

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 82 of 2023**

Tapas Pal, S/o Late Narayan Chandra Pal, aged 39 years, R/o
Bhadodih, P.O. -Jhumri Telaiya, P.S. Telaiya, District -Koderma.

.... Petitioner

Versus

1. The State of Jharkhand
2. Brahmadev Yadav, S/o Late Tekan Mahto @ Tekan Yadav, R/o
Village -Harila, P.O. & P.S. -Barhi, District -Hazaribagh.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....
For the Petitioner : Mr. Yogesh Modi, Advocate
: Mr. Nilesh Kumar, Advocate
For the State : Mr. Pankaj Kumar, P.P.
For O.P. No.2 : Mr. Avilash Kumar, Advocate
: Mr. Saurabh Narayan, Advocate
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By the Court:-

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the entire criminal prosecution of the Complaint Case No. 243 of 2022 including the order taking cognizance dated 28.06.2022 and order of framing of charge dated 19.11.2025, passed by the learned Chief Judicial Magistrate, Koderma in connection with the said Complaint Case No. 243 of 2022.
3. The allegation against the petitioner is that the petitioner entered into an agreement for sale of his property to the

complainant and took an advance of Rs.20,00,000/- and it was agreed to between the parties that the remaining consideration amount of Rs.60,00,000/- will be paid at the time of registration of the property but later on the petitioner entered into an agreement with a third party to sell his land for Rs.90,00,000/- and when the complainant insisted for registration of the land in his name, the petitioner abused and threatened the complainant. On the basis of the complaint, statement of the complainant on solemn affirmation and statement of the inquiry witnesses, the learned Chief Judicial Magistrate, Koderma found prima facie case for the offences punishable under Sections 406, 420, 504 & 506 of the Indian Penal Code and framed charges for the said offences.

4. It is submitted by the learned counsel for the petitioner that as yet no witness has been examined in this case. Relying upon the Judgment of this Court in the case of **Jitendra Kumar Singh Vs. The State of Jharkhand & Anr.** reported in **2025:JHHC:15953**, it is submitted by the learned counsel for the petitioner that in that case, this Court relied upon the Judgment of the Hon'ble Supreme Court of India in the case of **Delhi Race Club (1940) Ltd. and Others Vs. State of Uttar Pradesh and Another**, reported in **(2024) 10 SCC 690**, paragraph no.43 of which reads as under:-

"43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same.

Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously." (Emphasis supplied)

Wherein it has been held by the Hon'ble Supreme Court of India that both the offences punishable under Section 420 and 406 of the Indian Penal Code cannot co-exist simultaneously.

5. It is next submitted that in that case, this Court also relied upon the Judgment of the Hon'ble Supreme Court of India in the case of **Rikhab Birani and Another Vs. State of Uttar Pradesh and Another**, reported in **2025 SCC Online SC 823**, para -18 of which reads as under:-

"18. In Kunti v. State of Uttar Pradesh¹¹, this Court referred to Sarabjit Kaur v. State of Punjab¹² wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out." (Emphasis supplied)

And submits that in that case, the Hon'ble Supreme Court of India has also reiterated the settled principle of law that merely the allegation of failure to keep a promise will not be enough to initiate criminal proceeding.

6. It is next submitted by the learned counsel for the petitioner that even if the entire allegations against the petitioner are considered to be true in their entirety, still the offence punishable under Section 420 & 406 of the Indian Penal Code is not made out. It is

next submitted that in the absence of any allegation against the petitioner that the petitioner intentionally insulted the informant in such a manner provoking to commit breach of peace or any other offence, the offence punishable under Section 504 of the India Penal Code is not made out and in the absence of any allegation against the petitioner of committing threatening of such nature with the intent to cause alarm to that person, the offence punishable under Section 506 of the Indian Penal Code is not made out. It is then submitted that the allegations against the petitioner are false. The sale price of the property was agreed to between the parties at the rate of Rs.1,40,00,000/- only upon the repayment of bank loan by the petitioner as the same was kept mortgaged with the bank. It is next submitted that the complaint has been filed on the basis of fabricated and forged agreement. The petitioner has received only Rs.1,00,000/- as advance. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

7. The learned Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer of the petitioner and submit that the materials in the record are sufficient to constitute each of the offences for which charges have been framed against the petitioner. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

8. Having heard the submissions made at the Bar and after going through the 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 **Radheyshyam & Others vs. State of Rajasthan & Another** reported in **2024 SCC OnLine SC 2311**, para-12 of which reads as under:-

"12. In the present case, the appellants were not entrusted with any property by respondent no. 2 - complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out." (Emphasis supplied)

Wherein the Hon'ble Supreme Court of India has held that the amount paid towards consideration cannot be said to have been entrusted with the accused person by the complainant and merely because the seller is refusing to register the sale, it does not amount to misappropriation of the advance amount paid.

9. Under such circumstances, this Court has no hesitation in holding that even if the entire allegation made against the petitioner are considered to be true, still the offence punishable under Section 406 of the Indian Penal Code is not made out against the petitioner.
10. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, it is a settled principle of law as has been

held by 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:-

"6. 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)

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that in order to constitute the offence of cheating, the accused must play deception since the beginning of the transaction between the parties and if the intention to cheat has developed later on, the same cannot amount to cheating.

11. Now coming to the facts of the case, there is absolutely no allegation against the petitioner that the petitioner played deception since the beginning of the transaction between the parties. Hence, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioner.
12. So far as the offence punishable under Section 504 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under:-

(i) *The accused intentionally insulted someone;*

- (ii) *He thereby intended to give him provocation;*
- (iii) *He knew that it was likely that such provocation would cause that person to commit a breach of peace or to commit any other offence.*

13. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner abused the complainant. There is no allegation against the petitioner that the petitioner intentionally insulted the complainant or he thereby gave or intended to give provocation that would cause the complainant to commit breach of peace or to commit any other offence and in the absence of the same, in the considered opinion of this Court, even if the entire allegations made against the petitioner are considered to be true, still the offence punishable under Section 504 of the Indian Penal Code is not made out against the petitioner.

14. So far as the offence punishable under Section 506 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under:-

- (i) the accused threatened someone with injury to his person, reputation or property or to the person, reputation or property of another in whom the former was interested.*
- (ii) the accused did so with intent to cause alarm to the victim of offence.*
- (iii) the accused did so to cause the victim to perform any act which he was not legally bound to do.*

15. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner threatened the complainant

with intent to cause alarm to the complainant nor there is any allegation that the petitioner threatened the complainant to perform any act which he was not legally bound to do.

16. Under such circumstances, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the same falls short from constituting the offence punishable under Section 506 of the Indian Penal Code.

17. In view of the discussions made above, since none of the offences in respect of which charges have been framed against the petitioner is made out, even if the entire allegations made against the petitioner are considered to be true in their entirety, hence, this Court is of the considered view that continuation of this criminal proceeding against the petitioner will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal prosecution being Complaint Case No. 243 of 2022 including the order taking cognizance dated 28.06.2022 and order of framing of charge dated 19.11.2025, passed by the learned Chief Judicial Magistrate, Koderma in connection with the said Complaint Case No. 243 of 2022, be quashed and set aside *qua* the petitioner.

18. Accordingly, the entire criminal prosecution being Complaint Case No. 243 of 2022 including the order taking cognizance dated 28.06.2022 and order of framing of charge dated 19.11.2025, passed by the learned Chief Judicial Magistrate, Koderma in connection

with the said Complaint Case No. 243 of 2022, is quashed and set aside *qua* the petitioner.

19. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 5th May, 2026
AFR/Sonu-

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