A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 4969 of 2025

(A petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023.)

Madhab Bhutia & Anr. .... ***Petitioner (s)***

-versus-

State of Odisha & Anr. .... ***Opposite Party (s)***

Advocates appeared in the case through Hybrid Mode**:**

For Petitioner (s) : *Mr. B.S. Tripathy, Sr. Adv.*
Along with
Mr. A. Tripathy, Adv.

For Opposite Party (s) : *Mr. Tej Kumar, ASC*
(for O.P.1)
Mr. Subrat Sarangi, Adv.
(for O.P.2)

CORAM:
DR. JUSTICE SANJEEB K PANIGRAHI

DATE OF HEARING:-09.02.2025
DATE OF JUDGMENT:-27.02.2026

Dr. Sanjeeb K Panigrahi, J.

1. The petitioners, in the present petition, seek quashing of the impugned FIR in Talcher P.S. Case No.1042, dated 25.09.2025, registered under Sections 420 and 34 of the Indian Penal Code against Nabakishore Sahoo, Ex-Senior Manager, Orissa Gramya Bank, Talcher Branch, along with the present petitioners, corresponding to G.R. Case No.1870 of 2025, now pending before the learned S.D.J.M., Talcher.

I. FACTUAL MATRIX OF THE CASE:

2. The brief facts of the case are as follows:

i. Pursuant to an application dated 23.01.2013, a housing loan to the tune of Rs. 15.00 lakhs was sanctioned in favour of the petitioners by Orissa Gramya Bank, Talcher Branch, vide sanction endorsement dated 28.12.2013. Out of the sanctioned amount, a sum of Rs. 9.00 lakhs was disbursed in phases during the period from 03.01.2014 to 19.08.2014 by crediting the amount to the savings bank account of petitioner No. 1. The petitioners state that against the disbursed amount of Rs. 9.00 lakhs, they made repayments in terms of the repayment schedule. According to them, deposits made between 30.10.2013 and 16.08.2021, aggregating to Rs. 10,20,000/-, have not been reflected or adjusted in the loan account.

ii. By letter dated 25.07.2024, the Bank called upon the petitioners to regularize the alleged default. In reply dated 16.08.2024 submitted through counsel, the petitioners disputed the disbursement entries of Rs. 3.00 lakhs on 28.03.2014, Rs. 2.00 lakhs on 28.04.2014 and Rs. 1.00 lakh on 29.05.2014, contending that the said amounts were not credited to the relevant account. They further asserted that various deposits made by them had not been adjusted towards the loan liability and expressed willingness to settle the account under a One Time Settlement after proper adjustment. The Bank submitted its reply on 21.08.2024.

iii. On 27.08.2024, the Bank issued a Possession Notice in respect of the mortgaged property.

iv. The petitioners thereafter filed WP(C) No. 4197 of 2025 seeking permission to settle the loan liability, which was withdrawn on 11.02.2025. Subsequently, WP(C) No. 11086 of 2025 was filed and is stated to be pending.

v. Subsequently, pre-litigation mediation being Proceeding No. 23 of 2025 was initiated before the High Court of Orissa Mediation Centre. The petitioners filed their objection contending that as against the disbursed loan amount of Rs. 9.00 lakhs, they had deposited Rs. 19,09,857/-, whereas the Bank reflected an outstanding of Rs. 13,63,474/-. They also alleged that certain payments were not accounted for and that interest and additional charges were recovered during the Covid-19 period. The mediation failed as per the failure report dated 10.09.2025.

vi. Thereafter, on the basis of a complaint lodged on 25.09.2025 at 4.30 P.M., Talcher P.S. Case No. 1042 dated 25.09.2025 was registered under Sections 420 and 34 of the I.P.C. against Nabakishore Sahoo, Ex-Senior Manager, Orissa Gramya Bank, Talcher Branch, along with the present petitioners, corresponding to G.R. Case No. 1870 of 2025, pending before the learned S.D.J.M., Talcher. The FIR alleges that the petitioners had availed the housing loan of Rs. 15.00 lakhs, that the loan was disbursed in phases without verification of end use, that construction was not initiated, and that the mortgaged property was sold to a third party without repayment of Bank dues and without prior intimation to the Bank.

vii. The petitioners have filed the present petition seeking quashing of the said FIR and the consequential criminal proceeding.

II. SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel for the petitioners made the following submissions in support of their contentions:

i. It was submitted that the entire criminal proceeding initiated against the petitioners amounts to an abuse of the process of law and has been instituted with an ulterior motive. According to learned counsel, the allegations made in the FIR are baseless and seek to give a criminal colour to a dispute which is essentially civil in nature arising out of a loan transaction.

ii. It was contended that the allegations in the FIR do not prima facie constitute any offence or make out a case against the petitioners. It was further submitted that the allegations are inherently improbable and do not disclose sufficient ground for proceeding against them. In this context, reliance was placed upon the decision of the Supreme Court in ***State of Haryana v. Bhajan Lal***[1].

iii. Learned counsel further submitted that criminal courts must not be used for settling scores or to pressurize parties to settle civil disputes. In support of the said submission, reliance was placed upon ***Mohd. Ibrahim v. State of Bihar***.[2]

iv. It was further contended that the present dispute arises out of a loan transaction and pertains to issues relating to disbursement,

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[1] 1992 Supp (1) SCC 335.
[2] 2009 (8) SCC 751

repayment and alleged non-adjustment of amounts, which are civil in nature.

v. Learned counsel further submitted that a mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown at the inception of the transaction. In support of the said proposition, reliance was placed upon ***Sarabjit Kaur v. State of Punjab***.[3]

vi. Reliance was also placed upon ***ARCI v. Nimra Cerglass Technics (P) Ltd.***[4], to contend that the distinction between a mere breach of contract and the offence of cheating depends upon the intention of the accused at the time of entering into the transaction.

vii. On the aforesaid grounds, learned counsel for the petitioners submitted that the impugned FIR and the consequential criminal proceeding are liable to be quashed in exercise of inherent jurisdiction under Section 482 Cr.P.C.

III. SUBMISSIONS ON BEHALF OF THE OPPOSITE PARTIES:

4. Learned counsel for the opposite parties made the following submissions in support of his contentions:

i. Learned counsel for the opposite parties submitted that the FIR was lodged on the basis of a complaint dated 25.09.2025 alleging that the petitioners had availed a housing loan of Rs. 15.00 lakhs from Orissa Gramya Bank, Talcher Branch, that the loan was disbursed in phases without verification of end use, that construction was not initiated, and that the mortgaged property was sold to a third party without

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[3] (2023) 5 SCC 360.

[4] (2016) 1 SCC (Cri) 269.

repayment of Bank dues and without prior intimation to the Bank. On the basis of the said complaint, Talcher P.S. Case No. 1042 dated 25.09.2025 was registered under Sections 420 and 34 of the I.P.C. and investigation was undertaken.

IV. COURT'S REASONING AND ANALYSIS:

5. Heard learned counsel for the parties and perused the materials available on record.

6. The limited question that arises for consideration in the present proceeding under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is whether the allegations made in the FIR disclose the commission of offences under Sections 420 and 34 of the Indian Penal Code and whether the FIR and the consequential criminal proceeding ought to be quashed.

7. A perusal of the FIR reveals that the allegations against the petitioners are that they had availed a housing loan of Rs. 15,00,000/-, that the loan was disbursed in phases, that construction was not initiated, and that the mortgaged property was sold to a third party without repayment of Bank dues and without prior intimation to the Bank. The FIR further states that such conduct amounts to fraudulent activity involving public money.

8. It is well settled that in order to constitute an offence under Section 420 I.P.C., the essential ingredients of cheating must be satisfied. There must be deception of a person and fraudulent or dishonest inducement to deliver property.

9. Section 420 I.P.C. reads as follows:

> *"420. Cheating and dishonestly inducing delivery of property.— Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to*

> *any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."*

10. The Supreme Court in ***Prof. R.K. Vijayasarathy and Another v. Sudha Seetharam and Another***[5] elucidated the ingredients of an offence under Section 420 as follows:

> *"19.1. A person must commit the offence of cheating under Section 415; and*
> *19.2. The person cheated must be dishonestly induced to*
> *(a) deliver property to any person; or*
> *(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security.*
> *20. Cheating is an essential ingredient for an act to constitute an offence under Section 420."*

11. The Supreme Court in ***A.M. Mohan v. The State represented by SHO and Anr.***[6] observed:

> *"13. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:*
> *(i) the deception of any person;*

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[5] (2019) 16 SCC 739.
[6] 2024 INSC 233.

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
(iii) dishonest intention of the accused at the time of making the inducement."

12. Thus, the sine qua non for constituting the offence of cheating is the existence of fraudulent or dishonest intention at the very inception of the transaction.

13. In the present case, the FIR does not contain any specific allegation that at the time of availing the loan the petitioners had any fraudulent or dishonest intention to deceive the Bank, nor is there any assertion that the loan was obtained by misrepresentation or suppression of material facts or submission of false documents. The allegations, as they stand, pertain to non-utilization of funds for the stated purpose and sale of the mortgaged property without liquidation of the outstanding dues.

14. Even if the allegations in the FIR are accepted in their entirety, they indicate, at most, breach of the terms of the loan agreement and non-repayment of dues. Disputes arising out of loan transactions or alleged non-adjustment of payments ordinarily give rise to civil consequences unless the essential ingredients of criminal intent at inception are clearly made out.

15. It is also apposite to note that the scope of interference under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 is well settled. The inherent power of this Court is to be exercised with circumspection, so as to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

16. In ***State of Haryana v. Bhajan Lal,***[7] the Supreme Court illustratively enumerated categories of cases wherein the extraordinary or inherent powers may be exercised. The Court observed:

> *"102. In the backdrop of the interpretation of the various relevant provisions of the Code 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 Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though 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 of myriad kinds of cases wherein such power should be exercised.*
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> *(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.*
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> *(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*

[7] 1992 Supp (1) SCC 335.

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

(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.

(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."

17. Applying the aforesaid principles to the facts of the present case, this Court finds that the FIR does not contain any averment suggesting that at the time of applying for or availing the loan the petitioners had made any false representation or otherwise deceived the Bank with a pre-existing dishonest intention. The allegations relate to subsequent events, namely non-utilization of funds for the stated purpose and sale of the mortgaged property without repayment of dues.

18. The mere fact that the borrower failed to utilize the loan amount for the intended purpose or subsequently transferred the mortgaged property does not by itself establish the essential ingredient of deception at the inception of the transaction. At best, such allegations may constitute breach of contractual obligations or violation of loan conditions, for which civil remedies are available to the Bank under law.

19. In the absence of specific allegations demonstrating such dishonest intention, continuation of criminal proceedings would not be justified.

V. CONCLUSION:

20. In view of the foregoing analysis, this Court is of the considered opinion that even if the allegations contained in the FIR are accepted in their entirety, they do not prima facie disclose the essential ingredients of the offence under Section 420 of the Indian Penal Code. The foundational requirement of dishonest intention at the inception of the transaction is absent from the FIR.

21. The allegations, as presently structured, disclose a dispute arising out of a loan transaction and subsequent events relating to repayment and enforcement of security. In the absence of specific averments demonstrating deception or fraudulent inducement at the very inception, permitting the criminal prosecution to continue would amount to allowing the criminal process to be invoked in a matter which is predominantly civil in character.

22. Accordingly, Talcher P.S. Case No.1042 dated 25.09.2025 registered under Sections 420 and 34 of the Indian Penal Code, corresponding to G.R. Case No.1870 of 2025 pending before the learned S.D.J.M., Talcher, and all consequential proceedings arising therefrom, insofar as they relate to the present petitioners, are hereby quashed.

23. The CRLMC stands **allowed**.

24. Interim order, if any, passed earlier stands vacated.

(Dr. Sanjeeb K Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 27th February, 2026