

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.94 of 2023

1. Kishori Yadav aged about 32 years, son of Sri Shambhu Yadav.
2. Chamari Yadav aged about 38 years, son of Late Saryu Mahto.
3. Nanhak Yadav @ Nanhe Yadav, aged about 42 years, son of Late Saryu Mahto.
4. Rajendra Yadav aged about 40 years son of Late Saryu Mahto.
5. Mahendra Yadav aged about 36 years, son of Late Saryu Mahto.
6. Brahm Dev @ Brahm Dev Yadav aged about 35 years, son of Late Saryu Mahto.

All resident of Village-Mile, P.O.-Baraini, P.S. & Distt.-Chatra.

7. Smt. Sona Devi aged about 42 years, wife of Sri Babban Yadav, resident of village & P.O.-Baraini, P.S. & District-Chatra.
8. Chandrakant Yadav aged about 35 years, son of Sri Sirish Yadav, resident of village-Mile, Tola Teliyadih, P.O.-Baraini, P.S. & District-Chatra.
9. Smt. Manorma Devi aged about 38 years, wife of Sri Fuleshwar Yadav, resident of village & P.O.-Baraini, P.S. & District-Chatra.
- 10.Smt. Shilu Devi @ Shila Devi aged about 34 years, wife of Sri Manoj Yadav, resident of village-Mile, P.O.-Baraini, P.S. & District-Chatra.
- 11.Smt. Lakhmania Devi @ Marni Devi aged about 89 years, wife of Sri Binod Bhuneshwar Yadav, resident of village-Geri, Tola Chhanhi, P.O.-Baraini, P.S. & District-Chatra.
- 12.Smt. Pinki Devi @ Pinki Kumari aged about 45 years, wife of Sri Binod Yadav, resident of Luttu Tola Masuriyatari, Chatra, P.O.-Baraini, P.S. & District-Chatra.

... Petitioners

Versus

1. The State of Jharkhand, and

2. Smt. Pramila Singh @ Kumari Pramila wife of Sri Umesh Kumar Singh and daughter of Late Indradeo Singh, resident of Village-Nawada, P.O.-Baraini, P.S. & District-Chatra.

... Opposite Parties

For the Petitioners : Mr. Sushant Kr. Sinha, Advocate
: Mr. Rajiv N. Prasad, Advocate
For the State : Mr. Bhola Nath Ojha, Spl.P.P.
For the O.P. No.2 : Mr. Vijay Kr. Sharma, Advocate

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 of the Code of Criminal Procedure with a prayer to quash and set aside the entire criminal proceeding including the order taking cognizance dated 06.06.2018 passed by learned Additional Chief Judicial Magistrate, Chatra in Complaint Case No.812 of 2017 whereby and where under the learned Additional Chief Judicial Magistrate, Chatra has found *prima facie* case for the offences punishable under Sections 406/34 of the Indian Penal Code against the petitioners.

3. The allegation against the petitioners is that the petitioners purchased the landed property of the complainant for which the complainant executed a registered sale deed, the consideration amount of the same was Rs.27,32,000/-. The petitioners gave demand draft of Rs.4

lakhs to the complainant and transferred Rs.20,500/- in the account of the husband of the complainant, but did not pay the rest amount.

4. Learned counsel for the petitioners submit that the allegations against the petitioners are false and fabricated and even if the entire allegations made against the petitioners are considered to be true in their entirety, still no offence is made out. It is lastly submitted that the prayer as prayed for in this Cr.M.P., be allowed.

5. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. and submit that the allegations made in the complaint, statement on solemn affirmation and statement of enquiry witnesses are sufficient to constitute the offence punishable under Section 406/34 of the Indian Penal Code. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

6. Having heard the rival submissions made at the Bar and after carefully 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 **Vir Prakash Sharma Vs. Anil Kumar Agarwal & Anr.**, reported in (2007) 7 SCC 373 wherein the Hon'ble Supreme Court of India has observed that when the dispute between the parties is essentially a civil dispute, nonpayment or under-payment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust.

7. It is also a settled principle of law that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the accused person dishonestly disposed of the same in some way or dishonestly retained the same as has been reiterated by the Hon'ble Supreme Court of India in the case of **Binod Kumar & Others vs. State of Bihar & Another** reported in (2014) 10 SCC 663 paragraph-18 of which reads as under:-

"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust." (Emphasis supplied)

8. Now, coming to the facts of the case, the essential ingredients to constitute the offence punishable under Section 406 are as follows:-

*There must be an entrustment and there must be misappropriation or conversion to one's own use or use in violation of a legal direction or of legal contract as has been held by the Hon'ble Supreme Court of India in the case of **Ram Narayan Popli vs. C.B.I.** reported in 2003 3 SCC 641.*

9. It is also a settled principle of law that a mere transaction of sale or purchase does not amount to entrustment as has been held by the Hon'ble

Supreme Court of India in the case of **State vs. Jasmanth Lal** reported in **AIR 1968 SC 79**.

10. After carefully going through the materials in the record, this Court finds that there is absolutely no allegation of entrustment of any property upon the petitioners, so in the absence of that certainly, no offence punishable under Section 406 of the Indian Penal Code is not made out.

11. In view of the discussion made above, this Court has no hesitation in holding that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order taking cognizance dated 06.06.2018 passed by learned Additional Chief Judicial Magistrate, Chatra in Complaint Case No.812 of 2017, be quashed and set aside.

12. Accordingly, the entire criminal proceeding including the order taking cognizance dated 06.06.2018 passed by learned Additional Chief Judicial Magistrate, Chatra in Complaint Case No.812 of 2017, is quashed and set aside against the petitioners.

13. In the result, this Cr.M.P., stands allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 18th of September, 2025
AFR/ Abhiraj