminal proceedings

pending against the accused, which reads as hereunder:-

> *"(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; and*
>
> *(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."*

42. In the aforesaid conspectus, the allegations as levelled by the complainant/opposite party No. 2 are of doubtful veracity tainted with malice, which show clear abuse of the judicial proceedings only in order to settle personal scores with the petitioners.

43. Accordingly, the order dated 03.10.2015 passed by the learned Judicial Magistrate-Ist Class, Saran at Chapra, in connection with Complaint Case No. 3415 of 2014, taking cognizance of the offences against the

petitioners, is, hereby, quashed and set aside and all the criminal proceedings emanated therefrom are also quashed and set aside.

44. The application stands allowed.

45. The interlocutory application(s), if any, also stands disposed off accordingly.

(Rana Vikram Singh, J)

Praveen-II/-

AFR/NAFR	AFR
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