

**IN THE COURT OF SRI MRINAL ARYAN
JUDICIAL MAGISTRATE FIRST CLASS, JAMUI**

Complaint Case No.: -259 C/24

ORDER U/S 203 Crpc

Date	Description	Remark
10/12/2024	Case is called out. Complainant has filed pairvi. The record was put up today for order on the point of issue of summons. Heard the learned counsel for the complainant on the point of issuance of summon on dated 18.10.24 and perused the complaint petition, the S.A. of the complainant, and testimony of inquiry witnesses. The case is running for Summoning order. Perused the case record. On perusal of the case record it transpires that a complaint petition has been filed on behalf of complainant under section- 420, 467, 468, 471, 120B of IPC against four accused persons: 1. Sushil Singh, 2. Bipin Singh, 3. Sudhanshu Kumar, 4. Monu Kumar Singh. The complainant in Complaint petition has stated that the land bearing (Khata No- 56, Khasra No- 477, Rakba- 1 acre 8 dec.) AND (Khata No- 57, Khasra No- 428, 712, 722, 794, 795, 796, 1789, 1813, 1819, 1834, 1333, 1341, 1540, 1542, 466, 1115 total Rakba- 2 acre 244.5 dec.) is in the name of Complainant and his three brothers. That on 15.02.2024 Sushil Singh and Bipin Singh by committing forgery sold 08 dec. land from (Khata No- 56, Khasra No- 477). The complainant has been examined on S.A on Oath wherein he has stated that Sushil Singh and Bipin Singh by committing forgery sold 16 dec. land from (Khata No- 56, Khasra No- 477). He has also submitted that on petition in CO Office the mutation of aforesaid land is stayed. The complainant has stated that he came to know about the said fraud when he had gone to Registry Office, Jamui for some work. The complainant has also submitted that he had made an application in this regard in SP Office Jamui but no action was taken. This court finds that the complainant apart from her Solemn affirmation on Oath, has adduced three Inquiry witnesses namely, 1. Pawan Kumar Singh, 2. Nepali Singh, 3. Mahesh Prasad Singh. This court also finds that all the Inquiry witnesses have supported the Complainants story in their own way. It is to be noted that Section 467 is attracted when someone forges a document that pretends to be a valuable security, will, adoption authority, or any authorization for financial transactions or property exchanges. And Section 468 is attracted when a person commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating And Section 471 is attracted when a person fraudulently or dishonestly uses as genuine any [document or electronic record] which he knows or has reason to believe to be a forged. <u>However, it is to be noted</u>	

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that Forgery is sine-qua-non of offences under sections 467, 468 and 471 IPC. Section 195 Crpc is a limitation on cognizance taking power of the court and Section 195(1)(b)(ii) Crpc clearly bars the court from taking cognizance of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, unless there is a complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate. Since there is no such complaint by any court/officer thus summoning order under sections 467, 468, 471 of IPC is not taken. Furthermore, **Section 420** IPC deals with the offense of cheating. It is invoked when a person cheats or dishonestly induces another person to deliver property or commit an act based on fraudulent representations or deceit. Section 420 and 468 are overlapping sections. Both sections require the intent to deceive or commit fraud. However, Section 468 specifically deals with the act of **forgery**, where the intention is to use a forged document or electronic record for cheating. In cases where forgery is the primary offense, Section 468 might be charged, and Section 420 might not be needed, as it would be considered a **lesser offense** in comparison to the more serious offense of forgery. Courts have occasionally recognized that where the act of forgery (covered by Section 468) is committed with the intention of defrauding someone, it can overshadow the application of Section 420. Courts may decide that the act of forging documents for fraudulent purposes is more severe and directly addresses the nature of the offense, thereby preferring Section 468 over Section 420.

In the case of **Ram Jas v State of Uttar Pradesh (1970)** the Apex Court laid the following elements as essential in constituting the offence of cheating-

1. Fraudulent or Dishonest inducement by the person deceiving, and
 2. The person deceived should be:
 - A. Induced to deliver the property to a person or consent that any person shall retain a property; or
 - B. The person deceived should be intentionally induced to do something or omit to do something that they would not have done in case they had not been deceived, and
 - C. In case of b), the act or omission of intentional inducement should be of a nature that is likely to cause or actually causes damage or harm to the person so induced. This damage may be to their body, mind, reputation or property.
- However, there is nothing on record to show that accused caused the Complainant to commit/omit any act or deliver/retain any property.

Lastly, it is worth noting that instant case is a case of civil nature and there is no official complaint in light of Section 468, 471 IPC. In the case of **In G. Sagar Suri vs. State of U.P., MANU/SC/0045/2000 : (2000) 2 SCC 636** the Court observed: "It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process, a criminal court has to exercise a great deal of caution. For the accused it is a serious matter."

Also In case: **Mitesh Kumar J. Shah vs. State of Karnataka, LL 2021 SC 592** the hon'ble apex court held that "a criminal colour cannot be given to a civil dispute merely to take advantage of a relatively quick relief granted in a criminal case in

Continued 10/12/2024	contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety.” Thus, in the given facts and circumstances, the court is not inclined to pass a summoning order and the Complaint is being dismissed under Section 203 of CrPC. O/C is directed to consign the record to the record room accordingly. Dictated  JMFC Jamui.	
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