

**In the Court of Additional Sessions Judge-II,
Danapur, District-Patna, Bihar.**

**Present :- Kshiprachala Anjalee,
Addl. Sessions Judge-II, Danapur.**

Danapur, dated 24th August' 2026

Criminal Revision No. 524 of 2024

(This Criminal Revision is directed against the order dated 05-12-2023, passed by the then learned Additional Chief Judicial Magistrate II, Danapur, in Complaint Case No. 1514(C) of 2023)

In the matter of,

1.Binod Kumar, Son of Late Sri Chotu Sharma, Resident of Flat No. 501, Parijat Complex, Frazer Road, Dak Bunglow Road, P.S.-Kotwali, District-Patna. ... Petitioner/Revisionist

Versus.

1.The State of Bihar

2. Rajeev Kumar Sharma, Son of Late Ram Janam Sharma, Resident of West Lohanipur, Parmeshwar Singh Lane, P.S.-Kadamkuan, District-Patna, PIN-800003.Opp. Parties

**Learned counsel for the Revisionists:- Sri Anil Kumar, Advocate
Learned counsel for the Opp. Party No.1:-Sri Ramkeshwar Prasad,
Addl. P.P.**

**Learned counsel for the Opp.Party No.2:-Sri Abhiram Kumar,
Advocate**

ORDER

1. The present criminal revision has been preferred by the petitioner/revisionist against the order dated 05.12.2023 passed by the learned A.C.J.M.-II, Danapur, in Complaint Case No.1514(C) of 2023, whereby and whereunder the learned Court below has taken cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code and Section 138 of the Negotiable

Instruments Act, 1881, against all the three accused persons including the present petitioner.

2. The petitioner has challenged the aforesaid order mainly on the grounds that the learned Court below has failed to properly appreciate the complaint petition, the statement of the complainant on solemn affirmation and the inquiry evidence; that there was no sufficient material against the petitioner; that the learned Court below has not applied its judicial mind; and that the order taking cognizance and issuance of process has been passed mechanically and suffers from illegality, irregularity and impropriety.
3. Learned counsel for the petitioner has submitted that the allegations contained in the complaint do not constitute the offences alleged against the petitioner and that the dispute, in substance, arises out of a transaction relating to sale of immovable property. It has further been argued that the ingredients of Sections 406 and 420 of the I.P.C. as well as Section 138 of the Negotiable Instruments Act are not made out against the petitioner. It has, accordingly, been prayed that the impugned order be set aside so far as the present petitioner is concerned
4. Learned Addl. P.P. for the State and learned counsel appearing for opposite party no.2 have opposed the revision petition. It has been submitted that the learned Court below, after considering the complaint petition, the statement of the complainant, the inquiry witness and the documents available on record, has rightly taken cognizance against all the accused persons. It has further been submitted that the disputed questions raised by the petitioner are

matters which can appropriately be considered during trial and there is no justification for interference in revisional jurisdiction at this stage.

5. Learned counsel for opposite party no.2 has further submitted that an earlier Criminal Revision No.297 of 2024 had been preferred on behalf of accused Aparna Bhattacharya and others against the same order dated 05.12.2023, and the said revision petition was dismissed by the learned Court of D.A.S.J.-III, Danapur. It has thus been submitted that there is no occasion for this Court to take a different view in the matter in the absence of any exceptional circumstance.
6. Heard the learned counsel for the parties and perused the Lower Court Record as well as the impugned order. From perusal of the record, it appears that the complainant initially filed Complaint Case No.1514(C) of 2023, which was transferred to the Court of learned A.C.J.M.-II, Danapur, under Section 192(2) of the Cr.P.C. for inquiry, trial and disposal. The substance of the complaint case is that the complainant intended to purchase a residential plot for his physically handicapped daughter, namely, Sangam Kumari. It has been alleged that in April, 2021, the complainant came in contact with the accused persons in connection with purchase of a plot measuring about 1050 sq. ft., bearing Plot No.483, Khata No.82, Thana No.179 and 54, situated at Mauza-Khalilpura, P.S.-Phulwarisharif, District-Patna. It is alleged that the complainant agreed to purchase the said land and thereafter a written agreement was executed in favour of his daughter. Subsequently, the entire consideration amount was paid and a registered sale deed bearing Deed No.11483 dated 06.09.2021 was executed in favour of Sangam

Kumari. It is further alleged that her name was mutated in the revenue records.

The further allegation is that when the complainant subsequently went to the land for taking possession and measurement/demarcation was undertaken, one Ganesh Kumar appeared and claimed the land to be his property and produced documents in support of his claim. It is alleged that thereafter the accused persons assured the complainant that the matter would be managed with Ganesh Kumar, but possession could not be delivered.

It is further alleged that thereafter the accused persons agreed to return a sum of Rs.51 lakhs to the complainant. According to the complaint, different amounts were subsequently returned, including payments made by accused Binod Kumar and Raj Kumar Pandey, totalling Rs.19.50 lakhs. For the remaining amount, a cheque was allegedly issued by accused Raj Kumar Pandey, which, upon presentation, was dishonoured for insufficiency of funds. Thereafter, a statutory legal notice was issued, but the amount was not paid.

7. The learned Court below recorded the statement of the complainant on solemn affirmation on 22.11.2023 and examined the inquiry witness Sangam Kumari on 24.11.2023. The complainant also brought several documents on record. Upon consideration of the materials available before it, the learned Court below found sufficient ground to proceed against all the three accused persons and took cognizance under Sections 406 and 420 of the I.P.C. and Section 138 of the Negotiable Instruments Act.

8. At this stage, it is necessary to keep in view the limited scope of revisional jurisdiction. The revisional Court does not ordinarily undertake a meticulous appreciation of the evidence or conduct an examination as would be undertaken at the stage of trial. **The Hon'ble Supreme Court in Pepsi Foods Ltd. & Anr. v. Special Judicial Magistrate & Ors., (1998) 5 SCC 749**, has observed that summoning of an accused is a serious matter and the Magistrate is required to apply his mind to the allegations and the material placed before him. At the same time, the Court at the stage of issuance of process is not required to conduct a detailed appreciation of evidence or determine whether the prosecution will ultimately result in conviction. In **S.W. Palanitkar & Ors. v. State of Bihar & Anr., (2002) 1 SCC 241**, the **Hon'ble Supreme Court** reiterated that the Court has to examine whether the allegations, taken at their face value, disclose the ingredients of the alleged offences. However, disputed questions of fact and the ultimate truthfulness of the allegations are ordinarily matters for trial. The Hon'ble Supreme Court has consistently held that at the stage of taking cognizance or issuing process, the Court is required to ascertain whether there is sufficient ground for proceeding and is not required to conduct a mini-trial.
9. The petitioner has raised several contentions regarding the absence of ingredients of Sections 406 and 420 of the I.P.C. It has also been argued that the transaction is essentially civil in nature and that the liability under Section 138 of the Negotiable Instruments Act cannot be fastened upon the petitioner. These contentions cannot, at this stage, be examined by this Court in the manner suggested by the petitioner. The complaint contains specific allegations concerning the

representation made by the accused persons regarding the ownership of the land, execution of the registered sale deed, non-delivery of possession, subsequent assurance regarding settlement of the dispute and the alleged agreement for refund of the consideration amount.

10.The complainant's statement on solemn affirmation and the statement of the inquiry witness are also available on record and the learned Magistrate has considered the materials before taking cognizance. Whether these allegations are ultimately proved by legally admissible evidence, whether the petitioner had the requisite dishonest intention, whether there was entrustment within the meaning of Section 405 of the I.P.C., whether the alleged liability was legally enforceable and whether the statutory requirements of Section 138 of the Negotiable Instruments Act have been duly complied with are matters which may appropriately be considered on the basis of evidence during trial.

11.It is also significant that an earlier Criminal Revision No.297 of 2024, preferred on behalf of accused Aparna Bhattacharya and others against the same order dated 05.12.2023, has already been considered and dismissed by the learned Court of D.A.S.J.-III, Danapur. Though the said order does not, by itself, bar the present revision, the fact remains that the legality of the order taking cognizance has already been examined in revisional jurisdiction in relation to the same complaint proceeding. In the present revision also, no such exceptional circumstance or manifest illegality has been brought to the notice of this Court which may warrant a different conclusion.

12. This Court is conscious that the revisional jurisdiction is available to correct patent illegality, jurisdictional error or material irregularity. However, such jurisdiction is not intended to substitute the revisional Court's assessment of disputed facts for the assessment which is to be undertaken by the trial Court on the basis of evidence. In the present case, the learned Magistrate had before him the complaint petition, the statement of the complainant on solemn affirmation, the inquiry evidence and the documents produced on behalf of the complainant. Upon consideration thereof, the learned Magistrate found sufficient ground to proceed against all the three accused persons under Sections 406 and 420 of the I.P.C. and Section 138 of the Negotiable Instruments Act.

13. At this stage, this Court does not find the impugned order to be suffering from such illegality, impropriety or material irregularity as would warrant interference in exercise of revisional jurisdiction. It is made clear that this Court has not expressed any final opinion on the merits of the allegations or on the ultimate applicability of Sections 406 and 420 of the I.P.C. and Section 138 of the Negotiable Instruments Act to the petitioner.

14. The petitioner/accused shall have full liberty to raise all such legal and factual grounds before the learned trial Court at the appropriate stage of the proceeding. The petitioner shall also be at liberty to challenge the prosecution evidence, dispute the alleged entrustment or inducement, question the existence and enforceability of the alleged liability and raise all other available defences in accordance with law. The learned trial Court shall consider such contentions

independently on the basis of the evidence adduced before it, without being prejudiced by any observation contained in this order.

15. Accordingly, **this Court finds no sufficient ground to interfere with the impugned order dated 05.12.2023 passed by the learned A.C.J.M.-II, Danapur, in Complaint Case No.1514(C) of 2023. Accordingly, the present Criminal Revision No.524 of 2024 is hereby dismissed.**

16. Let a copy of this order be sent to the learned trial Court along with the Trial Court Record for information and necessary action. The office is directed to comply with the necessary formalities and thereafter deposit the record in the record room as per rules. A copy of this order be uploaded on the CIS.

(Dictated & corrected by me)

(Dictated)

**(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur
Dated 24-08-2026**

**(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur
Dated 24-08-2026**