

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 18 of 2023

1. Shyam Bihari, aged about 54 years, son of Mahavir Prasad resident of village- Tilwariya, P.O. & P.S.- Haweli Kharagpur, District- Munger, Bihar
2. Bhola Choudhary aged about 53 years, son of Arjun Choudhary, resident of village- Basmatta, P.O. & P.S.- Deoghar, District-Deoghar,
3. Abhay Shankar Jha aged about 52 years, son of Sitaram Jha, resident of village- Saket Vihar, Near Oxford School, Barmasia, P.O. & P.S.-Deoghar, District-Deoghar,
4. Radhey Shyam Yadav aged about 52 years, son of Late Sukhdeo Yadav, resident of village- Pokhriya, P.O. & PS.- Haveli Kharagpur, District- Munger, Bihar,
5. Indradeo Yadav aged about 51 years, son of Bangali Yadav, resident of village- Dhawa, P.O- Bhitiya, P.S.- Fullidumar, District- Banka, Bihar,
6. Raj Kumar Yadav aged about 51 years, son of Rameshwar Prasad Yadav, resident of village- Harpur, P.O. & P.S. Tarapur, District-Munger, Bihar,
7. Lal Babu Choudhary aged about 52 years, son of Bimal Choudhary, resident of village-Palajori, P.O. & P.S.- Palajori, District- Deoghar
8. Mohan Choudhary aged about 55 years, son of Baleshwar Choudhary, resident of village- New Colony, Madhupur P.O. & P.S.-Madhupur, District- Deoghar,
9. Arun Kumar aged about 52 years, son of Janak Ray, resident of village- Gopikandar, PO. & P.S.- Gopikandar, District- Dumka,
10. Dilip Kumar aged about 51 years, son of Kasim Saw, resident of village- Dilawarpur, P.O. & P.S.- Bihta, District- Patna, Bihar
11. Kamlesh Kant Yadav aged about 52 years, son of Ram Parikshan Yadav, resident of village- Kundahit, P.O. & P.S.- Barmasiya, District-Jamtara Petitioners

Versus

The State of Jharkhand

..... Opposite Party

For the Petitioners	: Mrs. M. M. Pal, Sr. Adv. Ms. Shipra Shalini, Adv. Mr. Abhisehk Sriwastava, Adv.
For the State	: Ms. Nehala Sharmin, Spl. PP

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 CrPC with the prayer for quashing and setting aside the entire criminal proceeding including the order dated 01.11.2022 passed in connection with Deoghar (Town) P.S. case no. 94 of 2019 corresponding to G.R. case no. 1112 of 2022 whereby and where under, learned Chief Judicial Magistrate, Deoghar based on the charge sheet submitted by the police in the case, has taken cognizance of the offences punishable under Sections 409, 420, 467, 468, 471, 120B of the IPC inter alia against the petitioners.
3. The allegation against the petitioners is that the petitioners along with the co-accused of the case, some of whom are the officers of Bharat Sanchar Nigam Limited (BSNL) and its predecessor-in-interest, Department of Telecommunication, committed forgery for the purpose of cheating and also used forged documents as genuine and being public servant and agent, committed criminal breach of trust, in respect of the property entrusted to them, by falsely claiming to be the Temporary Status Mazdoors (TMS) of the said BSNL and its said predecessor-in-interest being the Department of Telecommunication and when the same was detected and their so called service was kept in abeyance, the petitioners challenged the said order by which their services were kept in abeyance and which keeping in abeyance order was passed by the competent officer; before the Central Administrative Tribunal (CAT), Patna. One of such cases relates to O.A. No. 51 / 132 / 2017, wherein it was contended by the BSNL and the Department of Telecommunication that the documents produced by the petitioners and some other co-accused persons, were forged documents. It was observed by the Central Administrative Tribunal that only if the BSNL authorities initiate action against their senior guilty officers who have helped to perpetrate the fraud, then such claim of BSNL would be credible. The matter was enquired into by the concerned officers of the BSNL and the DGM, Vigilance after due enquiry found

eleven officers and fourteen TSM to be *prima facie* involved in the acts of omission and commission of malafide and on the basis of the same the written report was lodged with the Officer-In-charge, Deoghar Town Police Station and basing upon the written report of Officer-In-charge, Deoghar Town Police Station, Deoghar (Town) P.S. case no. 94 of 2019 was registered. After registration of the case police took up investigation of the case. After completion of the investigation, the police found the allegations made against the petitioner is to be true basing upon the materials collected during the investigation of the case, including the statement of the witnesses and submitted chargesheet against the petitioners and the co-accused persons, for having committed the offence punishable under Sections 409, 420, 467, 468, 471 and 120B of IPC. On the basis of the said charge sheet submitted by the police, vide order dated 01.11.2022 in G.R. case no. 1112 of 2022 arising out of Deoghar (Town) P.S. case no. 94 of 2019, learned Chief Judicial Magistrate, Deoghar took cognizance of the said offences in respect of which charge sheet was submitted, inter alia against the petitioners.

4. It is submitted by learned senior counsel for the petitioners relying upon the order of the Hon'ble Supreme Court of India in the case of **Pradeep Kumar Kesarwani vs. The State of Uttar Pradesh & Anr.** passed in Cr. Appeal no. 3831 of 2025 dated 02.09.2025 that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that summoning of any person on the basis of a frivolous or vexatious complaint is something very serious and this would tarnish the image of the person against whom false, frivolous and vexatious allegations are levelled. The duty of the court in cases, where an accused seeks quashing of an FIR or proceedings on the ground that such proceedings are manifestly frivolous or vexatious or instituted with an ulterior motive for wreaking vengeance was discussed by the Hon'ble Supreme Court of India relying upon paragraph- 34 of its judgement in the case of **Mohammad Wajid vs. State of U.P.**

reported in **2023 SCC OnLine SC 951**. It is next submitted by the learned senior counsel that this case is also a manifestly frivolous, vexatious and has been instituted with ulterior motive only because the BSNL lost the concerned O.A. before the CAT.

5. Learned senior counsel for the petitioners next relies upon the judgment of a Division Bench of this Court and submits that though BSNL challenged the orders passed by the Central Administrative Tribunal in O.A. No. 51/32/2017 but the said writ petition has been dismissed vide common judgment dated 05.02.2026 in WP (S) no. 497 of 2026 with WP (S) no. 6953 of 2025 and the order dated 16.02.2026 in WP (S) 5766 of 2025.
6. Learned senior counsel for the petitioners next relies upon the judgment of a co-ordinate Bench of this Court in the case of **Shoab Hasan Chand vs. State of Jharkhand & Ors.** reported in **2025 (4) JBCJ 329 (HC)** wherein the co-ordinate Bench relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Inder Mohan Goswami and Another vs. State of Uttranchal and Others** reported in **(2007) 12 SCC 1**, wherein the Hon'ble supreme Court of India discussed the ingredients to constitute the offence punishable under Sections 420 of IPC as also Sections 467, 468, 471 of IPC and submits that even if the entire allegations made against the petitioners are considered to be true in their entirety, still none of the offences in respect of which , cognizance has been taken by learned Chief Judicial Magistrate, Deoghar is in fact made out.
7. Learned senior counsel for the petitioners next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Another** reported in **(2005) 10 SCC 336** paragraph-6 of which reads as under:-

"Xxxx xxxx xxxx It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case it has nowhere been stated that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420 IPC."

(Emphasis supplied)

and submits that therein the Hon'ble Supreme Court of India reiterated the settled principle of law that in order to constitute the offence of cheating, the accused must have played deception since the very inception and if the intention to play the deception develops later on, the same cannot amount to cheating, hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

8. Learned Spl. PP on the other hand, vehemently oppose the prayer of the petitioners and submit that there is direct and specific allegation against the petitioners of having committed the forgery for the purpose of cheating and having used the forged document as genuine to raise a false claim of employment under the BSNL and its predecessor-in-interest being the Department of Telecommunications and in criminal conspiracy with the co-accused persons, they have also committed criminal breach of trust, in criminal conspiracy with the public servant entrusted with the property, in capacity of the public servant and they have also committed the offence of cheating. It is next submitted that the offences as alleged were found to be true against the petitioners during the investigation of the case and the police after completion of the investigation, submitted chargesheet against the petitioners basing upon which, the cognizance of the offence has been taken by learned Chief Judicial Magistrate, Deoghar.
9. It is next submitted by learned Spl. PP that it is a settled principle of law that the Magistrate cannot add or subtract any section of the offence mentioned in the charge sheet while taking cognizance of the offence and same will arise only when the court considers, framing of charge under relevant provisions of law. It is next submitted that as the petitioners are not appearing before the trial court even though summons have been issued against them and they are also very much aware about the same, hence, learned trial court could not consider the framing of the charge; as yet. It

is next submitted that there is no averment made in this criminal miscellaneous petition regarding any misconduct on the part of the police during the investigation of the case, so there is no justifiable reason for quashing the entire criminal proceeding, only on the sole ground that the allegations against the petitioners are not true. It is further submitted that no doubt, principle of law as discussed by the Hon'ble Supreme Court of India in the case of **Pradeep Kumar Kesarwani vs. The State of Uttar Pradesh & Anr.**, (supra), are the subtle principles of law but the ratio of the said the judgment is not applicable to the facts of this case, as unlike that case in this case, there is no material to support the contention of the petitioners that the FIR is manifestly frivolous one or vexatious and instituted with ulterior motive; because the undisputed fact remains that police after investigation of the case, has already found the allegations made against each of the petitioners to be true; on the basis of the materials collected during the investigation of the case, which has been discussed in detail in the case diary and also the gist of which has been mentioned in the charge sheet submitted by the police in the court concerned. It is further submitted that cognizance of the offences has already been taken by the concerned magistrate, hence, it is submitted that this Criminal Miscellaneous Petition being without any merit, be dismissed.

10. Having heard the submissions made at the Bar and after going through materials available in the record, it is pertinent to mention here that it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in (2014) 3 SCC 659, para 15 of which reads as under :-

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation

had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the chargesheet.” (Emphasis supplied)

wherein the Hon’ble Supreme Court of India has categorically laid down the law that if the investigating authorities for any reason whatsoever, have left all the offences to be included in the charge sheet, on the basis of the FIR, basing upon which, the investigation has been concluded, the learned Magistrate before whom the matter comes up for taking cognizance after submission of the charge sheet, cannot fill up the lacunae and the Magistrate in a case, which is based on police report, cannot add or subtract any section of any offence, at the time of taking cognizance, as the same would be permissible to the trial court only at the time of framing of charge under Section 216, 218 or under Section 228 of CrPC; as the case may be.

11. The undisputed fact remains that after registration of the FIR, the case was investigated by the I.O. of the case and I.O. after completion of the investigation of the case, found sufficient materials which has been described in detail in the case diary that the allegations against the petitioners are true, in respect of the offences for which, charge sheet was submitted. Learned magistrate has taken cognizance of the offence based on the charge sheet submitted by the police, after investigation of the case and there is no allegation anywhere in the Criminal Miscellaneous Petition regarding any misconduct on the part of the I.O. in conducting investigation of the case. The only contention of the petitioner is that the allegations against the

petitioners are false and one or the other offence is not made out against the petitioners.

12. It is a settled principle of law that the defence of the petitioner and the veracity of the evidence put forth by the accused, cannot be considered in exercise of the power under Section 482 Cr.P.C. by the High Court, as that would be job of the trial court, as has been held by the Hon'ble Supreme Court of India, in the case of **State of Madhya Pradesh vs. Awadh Kishore Gupta & Ors.** reported in **2004 2 Supreme 501**.

13. It is also a settled principle of law that the High Court in exercise of its power under Section 482 of CrPC, cannot conduct a mini trial, as has been reiterated by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in **2022 LiveLaw SC 594**, the relevant portion of which reads as under :-

" Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

14. In view of the settled principle of law that at the time of taking cognizance, learned Magistrate cannot add or subtract any section of the offence based on the report submitted by the police, investigating a case initiated on the basis of the FIR. So even assuming for the sake of argument that one or the other of the offences is not made out, but as at this stage, the Magistrate cannot add or subtract that offence; certainly the Magistrate can do the same while considering the framing of charge, which is yet to take place, because of the non-cooperation of the petitioners who though are very much aware about the requirement of their appearance before the learned Magistrate, have still succeeded in

- avoiding their appearance before learned Magistrate concerned till date.
15. Under such circumstances, this Court is of the considered view that this is not a fit case, where the prayer made in this Criminal Miscellaneous Petition by the petitioners is to be to acceded in exercise of its power under section 482 of CrPC.
16. Accordingly, this Criminal Miscellaneous Petition being without any merit is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 9th of March, 2026
Smita / AFR

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