

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 125 of 2023

Vijay Kumar Chhaparia, aged about 72 years, son of late Mishri Lal Chhaparia, resident of Bano Manzil Road, Gahrikhana Chowk, Harmu Road, P.O.-G.P.O., P.S.-Sukhdeo Nagar, Dist.-Ranchi-834001, Jharkhand

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Petitioner

Versus

1. The State of Jharkhand
2. Deepak Sarawagi, son of late Raj Kumar Sarawagi, Proprietor of M/s Akshit Agencies, K.C. Complex, P.O.-G.P.O., P.S.-Kotwali, Dist.-Ranchi-834001, Jharkhand and resident of Kanke Road, Opposite Petrol Pump, P.O.-Gonda, P.S.-Gonda, Dist.-Ranchi-834008, Jharkhand

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Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Girish Mohan Singh, Advocate
	: Mr. Mukesh Kr. Banka, Advocate
For the State	: Mrs. Kumari Rashmi, Addl. P.P.
For O.P. No.2	: Mr. Amritansh Vats, Advocate
	: Mr. Amartya Choubey, Advocate
	: Mr. Ashish Choudhary, Advocate
	: Mr. Arpan Kumar, Advocate

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By the Court:-

I.A. No. 7460 of 2023

1. Heard the parties.
2. This interlocutory application has been filed with a prayer for early hearing of this criminal miscellaneous petition.

3. Since, hearing of this criminal miscellaneous petition is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 125 of 2023

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 Cr.P.C. with the prayer to quash the entire criminal proceeding including the order taking cognizance dated 23.11.2022 passed by the learned Judicial Magistrate 1st Class, Ranchi in connection with Complaint Case No. 3837 of 2020 by which the learned Judicial Magistrate 1st Class, Ranchi found *prima facie* case for the offence punishable under Sections 420 and 406 of Indian Penal Code.
3. The brief fact of the case is that the petitioner purchased various articles from the shop of the complainant in the name and style of “Akshit Agencies” of which the complainant is the proprietor and intermittently the petitioner was paying money but he never paid the entire dues of the petitioner and as on 05.05.2020 a sum of Rs. 29,95,152/- was due and payable by the petitioner but he did not pay the same to the complainant, even though the complainant served legal notice upon him.
4. Learned counsel for the petitioner relied upon the judgment of the Hon’ble Supreme Court of India in the case of **Uma Shankar**

Gopalika vs. State of Bihar & Ors. 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)”

And submits that therein 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 but if the intention has developed later on, the same will not amount to cheating.

5. Learned counsel for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Indian Oil Corpn. Vs. NEPC India Ltd. & Ors.** reported in **(2006) 6 SCC 736** and submits that therein the Hon'ble Supreme Court of India has reiterated that criminal proceeding should not be encouraged when it is found to be *mala fide* or otherwise an abuse of process of the law. Learned counsel for the petitioner further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Vesa Holdings Private Limited & Anr. vs State of Kerela & Ors.** reported in **(2015) 8 SCC 293** and submits that in that case, the Hon'ble Supreme Court of India has reiterated the settled

principle of law as has been observed in the case of **Uma Shankar Gopalika vs. State of Bihar & Ors.** (supra).

6. Learned counsel for the petitioner then relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Vijay Kumar Ghai & Ors. vs. State of West Bengal & Ors.** reported in (2022) 7 SCC 124 and submits that therein, the Hon'ble Supreme Court of India has observed that in order to attract the ingredients under Section 406 and 420 of Indian Penal Code, it is imperative on the part of the complainant to *prima facie* establish that there was an intention on the part of the petitioner and/or others to cheat and/or to defraud the complainant right from the inception.
7. Learned counsel for the petitioner further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. State of Punjab & Anr.** reported in (2023) 5 SCC 360 and submits 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.
8. Learned counsel for the petitioner also relied upon the judgment of 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 held that non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust by thus observing in paragraph no.8 of the said judgment which reads as under:-

“8. The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case. Section 405 of the Penal Code reads, thus:

“405. Criminal breach of trust. –Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ‘criminal breach of trust’.”

Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made.” (Emphasis supplied)

9. Learned counsel for the petitioner lastly relied upon the judgment of this Court in the case of **Prabhat Ranjan Mallick & Anr. vs. The State of Jharkhand & Anr.** dated 18.09.2025 decided in Cr.M.P. No. 96 of 2023 reported in **2025:JHHC:29068** and submits that, this Court relied upon the judgment of the Hon’ble Supreme Court of India in the case of **State of Gujarat vs. Jaswant Lal Nathalal** reported in **AIR 1968 SC 700** wherein the Hon’ble Supreme Court of India reiterated the settled principle of law that mere transaction of sale or purchase does not amount to entrustment which is an essential ingredient to constitute the offence punishable under Section 406 of Indian Penal Code. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

10. Learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand opposes the prayer and submits that the materials available in the record is sufficient to constitute both the offences punishable under Sections 406 and 420 of Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
11. Having heard the submissions made at the Bar and after going through the materials in the record, this Court finds that it is the admitted case of the complainant that there is long standing business relationship between the petitioner and the complainant and it is also an admitted case of the complainant that the petitioner used to pay money to the complainant from time to time in discharge of his debt regarding purchase of various articles. There is no allegation against the petitioner of having any intention to deceive the complainant since the beginning of the transaction between the parties. In the absence of this essential ingredient, 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 Indian Penal Code is not made out.
12. So far as the offence punishable under Section 406 of Indian Penal Code is concerned, as has been held by the Hon'ble Supreme Court of India in the case of **Vir Prakash Sharma vs. Anil Kumar Agarwal & Anr.** (supra) at best this is a case of underpayment of the price of goods but it is a settled principle of

law that the same is insufficient to constitute the offence punishable either under Section 420 or under Section 406 of Indian Penal Code more so, in the absence of any allegation of playing deception since the beginning of the transaction between the parties or the allegation of entrustment or dishonest misappropriation of the entrusted property.

13. 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 offence punishable under Section 406 of Indian Penal Code is not made out.
14. In view of the discussions made above, as none of the offences in respect of which the learned Judicial Magistrate 1st Class, Ranchi found *prima facie* case is made out even if the entire allegations made against the petitioner are considered to be true in their entirety, therefore, this Court is of the considered view that continuation of the criminal proceeding will amount to abuse of process of the law and this is a fit case where the entire criminal proceeding including the order taking cognizance dated 23.11.2022 passed by the learned Judicial Magistrate 1st Class, Ranchi in connection with Complaint Case No. 3837 of 2020 be quashed and set aside.
15. Accordingly, the entire criminal proceeding including the order taking cognizance dated 23.11.2022 passed by the learned Judicial Magistrate 1st Class, Ranchi in connection with Complaint Case No. 3837 of 2020 is quashed and set aside.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 6th November, 2025
AFR/Sonu-Gunjan/-

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