

I. Core Issue

The key question is **whether the Magistrate was justified in retaining antithetical charges under Sections 406 (criminal breach of trust) and 420 (cheating) simultaneously**, by invoking Section 221 CrPC — and in rejecting the accused’s application under **Section 216 CrPC** for modification/alteration of the charge.

In other words:

When two charges are *mutually destructive in their ingredients*, can the Magistrate refuse to modify the charge merely by citing Section 221 CrPC?

II. Legal Framework

Section 216 CrPC — *Alteration or Addition of Charge*

- Empowers the court to **alter or add** any charge at any time before judgment.
- The test: whether alteration is **necessary to rectify a defect or ensure a fair trial**.
- Court must ensure **no prejudice** is caused to the accused.

Section 221 CrPC — *Where it is doubtful what offence has been committed*

- Applies **when it is doubtful which offence** an act constitutes.
- Permits the court to frame **alternative charges** — e.g., “If the act was done dishonestly, it is theft; if done with deception, it is cheating.”
- However, the section **cannot be invoked** where **ingredients of the offences are irreconcilable**, or where prosecution is uncertain due to **lack of clarity in evidence**, not because of **legal inconsistency**.

III. Legal Principle — Antithetical Charges

1. Section 406 and Section 420 are mutually destructive

- **Section 406 IPC (Criminal Breach of Trust)** presupposes:
 - *Entrustment* of property;
 - *Subsequent dishonest misappropriation* or conversion by the trustee.
- **Section 420 IPC (Cheating)** presupposes:
 - *Deception* at the very inception of the transaction;
 - *Delivery of property* as a result of such deception.

Therefore:

If there was entrustment (406), there cannot simultaneously be deception at inception (420), and vice versa.

Courts have repeatedly held that the **mental elements** of 406 and 420 **cannot coexist** — because one assumes bona fides at the start and later breach, while the other assumes deceit from the very beginning.

IV. Analysis: Magistrate's Error

1. Misapplication of Section 221 CrPC

- Section 221 applies only when **it is doubtful which offence** a single act constitutes — not when two offences are **mutually inconsistent in law**.
- The Magistrate **confused factual uncertainty** with **legal incompatibility**.
- Section 221 cannot justify a charge-sheet where **the legal ingredients themselves contradict** each other.
- Once the **charge-sheet and evidence** make it clear that the act either involves *entrustment* (406) or *inducement by deception* (420), the court must **choose one consistent legal theory**.

2. Violation of Fair Trial under Section 216

- The object of Section 216 is to **correct defective framing of charge** to ensure that the accused is **not prejudiced by an incoherent or self-destructive charge**.
- Continuing trial on legally inconsistent charges **vitiates the proceeding** — it causes serious **prejudice** and uncertainty in defence.
- The accused is entitled to know **with clarity** whether he is being tried for *breach of trust* (entrustment case) or *cheating* (inducement case).

V. Grounds for Appeal / Revision

You can succeed before the **Sessions Court (u/s 397 r/w 401 CrPC)** or **High Court (u/s 482 CrPC)** on the following well-settled grounds:

Ground 1 – Misapplication of Section 221 CrPC

The Ld. Magistrate erred in law in invoking Section 221 CrPC, which does not apply to mutually destructive charges. The offences under Sections 406 and 420 are legally inconsistent, and simultaneous trial under both vitiates the charge.

Ground 2 – Failure to Exercise Jurisdiction under Section 216 CrPC

The Ld. Magistrate failed to exercise jurisdiction vested in her under Section 216 CrPC to alter or modify the charge to ensure a coherent and legally sustainable charge, thereby occasioning failure of justice.

Ground 3 – Prejudice to the Accused

The framing of legally contradictory charges causes grave prejudice to the accused, who cannot defend simultaneously against inconsistent mental elements — one based on entrustment and the other on deception.

Ground 4 – Violation of Article 21 (Fair Trial)

The right to fair trial under Article 21 of the Constitution mandates that the accused be tried for a clearly defined offence. Proceeding on contradictory charges undermines the fundamental right to fair trial and due process.

Ground 5 – Abuse of Process

Continuance of proceedings on irreconcilable charges amounts to abuse of process of court, warranting interference by the revisional or inherent jurisdiction of the superior court.

VI. Remedy Suggested

- **Preferred procedural route:**
File a **Criminal Revision Application under Section 397/401 CrPC** before the **Sessions Court** or **High Court** challenging the Magistrate’s order rejecting alteration of charge.
- **Alternative remedy:**
If proceedings have advanced materially, invoke **Section 482 CrPC** (inherent powers of the High Court) to seek quashing or correction of the charge to prevent miscarriage of justice.

VII. Suggested Prayer (Model Draft Line)

“That the impugned order dated ___ passed by the Ld. Judicial Magistrate First Class, rejecting the Applicant’s plea under Section 216 CrPC, is bad in law, being based on an erroneous reliance on Section 221 CrPC, which is inapplicable to mutually destructive charges under Sections 406 and 420 IPC. The continuation of proceedings on such inconsistent charges is illegal, arbitrary, and violative of the Applicant’s right to a fair trial guaranteed under Article 21 of the Constitution of India.”

VIII. Conclusion

In sum:

- Section 221 CrPC can justify *alternative charges* only when the factual doubt concerns *which specific offence* an act may constitute — not when the *legal elements* are irreconcilable.
 - Sections 406 and 420 are **mutually exclusive** in law.
 - The Magistrate’s reliance on Section 221 was **erroneous**, and failure to correct the charge under Section 216 caused **substantial prejudice**.
 - The order is, therefore, **liable to be set aside in revision or under inherent powers**, with a direction to frame a consistent charge.
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