

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5911 of 2018**

Arising Out of PS. Case No.-721 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Krishna Bihari Prasad Sinha, S/o Late Nageshwar Prasad,
 2. Manish Priyadarshi S/o Krishna Bihari Prasad Sinha,
Both R/o Plot No.11, Vishwasaraiya Nagar, Bailey Road, P.S.- Rupaspur,
District- Patna.
- Petitioner/s

Versus

1. The State Of Bihar
 2. Sohab Hussain Chand, S/o Late Ali Hassan Chand, R/o Chand Villa,
Chunbati Kuan, Phulwarisharif, P.S.- Phulwarisharif, District- Patna.
- Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Sanjeev Ranjan
For the State	:	Mr. Nityanand Tiwary
For the O. P. No. 2	:	NONE

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
C.A.V.

Date : 06-01-2026

The present quashing application has been filed for quashing the order, dated 31.08.2017, passed, in Complaint Case No. 721(C) of 2017, by the learned Additional Chief Judicial Magistrate-XII, Patna, by which the learned District Court has taken cognizance for the offences punishable under Sections 406/420/467/468/ 471/387/120-B of the Indian Penal Code against the petitioners and one Nikhil Priyadarshi.

2. The prosecution case, as per the complaint petition filed by the complainant Shoaib Hasan Chand, against accused



persons, namely, Krishna Bihari Prasad Sinha, Nikhil Priyadarshi, Manish Priyadarshi, relatives and family members of Krishna Bihari Prasad Sinha, unknown anti-social friends of Nikhil and Manish Priyadarshi and Anjali Shrivastava, is that the complainant is the Managing Director of Aaha Planners and Developers Private Ltd. An unregistered development agreement was executed between the complainant and accused Nikhil Priyadarshi and Manish Priyadarshi, upon payment of Rs. 1,00,00,000/- (one crore) on 13.10.2016, regarding 40 Kathas of land of the accused persons, situated at Saguna More, Patna. Again, they demanded Rs. 30,00,000/- from the complainant- Opposite Party No. 2, which was paid to the accused persons through his cousin. Again after payment of Rs. 50,00,000/- in the first week of November, the accused Krishna Bihari Prasad Sinha handed over the documents of the land, in question. It has been stated that the complainant spent Rs. 50,00,000/- lakhs for development work towards the cost of construction of boundary wall at the site. Afterwards, upon verification, the complainant found the documents of land, in question, to be forged, fabricated and fake.

3. It has been stated that a total amount of Rs. 2,30,00,000/- have been paid by the complainant to the accused persons. When the complainant demanded his money back, the



friend of Nikhil Priyadarshi, namely, Gaurav, handed him a cheque of Rs. 450,000/- signed by one Prem Prakash, which was dishonored. Earlier also, a friend of Nikhil had given Rs. 1,00,000/- and further assured the complainant that he would get back his money once Nikhil arrives.

4. The complainant further alleged that on 13.03.2017, friend of Nikhil, along with anti-social elements, took the complainant to Durga Mandir, where he was surrounded by armed persons and threatened to kill him and his family members if he deposed in the rape case or demanded his money back and also threatened to lodge a false rape case against him. When the complainant demanded his money again, the accused filed false case of demand of extortion against the complainant.

5. The complainant, in his statement on solemn affirmation, states that Nikhil demanded Rs, 50,00,000/- on 25.01.2017, then he states that the demand of Rs. 50,00,000/- was made on 16 December, to which the complainant paid the amount after 2-4 days. The complainant got to know about the involvement of Nikhil, Manish and Krishna Bihari in the rape case of a minor girl through newspaper, dated 20.12.2016.

6. Learned Counsel for the petitioners submits that the impugned order has been passed mechanically without proper



appreciation of the facts and settled principles of law. The continuation of the criminal proceedings against the petitioners would result in gross miscarriage of justice and abuse of the process of the Court as the dispute between the parties purely arises out of the development agreement, dated 13.10.2016. The consideration was clearly fixed as 50 percent of the total built-up area and the agreement neither contains any recital regarding payment of any cash amount nor there is any acknowledgment of the accused persons.

7. The complainant, acting with ulterior motive and due to extraneous considerations, has attempted to convert a purely civil dispute into a criminal case by making false, improbable and self-contradictory allegations of cash payments, including Rs. 2,30,00,000/- and Rs. 50,00,000/-, which are improbable and unbelievable. The complainant has taken inconsistent stand by first alleging payment of Rs. 50,00,000/- in the first week of November 2017 and thereafter, during enquiry, alleged the said payment to be made on 16.12.2017. The complainant further alleged that such payment was made in old currency, which has ceased to be legal tender after 08.11.2017, thereby rendering the allegation illegal, improbable and absurd.



8. In any case, the development agreement, dated 13.10.2016, does not mention payment of Rs. 1,00,00,000/- or any other amount in cash, completely falsifying the allegation made by the complainant in the complaint petition.

9. Even if the entire complaint is taken at its face value, no ingredient of Sections 420 or Section 406 of the Indian Penal Code is attracted against the accused persons inasmuch as the accused persons admittedly have the right, title and interest over the land, in question and they were competent to enter into the agreement. Any failure to perform contractual obligations or non-registration of the agreement at a later stage can at best give rise to a civil dispute and cannot constitute the offence of cheating or criminal breach of trust.

10. Similarly, no offence under Sections 467, 468 or 471 read with Section 120-B of the Indian Penal Code is made out as there is no allegation of making, altering or using any forged or fabricated document and the essential ingredients of forgery, as defined under Sections 463, 464 and 470 of the Indian Penal Code are completely absent.

11. The complaint is manifestly mala fide and vindictive, having been filed solely to exert pressure upon the accused persons, which is evident from the fact that the



complainant has focused more on an unrelated rape case; rather, the alleged transactions, which clearly demonstrate misuse of the criminal process to wreak vengeance and that the complaint is being used as a tool for vested interest to implicate the petitioners and their family members and coerce them into parting with the valuable property.

12. Learned Counsel next submits that the order taking cognizance shows complete non-application of mind as there is no satisfactory reason recorded by the Magistrate for forming the opinion that the offences, in question, are made out for the purpose of issuance of summonses against the accused persons, including the petitioners. The failure to assign brief reason renders the order vulnerable, as has been held by the Supreme Court, in the case of **Mehmood Ul Rehman versus Khazir Mohammad Tunda and Other**, reported in **(2015) 12 SCC 420**.

13. Despite valid service of notice, no one appears on behalf of the Opposite Party No. 2.

14. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

15. The fact, which emerges is that the development agreement was allegedly entered into between the petitioners and



the complainant on 13.10.2016. As per the terms of the agreement entered into between the parties, the main consideration was 50 per cent of built up area as the absolute consideration for the said agreement. There is no endorsement in the development agreement rewarding payment of any amount in favour of the petitioners. Even assuming that the petitioners refused to get the development agreement registered due to non-payment of extra amount demanded by the petitioners, the same will give rise to a civil dispute.

16. From perusal of the complaint, it appears that no offence, much less offence under Sections 420/467/468 of the Indian penal Code is made out against the petitioners. To make an offence under Section 420 of the Indian Penal Code, it is necessary that there was an intention to cheat right from the inception. There was no such intention of cheating from the very inception as has been alleged against the petitioners in the complaint and the order taking cognizance.

17. In the case of **Hridaya Ranjan Prasad Verma and Others v. The State of Bihar and Another**, reported in **(2000) 4 SCC 168**, the Supreme Court has held 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. 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 the promise subsequently, such a culpable intention right at the beginning i.e., when he made the promise cannot be presumed.

18. Further, for constituting an offence under Section 467 and 468 of the Indian Penal Code, the condition precedent is making a false document.

19. In this regard, the Supreme Court, in paragraphs 13 and 14 of **Mohammed Ibrahim and Others v. The State of Bihar and Another**, reported in **(2009) 8 SCC 751**, has held that the condition precedent for the offences under Sections 467 and 471 of the Indian Penal Code is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof).

20. An analysis of Section 464 of the Indian Penal Code shows that it divides false documents into three categories; firstly,



where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed; secondly, where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person; and thirdly, where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practiced upon him, know the contents of the document or the nature of the alteration.

21. In the entire complaint petition, there is no allegation that the development agreement was executed claiming to be someone else or authorized by some one else or that the petitioners altered or tempered a document.

22. In the development agreement, the petitioners have given the details of sale deeds, along with the proof of registration of various sale deeds by virtue of which the petitioners have claimed the ownership upon the land, having an area of 38.83 kathas. No *prima facie* evidence has been brought on record by the



complainant showing that the title of the land of the petitioners are forged and fabricated.

23. Upon going through the allegations made in the complaint petition, the order taking cognizance and the materials on record, in my opinion, at best, the allegations give rise to civil dispute but the same has been given the colour of criminal offence. As such, permitting the prosecution to continue against the petitioners shall amount to abuse of the process of criminal court.

24. In order to prevent the abuse of the process of court and to secure the ends of justice, I deem it fit to quash the order taking cognizance against the petitioners, dated 31.08.2017.

25. Accordingly, the order, dated 31.08.2017, passed in Complaint Case No. 721(C) of 2017, by the learned Additional Chief Judicial Magistrate-XII, Patna, is hereby quashed so far as it relates to the petitioners.

26. In the result, this application is allowed.

27. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	07-11-2025
Uploading Date	06-01-2026
Transmission Date	06-01-2026

