

MARCH 31, 2000

[K.T. THOMAS AND D.P. MOHAPATRA, JJ.]

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*Code of Criminal Procedure, 1973—Section 482—Inherent powers—Exercise of—Held, the extraordinary power under Section 482 Cr.P.C. is to be exercised either to prevent abuse of process of the Court or otherwise to secure the ends of justice—Held further, power of quashing of a criminal proceeding is to be exercise very sparingly and with circumspection and that too in the rarest of rare cases.*

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*Indian Penal Code, 1860—Sections 415, 418, 420, 423, 469, 504 and 120B—Offence of cheating—Ingredients of, enumerated—Held, to hold a person guilty of cheating, it is necessary to show that he had fraudulent or dishonest intention right at the beginning of the transaction—Mere breach of contract cannot give rise to criminal prosecution for cheating—In the present case, the allegation that the appellants did not disclose at the time of sale of the property in question, the fact that one of their brothers had filed a partition suit which was pending, held, did not constitute the offence of cheating or other offences alleged in the complaint—Reading the averments in the complaints in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in the complaint—In such a situation, continuing the criminal proceeding against the accused/appellants will be an abuse of process of the Court—Complaint pending against the appellants quashed.*

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The three appellants herein succeeded to the property in question along with their three other brothers after the death of their father. They agreed to sell the land to respondent No. 2, a co-operative society in pursuance of which the respondent made a part payment to the appellants. Thereafter, the appellants executed a registered sale deed in favour of the society wherein two other brothers of the appellants signed as witnesses. By way of a further safeguard, the appellant executed a separate indemnity deed on the same day in which they undertook to indemnify any loss caused to the society on account of any objection which may

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A be raised by any co-sharer against transfer of the land in future. The land was delivered to the society on the same day.

Prior to the execution of the sale deed, one the brothers of the appellants had filed a suit for partition of the properties left by their father and division by metes and bounds.

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On registration of the sale deed, the respondent society handed over three cheques to the appellants for the balance amount. However, the said cheques were dishonoured on presentation on account of insufficiency of amount. Repeated requests to the respondent society to pay the balance amount were not acceded to. Finally, the appellants sent a notice to the respondent society through their advocate but to no avail. The appellants lodged an FIR under Sections 406, 420 and 120B IPC against the respondent society. They also filed three suits for realisation of the amount due to them.

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Shortly thereafter, the Respondent society filed complaint in the Court of the Chief Judicial Magistrate against the appellants alleging commission of offences under Sections 418, 420, 423, 469, 504 and 120B of Indian Penal Code. The respondent society alleged that the appellants had cheated the society by giving false, concocted and wrongful information and assurances thereby inducing the society to enter into negotiations and also to advance them a heavy amount with ulterior design to acquire wrongful gain to themselves and for wrongful loss to the Society.

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The petition filed by the appellants before the High Court for quashing the aforesaid complaint was dismissed. Hence the present appeals.

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On behalf of the appellants it was contended that the complaint against them by the respondent society was a counter blast to the criminal case and the civil suits filed by them against the respondent society.

Allowing the appeals, this Court.

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HELD : 1. The power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare cases.' The extraordinary power under Article 226 of the Constitution or the inherent powers under Section 482 Cr.P.C. could be exercised either to prevent abuse of process of Court or otherwise to secure the ends of justice. Thus, where the allegations made in the first

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information report or the complaint, even if 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, such a case warrants interference by the Court in exercise of its inherent powers. [868-D-F]

*State of Haryana and Others v. Bhajan Lal and Others*, [1992] Supp. 1 SCC 335, relied on.

*Ruppan Deol Bajaj (Mrs.) and Another v. Kanwar Pal Singh Gill and Another*, [1995] 5 SCC 194; *Rajesh Bajaj v. State NCT of Delhi and Others*, [1999] 3 SCC 259; *State of Kerala and Others v. O.C. Kuttan and Others*, [1992] 2 SCC 651; *P.S. Rajya v. State of Bihar*, [1996] 9 SCC 1 and *State of Orissa v. Bansidhar Singh*, [1996] 2 SCC 194, referred to.

2.1. On a reading of the complaint made by the respondent society, it is clear that the main offence alleged to have been committed by the appellants is 'cheating' punishable under Section 420 IPC. However, the ingredients of the offence of cheating punishable under Section 420 IPC and its allied offences under Sections 418 and 423 have not been made out. So far as the offences under Sections 469, 504 and 120B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position, the present case as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transactions has neither been expressly stated nor indirectly suggested in the complaint. All that the respondent society has alleged against the appellant is that they did not disclose that one of their brothers had filed a partition suit which was pending. The requirements that the information was not disclosed by the appellants intentionally in order to make the respondent society part with the property is not alleged expressly or even impliedly in the complaint. Therefore, the core postulate of dishonest intention in order to deceive the complainant-respondent society is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceedings against the accused will be an abuse of process of the Court. [868-G; 870-B-F]

2.2. On a reading of Section 415 Cr.P.C. which defines cheating, it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he

A may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the Section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases, the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest. [869-E-F]

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2.3. 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 the subsequent conduct is not the sole test. Mere breach of contract

C 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

D promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. [869-G-H]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 313-314 of 2000.

E From the Judgment and Order dated 13.4.99 of the Patna High Court in Crl.Misc. No. 22880/98 and 24068 of 1998.

U.R. Lalit, Ejaz Maqbool, Ms. Aparna Jha and Braj Kishore Mishra for the Appellants.

F P.S. Misra, Ms. Sunita Rani Singh and R.P. Singh for the Respondent No. 2.

H.L. Aggarwal and B.B. Singh for the Respondent No. 1.

G The Judgment of the Court was delivered by

**D.P. MOHAPATRA, J.** Leave granted.

The three appellants, Hridaya Ranjan Prasad Verma, Manoranjan Prasad Verma and Rajiv Ranjan Prasad Verma are sons of Late Shri Kashi Nath

H Prasad Verma. They have three other brothers who are not directly involved

in the present proceedings. Late Kashi Nath Prasad Verma was the owner of Khasra No. 213, Plot No. 1172, in Village Srinagar, within Siwan Police Station. On his death his six sons succeeded to the property. Appellant No. 1 is a neuro-surgeon at Patna; appellant no.2 is the Manager of Pathar Jhora Tea Gardens in Jalpaiguri and appellant no. 3 is a retired marketing manager of Jay Shree Tea and Industries Ltd., Delhi. Respondent No. 2, Manish Prasad Singh, an advocate, is the secretary of Kanishka Sahkari Grih Nirman Samiti Limited, Sewan, (hereinafter referred to as the Society) a cooperative society engaged in purchasing land from different persons and after developing and dividing it into small pieces selling the plots to different customers. The appellants agreed to sell the land in village Srinagar to respondent no. 2 for a consideration of Rs. 16,00,000. The respondent paid a sum of Rs. 11,00,000 to the appellants by way of drafts drawn in their favour on 7.12.92. The appellants executed a registered sale deed in respect of the land in favour of the Society. It is the case of the appellants that on insistence of respondent no.2 two other brothers of the appellants signed the sale deed as witnesses. By way of a further safeguard the appellants executed a separate indemnity deed on the same day in which they undertook to indemnify any loss caused to the society on account of any objection which may be raised by any co-sharer against transfer of the land in future. The appellants assert that they have delivered possession of the land to the society on the same day. Another brother of the appellants Priya Ranjan Prasad Verma also executed a sale deed in favour of the society alienating his portion of the land.

On registration of the sale deed respondent No. 2 handed over three cheques to the appellants for the sum of Rs. 5,50,000. When the appellants presented the said cheques in the bank, the same were dishonoured on account of insufficiency of amount in the account of the drawer. The respondent no. 2 had issued a separate cheque in favour of Priya Ranjan Prasad Verma which was also dishonoured for the same reason.

Prior to the execution of the sale deed Akhil Ranjan Prasad Verma brother of the appellants had filed a suit, Title Suit No. 118 of 1990 for partition alleging *inter alia* that though the properties left by their father had been partitioned amongst the brothers in 1971 no division by metes and bounds had taken place. On 5.12.1992 on the application filed under Order 39 Civil Procedure Code the learned subordinate judge, Siwan passed an interim order restraining the appellants from disturbing the *status quo* or transferring the land of Schedule I to the plaintiff but no injunction was passed

A in respect of the land described in Schedule-VI of the plaint in which the  
property in dispute in the present proceeding is included. According to the  
appellants the plaintiff Akhil Ranjan Prasad Verma did not press his prayer  
for injunction in respect of the Schedule IV properties. It is the further case  
of the appellants that between 9.12.92 to 18.12.92 the respondent No. 2 sold  
B portions of the land sold by them to several other persons.

When the cheques issued by the respondent No. 2 in their favour  
bounced the appellants made several requests to the said respondent for  
payment of the amount. On each such occasion the said respondent avoided  
to pay the amount promising to do so within a short time. Finally on  
C 21.10.1995 the appellants through their advocate sent a notice to respondent  
No. 2 reminding him that the cheques issued by him in favour of the  
appellants had bounced due to insufficiency of funds. Finding that respondent  
no. 2 had no intention to pay the amount, the appellants lodged a first  
information report under sections 406, 420 and 120 B IPC with the Siwan  
D Police Station on 11.11.1995 which was registered as Siwan Mafsil Case No.  
191/95. In the said FIR the respondent No. 2 and Avdesh Narayan Rai who  
was the Vice President of the cooperative society were named as the accused.  
The police after investigating into the allegations made in the FIR filed a  
charge-sheet against respondent no. 2 and Avdesh Narayan Rai. The appel-  
E lants also filed three suits for realisation of the amount due to them.

Shortly thereafter on 14.12.1995 the respondent no. 2 filed complaint  
no. 1282/95 in the Court of the Chief Judicial Magistrate, Siwan against the  
appellants alleging commission of offences under section 418 (Cheating with  
F knowledge that wrongful loss may ensue to person whose interest offender  
is bound to protect), section 420 (Cheating and dishonestly inducing delivery  
of property), section 423 (Dishonest or fraudulent execution of deed of  
transfer containing false statement of consideration), section 469 (Forgery for  
purpose of harming reputation), section 504 (intentional insult with intent to  
provoke breach of the peace) and section 120B IPC (criminal conspiracy).  
G It is the case of the appellants that the FIR was filed as a counter  
blast to the criminal case and the civil suits filed by them against  
the respondent No. 2.

In the complaint respondent no. 2 alleged *inter alia* that by conspiring  
H together all the accused have defaulted and cheated the society and the

complainant by giving false, concocted and wrongful information and assurances saying to have a Sada "Kora" and thus they induced the complainant to enter into negotiations and also to advance them a heavy amount with their ulterior design to acquire wrongful gain to themselves and for wrongful loss to the society and the complainant - both monetary and reputational. Some averments in the complaint relevant for the purpose of this proceeding are extracted hereunder :

"That at the time of giving proposal to the complainant for buying the said land, accused No. 1 asserted that the said land has fallen exclusively to the share and possession of three brothers (all accused) after the partition of the estate left by late Kashi Nath Prasad Verma among all his six sons and a "Kora" to this effect has also been prepared and signed by all the brothers. Accused No. 1 also said that the said Kora was not available at that time and he would show as and when need be.

That all accused hail from a very sound and respectable family and accused No. 1 specially being a renowned doctor, appeared to be more trustworthy to the complainant. The complainant showing due respect to accused No. 1 believed him and entered into negotiation with him for purchase of said land.

That ultimately all the accused appeared at Siwan for executing the sale deeds in favour of the Society on a date fixed earlier by them. Just before the execution of the sale deed the complainant asked the accused to show the "Kora" prepared and signed by them (all the six brothers). The accused did not show the "Kora" and assured that all the brothers will join the deed. The accused will execute the sale deeds and rest three brothers will join the sale deeds as attesting witnesses.

That the sale deeds in question were scribed at the direction and dictation of the accused in favour of the Society in respect of entire land but only two brothers out of rest three came to join the deeds as attesting witnesses and one of them i.e. sixth brother namely Praful Ranjan Prasad Verma did not appear to do the same as assured by accused No. 1 to the complainant.

That in order to avoid future complications the complainant proposed

A the accused either to retain 1/6th share of land for themselves and to execute sale deeds in respect of only five shares of land or to refund the money to the complainant given to them as advance consideration money. But the accused did not agree to the proposals of the complainant saying that they will execute an agreement to the effect that in case of any future trouble to the Society, the executant i.e. the accused will be liable to compensate the Society. Thus the complainant, seeing no alternative, agreed to the proposal of the accused to execute sale deeds in respect of entire lands and sale deeds were executed accordingly.

C That in the meantime, some days after the execution of the said sale deed, the complainant came to know that Title Suit No. 118/90 filed by Akhil Ranjan Prasad Verma, one of the six brothers of the accused as plaintiff against Priya Ranjan Prasad Verma & five others as defendants was subjudice in the court of Sub-Judge-III, Siwan, long before the starting of the negotiation for the sale and purchase of said land. Besides, another suit bearing no 68/83, *Nagendra Nath Sinha & Others-plaintiffs v. Singhashani Devi and Ors.*, defendants has also been pending in the Court of Munsif-1 Siwan from long before the starting of the negotiation of sale and purchase of the said land. The accused had concealed these facts from the complainant at the time of negotiation and execution of the aforesaid sale deeds.

E That from the facts detailed above, it is quite clear that accused have deliberately and intentionally defrauded and cheated the Society and the complainant by suppressing some facts and giving false and concocted information and assurances to the complainant so as to make him believe that the deal is a fair one and free of troubles. The accused did so with an intention to acquire wrongful gain for themselves and to cause wrongful loss to the society and the complainant. The accused have always kept the complainant in wrong box and thus they have induced the complainant to enter into negotiation and advance consideration money to them.

G That by suppressing facts relating to two pending cases from before and filing criminal case against the complainant and civil cases against the Society the accused have lowered down the prestige and reputation of the Society and the complainant in the eyes of the

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members, customers and the public at large, although the complainant has committed no fault since the amount due to the accused has already been entered into the Cash Book of the Society and it has come in the audit Report done for the year 1994-95.”

In the case of *State of Haryana and Others v. Bhajan Lal and Others*, [1992] Supp. 1 SCC 335, this Court in the back drop of interpretation of various relevant provisions of the Code of Criminal Procedure 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 Cr.P.C. gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the Court or otherwise to secure the ends of justice, making it clear that 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 to myriad kinds of cases wherein such power should be exercise :

(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 information 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 any 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

A person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

B (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.

C (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.

D In the decision this Court added a note of caution to the effect that the power of quashing a criminal proceeding should be exercised 'very sparingly and with circumspection and that too in the rarest of rare cases'.

E The principles laid down in this decision have been followed in several decisions of this Court like [1995] 5 SCC 194 *Rupan Deol Bajaj (Mrs.) and another v. Kanwar Pal Singh Gill and another*, [1999] 3 SCC 259; *Rajesh Bajaj v. State NCT of Delhi and others*, [1992] 2 SCC 651; *State of Kerala and others v. O.C. Kuttan and others*, [1996] 9 SCC 1 and *P.S. Rajya v. State of Bihar*, [1996] 2 SCC 194 *State of Orissa v. Bansidhar Singh*.

F The question is whether the case of the appellants comes under any of the categories enumerated in *State of Haryana and others v. Bhajan Lal and others* (supra) ? Is it a case where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in entirety do not make out a case against the accused? For determination of the question it becomes relevant to note the nature of the offences alleged against the appellants, the ingredients of the offences and the averments made in the complaint.

G On a reading of the complaint portions of which have been extracted earlier it is clear that the main offence alleged to have been committed by the appellants is 'cheating' punishable under section 420 IPC.

H Cheating is defined in Section 415 of the Code as, "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.*

The section requires - (1) Deception of any person.

(2) (a) Fraudulently or dishonestly inducing that person

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person 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.

On a reading of the section it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

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.

- A 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.

- B Judged on the touchstone of the principles noted above, the present case, in our considered view warrants interference inasmuch as the ingredients of the offence of cheating punishable under section 420 IPC and its allied offences under sections 418 and 423 has not been made out. So far as the offences under sections 469, 504 and 120B are concerned even the basic allegations making out a case thereunder are not contained in the complaint. That being the position the case comes within the first category of cases enumerated in *State of Haryana & Ors. v. Bhajan Lal and Ors.* (Supra) and as such warrants interference by the Court. Reading the averments in the complaint in entirety and accepting the allegations to be true, the ingredients of intentional deception on the part of the accused right at the beginning of the negotiations for the transaction has neither been expressly stated nor indirectly suggested in complaint. All that the respondent No. 2 has alleged against the appellants is that they did not disclose to him that one of their brothers had filed a partition suit which was pending. The requirement that the information was not disclosed by the appellants intentionally in order to make the respondent No. 2 part with property is not alleged expressly or even impliedly in the complaint. Therefore the core postulate of dishonest intention in order to deceive the complainant-respondent no.2 is not made out even accepting all the averments in the complaint on their face value. In such a situation continuing the criminal proceeding against the accused will be, in our considered view, an abuse of process of the court. The High Court was not right in declining to quash the complaint and the proceeding initiated on the basis of the same.
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Accordingly the appeals are allowed. The Judgment/Order dated 13-4-1999 of the Patna High Court in Criminal Misc. No. 22880/1998 and Criminal Misc. No. 24068 of 1998 is set aside and the proceeding in Criminal Case No. 22/96 pending in the Court of Chief Judicial Magistrate, Siwan is quashed.

- G M.P. Appeals allowed.