

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.96 of 2023

1. Prabhat Ranjan Mallick, aged about 58 years, S/o Nav Kishore Mallick, R/o Plot No.119 Baramasia Housing Board Colony, P.O., P.S. & Dist.-Bhuneshwar (Orissa)
2. Amarendra Samal, aged about 34 years. S/o Sri Umakant Samal, R/o Rangdih, P.O. & P.S.-Govindpur, Dist.-Dhanbad

Petitioners

Versus

1. The State of Jharkhand
2. Quazi Shakeel Ekta, S/o Late Fazle Ekta, R/o Ansari Mohalla, Shiwlibari, P.O. Kumardhubi, P.S.-Chirkunda, Dist.-Dhanbad

... Opposite Parties

For the Petitioners : Mr. Deepak Kumar, Advocate
For the State : Ms. Kumari Rashmi, Addl. P.P
For the O.P. No.2 : Mr. Mastar Akash, 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, 1973, with a prayer to quash the entire criminal proceeding arising out of Chirkunda (Kumardubhi O.P.) P.S. Case No.20 of 2018 corresponding to G.R. No.408 of 2018, registered for the offences punishable under Sections 406 and 420/34 of the Indian Penal Code, now pending in the court of learned C.J.M., Dhanbad.

3. Learned counsel for the petitioners submits that investigation of the case is still going on and charge-sheet has not yet been submitted. It is next submitted by the learned counsel for the petitioners that the allegation against the petitioners is that petitioner No.1 is the Managing Director of Koustav Metals Pvt. Ltd. and the petitioner No.2 is the Manager and employee by the said company and they had entered into a memorandum of understanding with Ekta Iron and Alloys Pvt. Ltd. of which the informant claims to be Managing Director and owner on 21.01.2010, the purchase of the said Ekta Iron and Alloys Pvt. Ltd. . The consideration amount was fixed at Rs.12.50 crores out of which the petitioners were to repay the loan of Rs.6.40 crores of Allahabad Bank taken by the said factory and the remaining Rs.6.10 crores was to be paid to the informant. Besides Rs.12.50 crores, the petitioners were to pay Rs.2,48,51,556/- over and above Rs.12.50 crores, towards the finished products and raw materials available in the factory and some of the articles in the factory were to be given back to the informant. The entire amount was to be paid by the petitioners within one year. Within the time period, the petitioners could not pay the amount and the cheque of Rs.6,00,22,000/- paid by the petitioners was dishonoured and a separate case for the same has been instituted. The petitioners took handover of the factory in February, 2011 and were running the same. The cheque of Rs.15,00,000/- towards the electricity dues issued by the petitioner No.1 was also dishonoured. On the basis of the written report submitted by the informant, police registered Chirkunda P.S. Case No.20 of 2018 and took up the investigation of the case.

4. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of *Naresh Kumar & Anr. Vs. The State of Karnataka & Anr.* reported in 2024 INSC 196 and submits that in para-7 thereof, the Hon'ble Supreme Court of India relying upon its judgment in the case of *Sarabjit Kaur v. State of Punjab & Anr. (2023) 5 SCC 360*, has reiterated the settled principle of law that a mere breach of contract by one of the parties, would not attract prosecution for criminal offence in every case and relying upon its own judgment in the case of *Vesa Holdings (P) Ltd. v. State of Kerala* reported in (2015) 8 SCC 293, the Hon'ble Supreme Court of India has reiterated the settled principle of law that every breach of contract would not give rise to the offence of cheating and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

5. Learned counsel for the petitioners submits that the cheque bounce case instituted by the informant has already been quashed by a co-ordinate Bench of this Court vide order dated 18.07.2023 passed in Cr.M.P. No.3354 of 2017. It is next submitted that Koustav Metals Pvt. Ltd. through the petitioners, have filed Original Money Suit No. 560 of 2017 on 14.09.2017 before the court of Civil Judge Senior Division-II, Dhanbad against the informant and others much prior to institution of this F.I.R. It is next submitted that even if the entire allegation made against the petitioners are considered to be true still neither the offence punishable under Section 406 of the Indian Penal Code nor the offence punishable under Section 420/34 of

the Indian Penal Code is made out. Hence, it is submitted that the prayer as prayed for by learned counsel for the petitioners be allowed.

6. On the other hand, learned Addl.P.P. appearing for the State and learned counsel for the O.P. No.2 vehemently oppose the prayer of the petitioners and submit that both the offences punishable under Sections 406 and 420/34 of the Indian Penal Code is made out against the petitioners, if allegations made against them, are considered to be true in their entirety. Learned counsel for the O.P. No.2 relies upon the judgment of Hon'ble Supreme Court of India in the case of *Trisuns Chemical Industry Vs. Rajesh Agarwal & Ors.* reported in (1998) 8 SCC 686 and submits that therein the Hon'ble Supreme Court of India reiterated the settled principle of law that merely because an act has a civil profile, it is not sufficient to denude it of its criminal outfit. It is next submitted that it is true that the transactions between the petitioners and the informant involves a civil dispute, however, the same will not condone the criminal act committed by the petitioners. Hence, it is submitted that the instant Cr.M.P., being without any merit, be dismissed.

7. 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 the essential ingredients to constitute the offence punishable under Section 406 of the Indian Penal Code are that

(i) There must be entrustment; and

(ii) There must be misappropriation or conversion to one's own use or use in violation of a legal direction or obtaining legal contract as has been

held by the Hon'ble Supreme Court of India in the case of *Ram Narayan Popli vs. Central Bureau of Investigation* reported in (2003) 3 SCC 641.

8. It is 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 of Gujarat Vs. Jaswant Lal Nathalal* reported in AIR 1968 SC 700.

9. Now coming to the facts of this case, so far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the allegations against the petitioners is that petitioners entered into an agreement for sale and paid some amount for possession of the factory but are not paying the entire consideration amount. So, essentially the dispute is of sale and purchase of the factory, hence, the same cannot be termed as entrustment. 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 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)

reiterated the settled principle of law that to make out a case of criminal breach of trust, it is not sufficient to show that the property has been retained by the accused persons but it must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

10. Now, in the absence of any entrustment or the other ingredients of the offence punishable under Section 406 of the Indian Penal Code, this Court has no hesitation in holding that even if the entire allegations made against the petitioners are considered to be true in their entirety, still the offence punishable under Section 406 and 34 of the Indian Penal Code is not made out against the petitioners.

11. 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 & Anr.*** reported in (2005) 10 SCC 336, paragraph no. 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)

that every breach of contract would not give rise to an offence of cheating and only in those cases the breach of contract would amount to cheating; where there was any deception played at the very inception and if the intention to cheat has developed later on, the same cannot amount to cheating.

12. Now, coming to the facts of the case, there is absolutely no allegation against the petitioners that petitioners played any deception since the beginning of the transaction between the parties. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case ***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, non-payment 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.

13. In view of the settled principle of law, this Court has no hesitation in holding that even if the entire allegation made against the petitioners are considered to be true in their entirety, still the same is not sufficient to constitute the offence punishable under Section 420/34 of the Indian Penal Code.

14. In view of the discussions made herein above as neither the offence punishable under Section 406/34 of the Indian Penal Code nor the offence

punishable under Section 420/34 is made out against the petitioners. Hence, this Court is of the considered view that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law, hence this is a fit case where the entire criminal proceeding arising out of Chirkunda (Kumardubhi O.P.) P.S. Case No.20 of 2018 corresponding to G.R. No.408 of 2018 which is now pending in the court of learned C.J.M., Dhanbad, be quashed and set aside against the petitioners.

15. Accordingly, the entire criminal proceeding arising out of Chirkunda (Kumardubhi O.P.) P.S. Case No.20 of 2018 corresponding to G.R. No.408 of 2018 which is now pending in the court of learned C.J.M., Dhanbad, is quashed and set aside against the petitioners.

16. Accordingly, the instant Cr.M.P. stands allowed.

(Anil Kumar Choudhary, J.)

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