

In the Court of Additional Sessions Judge I, Darbhanga Present - Neeraj Kumar II, BSJS, BR00552 Criminal Revision – 226/2023 Under Sections 397, 398, 399 Code of Criminal Procedure Against the order 23/02/2023 of Dismissal of Complaint 899/2022 u/s 203 CRPC by Learned JMFC, Darbhanga Prince Kumar versus State of Bihar and others			
Date of Judgment – Wednesday, The 05 th day of August, 2026			
Revisionist	R1	Prince Kumar, aged about 39 years, son of Ram Bihari Sinha, Village Pokharbhinda, PS Sakatpur, District Darbhanga	
	Represented By	Sri Dheeraj Kumar, Learned Amicus Curie	
Versus			
Opposite Parties	OP1	State of Bihar	
	Represented By	Sri A. N. Jha, Learned PP	
	OP2	Sitambar Pathak, son of Babu Narayan Pathak, Village New Poshanpura, Banker’s Colony, Kabirchak, PS Sadar, District Darbhanga	
	Represented By	Sri P. S. Sinha, Learned CLADCS	
Judgment			
1. Having been aggrieved and dissatisfied with the order dated 23/02/2023 passed by Learned JMFC, Darbhanga in connection with Complaint case 899/2022, Instant revision was filed by the revisionist. By this order the Learned JMFC dismissed the Complaint under section 203 CRPC.			
Contents of Revision			
2. The Learned Amicus Curie Sri Dheeraj Kumar appearing on behalf of the revisionist submitted that the Learned Magistrate wrongly observed that the ingredients of the alleged offences were not present in the Complaint petition. It was argued that as the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime. Quoting section 420 of the IPC, the learned counsel argued that OP2 had made a false representation before R1 and it was pertinent to mention here that the OP2 had made such statement with an intention to deceive the Complainant. It was argued that OP2 had mala-fide intention to deceive R1 since the inception. It was submitted by that the impugned order passed by the Learned Magistrate was absolutely bad both in law as well as in fact and hence was liable to be set aside. It was submitted that the impugned order was passed by the Learned Magistrate without considering the facts and documents submitted by R1. It was argued that if the impugned order dated, it would amount to miscarriage of justice to R1. It was argued that the witnesses fully supported the version of R1 and the allegation leveled in the complaint petition and this aspect of the matter was not considered by the learned Court below and the learned court below dismissed the complaint			
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petition in a mechanical way. It was stated also that Apex Court as well as several Hon'ble Court hold that at the time of taking cognizance court has to see prima facie material available on the records not to see the merit of the case and the learned court below did not consider the verdict of the Apex Court as well as Hon'ble Courts and dismissed the complaint petition in a routine way and without applying judicial mind hence the order of dismissal of complaint case by the learned court below was bad in law as well as fact. It was prayed to set aside the dismissal order.

3. Learned PP on behalf of the OP 1 and the Learned CLADCS on behalf of OP 2 submitted that there was no illegality and irregularity in the impugned order and prayed to reject the revision.

Point for determination

4. The main point for determination before me is whether the order dated 23/02/2023 passed by Learned JMFC Darbhanga suffers from any incorrectness, illegality or impropriety and it requires interference by this Court or not ?

Finding

5. It would be beneficial to have a look over the complaint case.

R1 is a bank employee while OP 2 is a teacher and both have had good relationship. OP2 offered to sale his land and R1 transferred Rs. 10,00,000/- out of his bank account to OP2 on different dates. On 06/07/2021 OP 2 sent Rs. 125000- from the bank account of his second wife. Thereafter OP 2 refused to sell his land and house on the ground of dispute between his both wives. On 10/03/2022, OP 2 assured of returning money, but didn't do so on one pretext or the other. R1 issued legal notice to OP 2 which was not received while the reply of second notice was unsatisfactory. Again a meeting took place wherein OP 2 assured of returning money by 10/07/2022 but didn't do so.

Proceedings before the Learned Trial Court

6. An Enquiry was initiated on the basis of the complaint. The complainant got himself and three inquiry witnesses Ram Bihari Sinha, Mohammad Hussain and Susheel Paswan examined in the case. The case was dismissed vide order dated 23/02/2023 under section 203 CRPC.

Decision and the reasons for the Decision

7. It would be important to have a look over some relevant provisions of law

governing Enquiry.

1. Section 200 of the Code of Criminal Procedure - Examination of complainant.
—A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate: Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-
 - (a) if a public servant acting or- purporting to act in the discharge of his official duties or a Court has made the complaint; or
 - (b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under section 192: Provided further that if the Magistrate makes over the case to another Magistrate under section 192 after examining the complainant and the witnesses, the latter Magistrate need not re- examine them.
2. Section 202 of the Code of Criminal Procedure - Postponement of issue of process.—(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding: Provided that no such direction for investigation shall be made,--
 - (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or
 - (b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under section 200.

(2) In an inquiry under sub- section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath: Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub- section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer- in- charge of a police station except the power to arrest without warrant.
3. Section 203 of the Code of Criminal Procedure - Dismissal of complaint. If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for

proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing

4. Section 204 of the Code of Criminal Procedure - Issue of process.—(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-
- (a) a summons- case, he shall issue his summons for the attendance of the accused, or
- (b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

8. Section 398 of the Code of Criminal Procedure - Power to order inquiry. On examining any record under section 397 or otherwise, the High Court or the Sessions Judge may direct the Chief Judicial Magistrate by himself or by any of the Magistrate subordinate to him to make, and the Chief Judicial Magistrate may himself make or direct any subordinate Magistrate to make, further inquiry into any complaint which has been dismissed under section 203 or sub- section (4) of section 204, or into the case of any person accused of an offence who has been discharged: Provided that no Court shall make any direction under this section for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made.

9. The relevant portion of the impugned order is reproduced below

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After going through the nature of allegation, this complaint is related to an oral agreement to sell. Hon'ble Supreme Court in Alpice Finance Ltd. v. P. Sadasivan, (2001) 3 SCC 513 held as follows:

“10. The facts in the present case have to be appreciated in the light of the various decisions of this Court. When somebody suffers injury to his person, property or reputation, he may have remedies both under civil and criminal law. The injury alleged may form the basis of civil claim and may also constitute the ingredients of some crime punishable under criminal law. When there is dispute between the parties arising out of a transaction involving passing of valuable properties between them, the aggrieved person may have a right to sue for damages or compensation and at the same time, law permits the victim to proceed against the wrongdoer for having committed an offence of criminal breach of trust or cheating. Here the main offence alleged by the appellant is that the respondents committed the offence under Section 420 IPC and the case of the appellant is that the respondents have cheated him and thereby dishonestly induced him to deliver property. To deceive is to induce a man to believe that a thing is true which is false and which the person practising the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. There is no allegation that the respondents made any willful misrepresentation. Even according to the appellant, the parties entered into a valid lease agreement and the grievance of the appellant is that the respondents failed to discharge their contractual obligations. In the complaint, there is no allegation that there was fraud or dishonest inducement on the part of the respondents and thereby the respondents parted with the property. It is trite law and common sense that an honest man entering into a contract is deemed to represent that he has the present intention of carrying it out but if, having accepted the pecuniary advantage involved in the transaction, he fails to pay his debt, he does not necessarily evade the debt by deception.”

Further, by an analysis of the terms and conditions of the agreement between the parties, the dispute

between the parties appears to be purely of civil nature. It is a settled legal proposition that criminal liability should not be imposed in disputes of civil nature. In Anil Mahajan v. Bhor Industries Ltd. Hon'ble Supreme Court held: "A distinction has to be kept in mind between mere breach of contract and the offence of cheating. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent, dishonest intention is shown at the beginning of the transaction." In the present case also, it is admission of the complaint that despite the dispute, the accused had returned an amount of Rs. 1,25,000/-. This conduct of the accused shows that he has no intention to cheat or commit fraud against the complainant.

Thus taking into account all the discussions, facts and circumstances of this case, it is clear that the materials available on record does not disclose any material to summon the accused persons and this court find that there is no sufficient ground for proceeding in this case against the accused persons. The present proceeding will be a gross abuse of the process of the law if proceeded.

Hence, The complaint petition is hereby dismissed under Section 203 of the Code of Criminal Procedure.

10. In the case of Chandra Deo Singh vs. Prokash Chandra Bose¹, Hon'ble Apex Court held that "No doubt, one of the objects behind the provisions of s. 202, Cr.P.C. is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. . . "
11. In the case of Smt. Nagawwa v. Veeranna Shivalingappa Konjalgi². Hon'ble Apex Court lays down that the scope of the inquiry under Sections 202 of the Codes of Criminal Procedure is extremely limited--limited only to the ascertainment of the truth or falsehood, of the allegations made in the complaint on the materials placed by the complaint before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all advert to any defence that the accused may have..."
12. The Hon'ble Supreme Court in the case of Birla Corporation Limited vs. Adventz Investments and Holdings Limited³ observed "27. The scope of enquiry under this Section is extremely restricted only to finding out the truth or otherwise of the allegations made in the complaint in order to determine whether process should be issued or not Under Section 204 Code of Criminal Procedure or whether the complaint should be dismissed by resorting to Section 203 Code of Criminal Procedure on the footing that there is no sufficient ground for proceeding on the basis of the statements of the Complainant and of his witnesses, if any. . . "

1 AIR 1963 SC 1430
2 (1976) 3 SCC 736
3 (2019) 16 SCC 610

13. A perusal of the decided cases suggests that the judicial view on the purpose of the enquiry as stipulated under section 200 and 202 of the CrPC is almost crystallized. And the view is that the enquiry u/s 202 of the CrPC is for the limited purpose to find the truthfulness or otherwise of the allegations made in the complaint, either, oral or written. The basic purpose of the inquiry is to ascertain and find out from the material submitted before the Court whether there is sufficient material to summon the accused. The purpose of the inquiry is also to ensure that the liberty of an individual is not lightly interfered and that the innocents are not harassed unnecessarily. The examination of the complainant and his witnesses, and also the provision to make an inquiry by other authority is a tool in the hand of the magistrate to ensure that false and vexatious proceedings are not carried any further.
14. Hon'ble Apex Court has held in a catena of cases⁴ and Hon'ble High Court of Judicature at Darbhanga in a case⁵ that the object of Section 202 CRPC was to enable the magistrate to scrutinize the allegations in a complaint petition carefully with a view to prevent summoning of an innocent person.
15. Rule 31 of the Criminal Court Rules of the High Court of Judicature at Patna VOLUME I envisages that the examination of the complainant and the witnesses present, if any, is not to be a mere form, but an intelligent enquiry into the subject-matter of the complaint carried far enough to enable the Magistrate to exercise his judgment as to whether there is or is not sufficient ground for proceeding.
16. It is trite law that a transaction may give rise to both Civil and Criminal prosecution. Particularly when the dispute involves transfer of value as consideration for some immovable property. According to section 420 IPC, to deceive is to induce a man to believe that a thing is true which is false and which the person practicing the deceit knows or believes to be false. It must also be shown that there existed a fraudulent and dishonest intention at the time of commission of the offence. In the instant case, there is no allegation that OP 2 made any willful misrepresentation since inception. R1 admitted that there was a mere oral agreement for sale of land on consideration of Rs. 3000000/- and he transferred cumulatively Rs. 1000000/- to OP 2. It is also an admitted fact that Rs. 125000/- was returned by OP 2 wife. R1 stated of sale of some land, but the entire complaint petition, the statements of the complainant and the witnesses as well as the legal notice do not disclose the particular details like Khata, Kesara, Area and Situation of the land which OP 2 proposed to sale to him. R1 stated about the second legal notice, but again the date was not mentioned when it was issued. R1 stated about a meeting, but the date, time and the persons present in the meeting was not deciphered. Except the vague, unclear allegation,

⁴ Subrata Roy Sahara vs Union of India , Pepsi case, Punjab National Bank case
⁵ P. C.Garg vs State of Bihar .

nothing is on record which could indicate towards OP 2 intention of deception since inception.

17. On perusal of the impugned order and its juxtaposition with the materials available on record, it appears that the Learned Magistrate rightly hold that the ingredients of the alleged offences are not present and furthermore the case is of civil nature. It is clear that a transaction related dispute has been unsuccessfully given a cloak of criminal offence with vague allegation. The Learned JMFC thus rightly dismissed the complaint petition.

18. In light of the above discussion, I find that the order of Dismissal of complaint dated 23/02/2023 passed by Learned JMFC Darbhanga under section 203 CRPC in Complaint case 899/2022 is absolutely legal, proper and correct. Hereinafter order is passed.

Order

19. In light of this finding reached above, following orders are passed

1. Let this Criminal Revision be and the same is dismissed.
2. Parties to bear their own cost.
3. Let the case record of the Criminal Revision be deposited in the Record Room or any other specified place in accordance with law and rules, but after all due diligence.

Judgment pronounced by me in Hindi in open Court Neeraj Kumar II Additional Sessions Judge I Darbhanga The 05 th day of August, 2026	Written and corrected by me Neeraj Kumar II Additional Sessions Judge I Darbhanga The 05 th day of August, 2026
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Date of Judgment/Order	05.08.2026
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