

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.564 of 2024

Arising Out of PS. Case No.-616 Year-2013 Thana- MASTURBATION MUFFASIL District-
Samastipur

Ramshreshtha Sharma, Son of Late Fakira Mistri Village- Laxmipur Ps- Sakra
Dist- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Sr. Advocate Mr.Md.Imtyaz Ahmad, Advocate Mrs. Vaishnavi Singh, Advocate Mr.Ritwik Thakur, Advocate
For the Respondent/s	:	Mr.Murli Dhar, APP Mrs.Asha Kumari, APP

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 21-07-2025

1. The instant revision under Section 397 read with Section 401 of the Code of Criminal Procedure is directed against the judgement and order of conviction of sentence dated 18th of May, 2024, passed by the learned Additional Sessions Judge 1st, Samastipur in Cr. Appeal No. 14 of 2024, whereby and whereunder, he dismissed the appeal filed by the petitioner, affirming the order of conviction and sentence, passed by the learned Sub-Divisional Judicial Magistrate, Samastipur in G.R. Case No. 3480 of 2013, arising of Samastipur Muffasil P. S. Case No. 616 of 2013,



T.R. No. 1255 of 2024, convicting the petitioner for the offence punishable under Sections 406 and 420 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for 3 years each on each count of offence with fine of Rs. 10,000/- each with default clause of imprisonment for 3 months for non-payment of fine. It was directed that substantive punishment of imprisonment for the offence under Sections 406 and 420 of the IPC shall run separately.

2. In appeal, the Appellate Court modified the order of sentence with a direction that the substantive imprisonment for 3 years for the offences under Sections 406 and 420 of the IPC shall run concurrently.

3. Legality, validity and propriety of the order of conviction and sentence is under challenge in the instant revision.

4. Samastipur Muffasil P. S. Case No. 616 of 2013 was registered on the basis of a written complaint submitted by one Sunil Kumar Sinha (P.W. 4), Divisional Manager, Bihar State Warehousing Corporation (hereinafter referred to as “BSWC”), Muzaffarpur, alleging, *inter alia*, that the



petitioner was the PCDO and In-Charge of godowns/warehouses, owned by BSWC, Samastipur. He was posted as In-Charge of warehouse at Samastipur during the period between 25th of February, 2010 and 31st of July, 2012. On 31st of July, 2012, he was transferred from Samastipur. He was directed to handover charge to his successor, namely, Mukeshwar Sharma, However, he did not deliver charge of the warehouse at Samastipur. Under such circumstances, the District Magistrate, Samastipur, vide letter dated 9th of December, 2023 directed P.W. 4 to make an inventory of the stock in the said warehouse in presence of a Magistrate. It was stated in the complaint that during inventory, the officers of the District Administration, Samastipur including P.W. 4 found shortage of 2230 sacks of DAP fertilizer. The inventory team found 30 sacks of DAP fertilizer and 11 sacks of suffering fertilizer in the said godown. It is alleged that the petitioner misappropriated 2230 sacks of DAP fertilizer weighing about 111.500 metric tone amounting to Rs. 44,29,449.00 and committed cheating in respect of Government property, thereby, causing loss to the Corporation to the tune of the aforesaid



amount.

5. Police took up the case for investigation and ultimately submitted charge-sheet against the accused on 30th of June, 2018 under Sections 406 and 420 of the IPC and Section 7 of the Essential Commodities Act. The accused / petitioner faced trial on the above-mentioned charge. During trial prosecution examined 7 witnesses amongst them P.W. 1 Suresh Prasad, was a peon of the said warehouse, P.W. 2, Jayram Kumar Thakur was a PCDO, BSWC, P.W. 4 Sunil Kumar Sinha is the informant, P.W. 5 and P.W. 6 Manoj Kumar and Rajeev Roshan were Investigating Officer and P.W. 7 Ish Narayan Singh was a retired employee of BSWC. During Trial, some documents were marked exhibits at the instance of the witnesses on behalf of the prosecution, which I proposed to discuss subsequently.

6. In support of his defence, the accused examined two witnesses including himself. D.W. 1 is the son of the accused / petitioner and D.W. 2 is the petitioner himself. He also proved two documents in course of his examination. The same documents were marked as Exhibit A and A/1



respectively.

7. Both the Courts below examined the evidence on record adduced by the prosecution and defence, both oral and documentary, and convicted and sentenced the petitioner for the offence punishable under Sections 406 and 420 of the IPC. The accused, however, was acquitted of the charge under Section 7 of the Essential Commodities Act.

8. At the outset, this Court likes to to record that Revisional Court does not have any power to reappraise the evidence adduced by the parties during trial of the case.

9. In ***Hydru v. State of Kerala***, reported in (2004) 13 SCC 374, the Hon'ble Supreme Court in paragraph 3 of the judgement held as hereunder:-

“3. From a bare perusal of the impugned order, it would appear that the High Court upon reappraisal came to a conclusion different from the one recorded by the appellate court. It is well settled that in revision against acquittal by a private party, the powers of the Revisional Court are very limited. It can interfere only if there is any procedural irregularity or material evidence has been overlooked or



misread by the subordinate court. If upon reappraisal of evidence, two views are possible, it is not permissible even for the appellate court in appeal against acquittal to interfere with the same, much less in revision where the powers are much narrower. No procedural irregularity has been found by the High Court in the order of the Sessions Court whereby the appellant was acquitted. Therefore, we are of the view that the High Court was not justified in interfering with the order of acquittal in exercise of its revisional powers, as such the same is liable to be interfered with by this Court.”

10. In the above-mentioned reported judgement, the accused/appellant was acquitted by the learned Sessions Judge. The High Court on reappraisal of evidence, reverse the order of acquittal and convicted the accused. The Hon’ble Supreme Court was pleased to set aside the order of conviction passed by the High Court.

11. The factual circumstances of this case is somewhat different. The accused / petitioner has approached this Court against the order of conviction passed by both the Courts below. However, what is



axiomatic is that in revision reappraisal of evidence is not permissible except where material evidence is overlooked by the Courts below.

12. Therefore, the revisional jurisdiction of this Court permits consideration of evidence on record only for limited purpose as to whether the material evidence was overlooked by the Trial Court or not. From the evidence of P.W. 1, it is ascertained that the petitioner was transferred to Buxar on 31st of July, 2012. He was directed to deliver charge to his successor Mukeshwar Sharma. It is also found from the evidence that at the relevant point of time he was In-Charge of 13 / 14 warehouses / godowns in the district of Samastipur. The petitioner delivered charge of all the warehouses / godowns except the godown at Samastipur.

13. It appears from the evidence of the informant being the Divisional Manager, BSWC, Samastipur that during the period between 16th of November, 2013 and 21st of November, 2013, he supplied 2140 bags of DAP fertilizers to the petitioner. Though he was under order of transfer in the month of July, 2012 to Buxar. He received the said bags of fertilizers as he did not deliver charge of the



said godown situated at Vyapar Mandal, Samastipur. When there was inordinate delay in delivering charge of the godown situated at Vyapar Mandal and inspection was held in the said godown under the leadership of P.W. 4. At the time of inspection, inventory was made and only 30 bags of DAP and 11 Bags of scattered fertilizers were found. The stock register of the said godown was examined and it was ascertained that the missing bags of fertilizers were not distributed and delivered to any person.

14. From the evidence of other witnesses, it is ascertained that the petitioner was transferred to Buxar on 31st of July, 2012 but he did not deliver charge of the concerned warehouse to his successor, Mukeshwar Sharma till 9th of December, 2013.

15. Thus, the control of the warehouse was with the petitioner till 9th of December, 2013 and it was the duty of the petitioner to explain the stock of the fertilizers supplied to the said warehouse during his tenure.

16. From the record of the Trial Court, it is found that after receiving the order of transfer, the petitioner went on leave. D.W. 1 is the son of the petitioner, who stated that



on 28th of February, 2013, the petitioner made an application to his superior authority for extension of his leave. In his evidence, the accused stated that on oath that on 13th of February, 2013, he gave charge of 3255 bags of fertilizers and on 7th of September, 2013, he gave charge of 17749 bags of fertilizers to Mukeshwar Sharma. It is also stated by him that he was in jail for two and half years, on the charge of embezzlement of fertilizers.

17. Mr. Ajay Kumar Thakur, learned Senior Advocate for the petitioner submits that both the Courts below erred in convicting and sentencing the petitioner under Sections 420 and 406 of the IPC because of the fact that no offence under Section 420 of the IPC was committed by the petitioner. Even if, the entire prosecution case is accepted on its face value. The case against the petitioner is that he was entrusted with bags of fertilizers which he misappropriated. The criminal misappropriation and cheating are distinct and separate offences and a person cannot be simultaneously charge for the offence of cheating and criminal breach of trust for the same transaction because for the offence of cheating dishonest intention of



the accused must exist at the very inception of any transaction whereas in case of criminal breach of trust there must exist a relationship between the parties whereby one authority entrusts with the property as per law in favour of the accused and the accused misappropriates the properties so entrusted. No case is made out against the petitioner for the offence under Section 420 of the IPC. The petitioner was wrongly convicted and sentenced to suffer imprisonment for the offence under Section 420 of the IPC.

18. In *Deepak Gaba & Ors. v. State of U.P., & Anr.* reported in (2023) 3 SCC 423, the Hon'ble Supreme Court had the opportunity to discuss the ingredients of offence under Sections 406 and 420 of the IPC. It is needless to say that 406 of the IPC prescribes punishment for breach of trust which may extend to 3 years or with fine or with both. Section 405 of the IPC defines criminal breach of trust. In order to prove criminal breach of trust, prosecution is under obligation to establish the following ingredients:-

(a) the accused was entrusted with property, or entrusted with dominion over property



(b) the accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so; and

c) such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

19. The Hon'ble Supreme Court, thus, held that criminal breach of trust would, inter alia, mean using or disposing of the property by a person who is entrusted with or otherwise has dominion. Such an act must not only be done dishonestly, but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

20. It is submitted on behalf of the State that undoubtedly the petitioner was entrusted with 2160 bags of fertilizers by the BSWC. The petitioner never challenged that the said bags of fertilizers were not received by him from BSWC. As a manager of Vyapar Mandal Warehousing



Corporation, he was entrusted to keep and distribute the fertilizers as per direction of his higher authority, which he did not. He was transferred to Buxar by an order dated 31st of July, 2012. However, he did not deliver charge to his successor. He retained control of the warehouse till December, 2013. When search was conducted in the said warehouse, the Government Authority found 2130 bags of DAP fertilizers missing. As the said bags of fertilizers were entrusted to the petitioner, it was his duty to explain as to why the said bags of fertilizers were not found in the warehouse. In the absence of such explanation, it would be held that the accused has dishonestly misappropriated or converted to his own use the said property or dishonestly used or disposed of that property. When the property entrusted to the petitioner is not found in the warehouse and no plausible explanation was given by him, the Court has no other alternative but to hold that the petitioner committed an offence of criminal breach of trust within the meaning of Section 405 of the IPC and both the Courts below rightly convicted the petitioner for the offence under Section 406 of the IPC.



21. In this regard, this Court may use illustration B of Section 406 which runs thus:-

“A is a warehouse-keeper, Z going on a journey entrusts his furniture to A. Under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. A has committed criminal breach of trust.”

22. In the instant case, the petitioner was warehouse keeper. He was entrusted to 2130 bags of fertilizers by the BSWC. He did not deliver the charge of the said fertilizers immediately after its transfer from Samastipur to Buxar. When he delayed delivery of charge of the said warehouse, inventory was made and the articles were found missing from the warehouse. The petitioner is, therefore, liable for criminal breach of trust. It is stated by the informant that as a result of missing of the said fertilizers, Government incurred loss of Rs. 44,29,449.00/-.

23. Under such circumstances, the Courts below did not commit any error in convicting the accused for the offence under Section 406 of the IPC.

24. In paragraph 18 of Dipak Gaga (supra), the



Hon'ble Supreme Court held:-

“18. In order to apply Section 420IPC, namely, cheating and dishonestly inducing delivery of property, the ingredients of Section 415IPC have to be satisfied. To constitute an offence of cheating under Section 415IPC, a person should be induced, either fraudulently or dishonestly, to deliver any property to any person, or consent that any person shall retain any property. The second class of acts set forth in the section is the intentional inducement of doing or omitting to do anything which the person deceived would not do or omit to do, if she were not so deceived. Thus, the sine qua non of Section 415IPC is “fraudulence”, “dishonesty”, or “intentional inducement”, and the absence of these elements would debase the offence of cheating.”

25. In **Mohd. Ibrahim v. State of Bihar** reported in **(2009) 8 SCC 751**, the Hon'ble Supreme Court observed that for the offence of cheating, there should not only be cheating, but as a consequence of such cheating, the accused should also have dishonestly adduced the person deceived to deliver any property to a person; or to make, alter, or destroy, wholly or in part, a valuable security, or



anything signed or sealed and which is capable of being converted into a valuable security.

26. Thus, mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment. Mainly, the difference between criminal breach of trust and cheating would depend upon the fraudulent inducement and mens rea to support of criminal breach of trust and cheating existence of fraudulent or dishonest intention right at the beginning of the transaction with mens rea must be shown. Breach of contractual obligation which was accompanied by fraudulent, dishonest or deceptive inducements resulting in involuntary and inefficient transaction stand criminalized under Section 415 of the IPC.

27. The above principle was laid down by the Hon'ble Supreme in *Satishchandra Ratanlal Shah v. State of Gujarat & Anr*, reported in *(2019) 9 SCC 148*.

28. In the instant case, it is not alleged by the informant that the BSWC was induced fraudulently or dishonestly by the petitioner to deliver 2160 bags of



fertilizers to him to keep them in the concerned warehouse. It is also not the case that the corporation being fraudulently or dishonestly induced by the petitioner to deliver the said property.

29. Therefore, this Court is of the view that both the Courts below committed illegality and impropriety in holding the petitioner guilty of offence under Section 420.

30. Accordingly, the petitioner is acquitted of the charge under Section 420 of the Indian Penal Code.

31. However, the order of conviction and sentence for the offence punishable under Section 406 of the IPC is affirmed.

32. Now with regard to sentence, it is submitted by the learned Advocate for the petitioner that both the Courts below passed sentence of rigorous imprisonment for a term of 3 years for the offence punishable under Section 406 of the IPC. The petitioner surrendered in the Court below on 4th of May, 2018. He was released on bail on 4th of February, 2021, meaning, thereby, he remained in custody for about two years and 9 months and again he is taken into custody on declaration of his conviction and sentence since 20th of



April, 2024.

33. Thus, this Court finds that the petitioner has already completed the period of sentence which he required to suffer for the offence punishable under Section 406 of the IPC.

34. For the reasons stated above, the remaining period of sentence, if any, is set off against the actual period of incarceration.

35. With the above order, the instant criminal revision is disposed of.

(Bibek Chaudhuri, J)

skm/-

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