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

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

Danapur, dated 10th August' 2026

Criminal Revision No. 626 of 2024

(This Criminal Revision is directed against the order dated 17-08-2024, passed by Ms. Tulika Shankar, the then learned Judicial Magistrate Second Class, Danapur, in Complaint Case No. 505 (C) 2024.)

In the matter of,

1.Pankaj Kumar, S/O Late Ayodhaya Prasad, R/O Patut, PS-Ranitalab, District-Patna

.... Petitioner

Versus.

1.The State of Bihar .... Opp. Party

Learned counsel for the Revisionist:- Sri Biresh Kumar,
Learned Advocate
Learned counsel for the Opp. Party No.1:-Sri Ramkeshwar Prasad,
Addl. P.P.

O R D E R.

1. Attendance has been filed on behalf of revisionist and opposite party. Record has been put up for hearing. Parties have been heard at length. Hence the order.

2. The present criminal revision has been preferred by the petitioner under Sections 397 and 401 of the Code of Criminal Procedure, 1973, against the order dated 17.08.2024 passed by the learned Judicial

Magistrate 2nd Class, Danapur, in Complaint Case No. 505(C)/2024, whereby the complaint petition filed by the petitioner alleging offences punishable under Sections 406, 420, 504 and 506 of the Indian Penal Code has been dismissed under Section 203 Cr.P.C.

3. Heard learned counsel for the petitioner and learned APP for the State. The lower court record has been perused.

Facts of the case

4. The case of the complainant, in brief, is that he is running a shop in the name and style of Global Infotech at Patut. According to the complainant, accused Chaturanand Pathak @ Jhunjhun Pathak used to visit his shop and, during the course of such dealings, the complainant and the accused persons entered into an oral arrangement whereby the accused persons agreed to supply electronic/computer parts to the complainant. It is alleged that in connection with the said transaction, the complainant initially issued two cheques bearing Nos. 599527 and 599528, each for Rs.3,00,000/-, total Rs.6,00,000/-. According to the complainant, the cheques were not encashed because of an error in the name mentioned therein. The complainant has further alleged that thereafter the accused persons repeatedly requested him to make payment in cash. However, instead of making payment in cash, the complainant allegedly paid the amount through banking channels. It is alleged that Rs.50,000/- was paid through online transfer on 13.07.2023 and Rs.2,50,000/- was credited in the account of Vinay Kumar Chaudhary on 13.07.2023 and 14.07.2023. It is further alleged that Rs.3,00,000/- had been paid to Vinay Kumar Chaudhary on 17.06.2023. he complainant alleges that after receiving the

aforesaid amount, the accused persons assured him that the electronic/computer parts would be supplied. The complainant waited for approximately one and a half months, but the goods were not supplied.

It is further alleged that when the complainant contacted the accused persons, he was informed that the delivery would be dispatched in October, 2023. Even after October, when the goods were not supplied, the accused persons allegedly assured the complainant that delivery would be made after Dussehra/Chhath Puja. According to the complainant, even after the festivals had passed, neither were the goods supplied nor was the money returned. When the complainant demanded refund, the accused persons allegedly continued to assure him that the goods would be supplied shortly. It is further alleged that accused Chaturanand Pathak furnished photocopies of his PAN Card and Aadhaar Card to demonstrate his readiness and bona fide intention.

The complainant further alleges that despite repeated approaches, the accused persons continued to postpone the delivery. Ultimately, the complainant came to the conclusion that he had been cheated and caused legal notices to be issued to the accused persons. It is alleged that accused Chaturanand Pathak stated that he was out of station on business and could not receive the notice, whereas accused Kedarnath Pathak replied to the legal notice. On these allegations, the complaint was instituted alleging commission of offences under Sections 406, 420, 504 and 506 IPC.

5. The complainant was examined on solemn affirmation under Section 200 Cr.P.C. and two enquiry witnesses, namely Upendra Kumar and

Raviranjan Kumar, were examined under Section 202 Cr.P.C.

6. By the impugned order dated 17.08.2024, the learned Magistrate dismissed the complaint under Section 203 Cr.P.C. The learned Magistrate primarily proceeded on the reasoning that the transaction between the parties was of a civil nature and that the complainant had failed to demonstrate dishonest intention from the inception of the transaction.

<u>Submissions</u>

7. Learned counsel for the petitioner submits that the learned Magistrate has failed to appreciate the allegations and materials available on record in their proper perspective. It is submitted that the parties admittedly entered into an arrangement for supply of computer/electronic parts; money was actually paid through banking channels; the accused persons neither supplied the goods nor returned the money; repeated assurances were given regarding delivery; and even after issuance of legal notice, the money was not returned. It is further submitted that the learned Magistrate committed an error in treating the dispute as purely civil merely because the transaction was commercial in nature. According to learned counsel, the circumstances emerging from the complaint and the evidence prima facie disclose dishonest conduct on the part of the accused persons and, at the very least, warrant issuance of process and examination of the matter in accordance with law.

<u>Point for determination</u>

8. The following point arises for determination:
    - Whether the learned Magistrate was justified in dismissing the complaint under Section 203 Cr.P.C. by

holding that the dispute was purely civil in nature, or whether the materials on record disclose sufficient grounds for proceeding against the accused persons, particularly for the offence of cheating under Section 420 IPC?

Discussion

9. The revisional jurisdiction under Sections 397 and 401 Cr.P.C. is supervisory in nature. The Revisional Court ordinarily does not undertake a detailed appreciation of evidence as would be required at the stage of trial. However, where the Magistrate has failed to consider relevant materials or has applied an erroneous legal principle resulting in premature termination of the complaint, interference in revision is justified. At the stage of Section 203 Cr.P.C., the Magistrate is required to consider the complaint, the statement of the complainant, the statements of witnesses examined under Section 202 Cr.P.C. and the result of the inquiry, if any, and determine whether there is sufficient ground for proceeding. At this stage, the Court is not required to determine whether the prosecution will ultimately succeed. The Court has only to examine whether the allegations and materials disclose a prima facie case or sufficient ground for proceeding.

10. It is undoubtedly correct that every breach of contract does not constitute cheating. The distinction between a mere breach of contractual obligation and the offence of cheating has been explained by the **Hon'ble Supreme Court in Hridaya Rangan Prasad Verma & Ors. v. State of Bihar & Anr., (2000) 4 SCC 168**, wherein it was held that dishonest or fraudulent intention must

exist at the inception of the transaction for constituting cheating.

The said principle is well settled and there can be no quarrel with it. However, the principle does not mean that the Court, at the stage of Section 203 Cr.P.C., must demand direct or conclusive proof of the accused's state of mind at the inception. Intention is ordinarily a matter of inference from the surrounding circumstances and conduct of the parties.

11. In the present case, there are circumstances which require consideration and cannot be brushed aside merely by describing the transaction as a civil dispute. Admittedly, as per the complainant's case, there was an oral arrangement between the parties for supply of computer/electronic parts. It is further alleged that money was paid by the complainant through banking channels. Thus, the transaction is not merely a vague assertion of payment; the complaint refers to particular amounts and particular modes and dates of payment. More importantly, the complainant alleges that despite receiving the money, the accused persons neither supplied the agreed computer/electronic parts nor returned the money.

The subsequent conduct alleged by the complainant is also relevant. It is not a case where the accused persons simply failed to make delivery on one occasion. The allegation is that after receiving the money, they repeatedly represented that the goods would be supplied in October, 2023; thereafter the delivery was allegedly postponed until after Dussehra/Chhath Puja; thereafter, despite the festivals having passed, the complainant was again assured that the goods would shortly be supplied. It is further alleged that when the complainant demanded return of his money, the accused persons did not refund the amount but continued to postpone the matter by giving assurances regarding delivery. Thus, the allegation is of a continuing course of conduct: receipt of money → non-supply of goods → repeated assurances of imminent delivery → failure to deliver → demand for refund → failure to refund → issuance of legal notice → continued non-payment. Primarily these conducts themselves are sufficient to show, that the accused persons had dishonest intention at the inception. These circumstances are relevant for drawing an inference regarding the intention of the accused persons and, therefore, cannot be discarded merely on the ground that the original transaction was commercial. The learned Magistrate has placed considerable emphasis upon the fact that the complainant voluntarily made payment. In the opinion of this Court, such reasoning, by itself, does not negative the allegation of cheating. In an offence of cheating, the alleged victim ordinarily parts with his property voluntarily, but does so because of the alleged deception or dishonest inducement. Therefore, the fact that payment was voluntarily made is not determinative of the absence of cheating.

12. Similarly, the fact that the parties had an oral agreement for supply of goods does not by itself make the matter exclusively civil. A contractual or commercial transaction may give rise to civil consequences as well as criminal liability, provided the ingredients of a criminal offence are otherwise disclosed. The Hon'ble Supreme Court has repeatedly held that the mere availability of a civil remedy is not an absolute bar to criminal proceedings. What has to be examined is whether the allegations disclose the ingredients of the alleged criminal offence. Where the factual foundation of a

criminal offence exists, the accused cannot claim immunity merely because the same transaction may also give rise to a civil remedy. In **Indian Oil Corporation v. NEPC India Ltd. & Ors., (2006) 6 SCC 736, the Hon'ble Supreme Court** cautioned against the tendency of converting purely civil disputes into criminal cases, but at the same time recognized that the existence of a civil remedy does not by itself constitute a ground for quashing criminal proceedings where the allegations disclose a criminal offence. Similarly, in **M. Suresh Kumar v. State of Andhra Pradesh,(2018) 15 SCC 273 the Supreme Court** has reiterated that the mere fact that a dispute has a civil complexion does not automatically exclude criminality where the ingredients of the criminal offence are otherwise made out.

In the present case, the question is not whether the complainant has a remedy by way of a money suit. Undoubtedly, such remedy may be available to him. The question is whether the existence of that remedy extinguishes the alleged criminal liability. The answer must be in the negative if the allegations, taken at their face value, disclose the ingredients of an offence. The learned Magistrate has relied upon **Hridaya Rangan Prasad Verma (supra).** The proposition laid down in that judgment is undoubtedly applicable. However, the said judgment does not lay down that subsequent conduct is wholly irrelevant while considering dishonest intention. Rather, the intention of a person has to be gathered from the facts and circumstances of each case.

13. In the present case, the repeated representations regarding delivery, despite the alleged receipt of the entire consideration, followed by

failure to deliver the goods and failure to refund the money even after demand, constitute circumstances which, at the preliminary stage, cannot be said to be wholly irrelevant to the question of dishonest intention. The learned Magistrate was therefore required to examine whether these circumstances, cumulatively considered, disclosed sufficient ground for proceeding against the accused. Instead, the complaint has been dismissed primarily on the premise that the transaction is civil in nature. This Court is of the view that such an approach is premature. Whether the accused persons genuinely intended to supply the computer parts but subsequently failed due to some reason, or whether the representation regarding supply was dishonest from the beginning, is a matter requiring appreciation of the evidence and surrounding circumstances. At this stage, this Court is not recording a finding that the accused persons are guilty of cheating. Equally, this Court is not required to record a finding that the accused persons necessarily had dishonest intention at inception. The limited finding is that the materials on record disclose circumstances sufficient to warrant further proceedings and that the complaint could not have been dismissed merely by labelling the transaction as civil.

Section 406 IPC

14. So far as Section 406 IPC is concerned, the position is somewhat different. The offence of criminal breach of trust requires the essential element of entrustment and subsequent dishonest misappropriation or conversion of the entrusted property. From the allegations presently available, the payment appears to have been made pursuant to an arrangement for purchase/supply of computer parts. Whether such payment constitutes entrustment within the

meaning of Section 405 IPC would require examination of the exact nature of the transaction and the evidence. Therefore, at this stage, this Court does not consider it appropriate to record any final conclusion regarding Section 406 IPC. The learned Magistrate, while considering the matter afresh, shall independently examine whether the ingredients of Section 406 IPC are disclosed.

Sections 504 and 506 IPC

15. Likewise, the allegations relating to Sections 504 and 506 IPC shall be examined independently by the learned Magistrate on the basis of the actual averments and materials on record. This Court is not expressing any final opinion regarding those offences.

<u>Finding</u>

16. On an overall consideration of the complaint, the solemn affirmation of the complainant, the statements of the enquiry witnesses and the allegations regarding the actual payment of money through banking channels, non-supply of the goods, repeated assurances, demand for refund, non-refund and the subsequent conduct of the accused persons, this Court finds that the matter could not have been terminated at the threshold merely by characterizing it as a civil dispute.

17. It is true that the transaction has a civil/commercial complexion and the complainant may also have a remedy for recovery of money. However, civil liability and criminal liability are not mutually exclusive. The existence of a civil remedy does not absolve the Court from examining whether the same factual transaction also prima facie discloses a criminal offence. The learned Magistrate has,

therefore, erred in applying the principle relating to breach of contract in a manner which resulted in a premature conclusion that no criminal proceeding could arise from the transaction. The impugned order dated 17.08.2024, therefore, suffers from an error of approach and warrants interference in revisional jurisdiction.

ORDER

18. Accordingly, **the present criminal revision is allowed. The order dated 17.08.2024 passed by the learned Judicial Magistrate 2nd Class, Danapur, in Complaint Case No. 505(C)/2024, whereby the complaint petition was dismissed under Section 203 Cr.P.C., is hereby set aside. The matter is remitted to the learned Magistrate concerned for fresh consideration from the stage at which the complaint was dismissed. The learned Magistrate shall consider afresh the complaint petition, the statement of the complainant recorded under Section 200 Cr.P.C., the statements of the enquiry witnesses recorded under Section 202 Cr.P.C. and all other materials available on the record and shall pass an appropriate and reasoned order in accordance with law regarding issuance of process.**

It is made clear that this Court has not recorded any finding that the accused persons are guilty of the offences alleged. The observations made herein are confined to the question whether the complaint could have been dismissed under Section 203 Cr.P.C. solely on the ground that the transaction was civil in nature. The learned Magistrate shall independently examine the ingredients of Sections 406, 420, 504 and 506 IPC and shall not be influenced by any observation made in this revisional order.

19. Let the lower court record be returned to the court concerned forthwith along with a copy of this order.

(Dictated & corrected by me) **(Dictated)**

(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur.
Dated 10-08-2026.

(Kshiprachala Anjalee)
Additional Sessions Judge-II,
Danapur.
Dated 10-08-2026