

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 144 of 2023

Upendra Saw @ Upendra Saw Keshri, aged about 55 years, son of
Ram Chandra Keshri, resident of House No. 193, Kailash Nagar,
Chas, PO & PS – Chas, District – Bokaro. ... **Petitioner**

Versus

1. The State of Jharkhand.
2. Rakesh Chandra Singh, son of late Munna Prasad Singh, aged
about 45 years, resident of house no. 141, resident of House No.
193, Kailash Nagar, Chas, PO & PS – Chas, District – Bokaro.

... **Opp. Parties**

For the Petitioner : Mr. Nilesh Kumar, Advocate
: Ms. Sonal Sodhani, Advocate
For the Opp. P. No. 2: None
For the State : Mr. Pankaj Kumar, P.P.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. Though notice has been validly served upon the Opp. Party No. 2, but no one turns up on behalf of the Opp. Party No. 2 in spite of repeated calls.
3. 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 the entire criminal proceeding against the petitioner including the order dated 21.11.2022 by which the learned Judicial Magistrate 1st Class Bokaro has found prima facie case for the offences punishable under Sections 406, 504 and 506 of the Indian Penal Code in connection with Complaint Case No. 601 of 2021.

4. The allegation against the petitioner is that the petitioner took friendly loan of Rs. 6,00,000/- from the father of the complainant but did not repay the said amount. On the basis of the complaint, statement on solemn affirmation and statement of inquiry witnesses, the learned Judicial Magistrate 1st Class, Bokaro found a prima facie case for the same offences and ordered the issue of summons to the petitioner.

5. Learned counsel for the petitioner, relying upon the judgment of this Court in the case of *Vikash Kumar @ Bikash Kumar Vs. The State of Jharkhand & Another* reported in 2023 JHHC: 27680 submits therein that this Court relied upon the judgment of *the Hon'ble Supreme Court of India* in the case of *Satish Chandra Ratanlal Shah Vs. State of Gujarat & Anr.* reported in (2019) 9 SCC 148, Paragraph Nos. 11 and 13 of which reads as under: -

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

*13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786].) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred." (Emphasis supplied)*

Wherein the Hon'ble Supreme Court of India reiterated the settled principles of law that the mere inability of the accused person to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent and dishonest intention is shown right at the beginning of the transaction between the parties.

6. Learned counsel for the petitioner further submits that the alleged loan was taken by the petitioner in the month of January 2018 but the complaint has been filed in the month of June 2021 which is more than 3 years, from the date of alleged taking money by the petitioner. This exceeds the limitation period for filing a money suit. Moreover, the maximum sentence prescribed for the offence punishable under Section 406 of the Indian Penal Code, may extend to 3 years. Thus, the complaint is barred by the limitation prescribed under Section 468 of the Cr.P.C. It is further submitted that the complainant has cooked up a story by mis-utilizing the old cheques of the petitioner and the dispute at best, is a civil dispute. It is next submitted that even if the allegations 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. It is lastly submitted that the prayer prayed for by the petitioner in this criminal miscellaneous case be allowed.

7. The learned Public Prosecutor, on the other hand vehemently opposes the prayer and submits that there is direct allegation against the petitioner of committing criminal breach of trust hence the offence punishable under section 406 of the Indian Penal Code is made out against the petitioner, in view of the allegations made against him in the record. It is lastly 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 in the record, it is pertinent to mention here that it is settled principles of law that *mens rea* is an essential ingredient of the offence punishable under Section 406

of the Indian Penal Code as has been held by the Hon'ble Supreme Court in the Case of *S.W. Palanitkar Vs. The State of Bihar* reported in *2002 SCC (Cri) 129*.

9. Now coming to the facts of this case admittedly the petitioner took friendly loan, there is no allegation against the petitioner of having any dishonest or fraudulent intention at the time of taking of loan or subsequent thereto. There is no allegation against the petitioner of dishonest misappropriation of any entrusted property.

10. Under such circumstances, in the absence of any allegation of dishonest or fraudulent intention on the part of the petitioner, this Court is of the considered view that even if the entire allegation made against the petitioner are considered to be true, still the same is insufficient to constitute the offence punishable under Section 406 of the Indian Penal Code.

11. After going through the materials on record, this Court finds that there is absolutely no allegation against the petitioner to constitute the offence punishable under Section 504 of the Indian Penal Code, which provides punishment for intentionally insulting the victim and provoking the victim to commit breach of peace or any other offence, nor is there any allegation of criminal intimidation of the complainant or anyone else. Hence, in the absence of any allegation about the essential ingredients of the said offences punishable under Section 504 and 506 of the Indian Penal Code, this Court is of the considered view that even if the entire allegation made against the petitioner is considered to be true, still the offence punishable under Sections 504 and 506 of the Indian Penal Code is not made out.

12. In view of the discussions made above, as none of the offences in respect of which the learned Magistrate has found *prima facie* case is made out against the petitioner, even if the allegations are considered to be true in their entirety, this Court is of the view that continuation of this criminal proceeding against the petitioner will amount to the abuse of process of law. Therefore, this is a fit case where the entire

criminal proceeding including order dated 21.11.2022 by which the *learned Judicial Magistrate 1st Class, Bokaro*, has found *prima facie* case for the offence punishable under Sections 406, 504 and 506 of the Indian Penal Code in connection with *Complaint Case No. 601 of 2021*, be quashed and set aside.

13. Accordingly, the entire criminal proceeding including order dated 21.11.2022 by which the *learned Judicial Magistrate 1st Class, Bokaro*, has found *prima facie* case for the offence punishable under Sections 406, 504 and 506 of the Indian Penal Code in connection with *Complaint Case No. 601 of 2021*, is quashed and set aside.

14. This Criminal Miscellaneous Petition stands *allowed*.

(Anil Kumar Choudhary, J.)

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