

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.268 of 2023**

Manoj Mandal @ Manoj Kumar Mandal, aged about 60 years, S/o
Ashutosh Mandal, R/o Village- Shaharjori, P.O. + P.S.- Barwadda,
District- Dhanbad ... Petitioner

Versus

1. The State of Jharkhand.
2. Ram Kumar Singh, S/o Gopal Prasad Singh, R/o Village- Bank More,
Dhanbad, P.O. + P.S.- Dhanbad, District- Dhanbad.

... Opposite Parties

For the Petitioners : Mr. Mukesh Bihari Lal, Advocate.
For the State : Mrs. Vandana Bharti, Addl.P.P.
For the O.P. No.2 : Mr. Anil Kumar Singh, 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 Cr.P.C. with the prayer to quash the order dated 28.11.2022 passed by Learned Judicial Magistrate 1st Class, Dhanbad whereby and whereunder the learned Magistrate took cognizance of the offences punishable under Sections 420/323/341/504 of the Indian Penal Code in connection with C.P. Case No. 2827 of 2022 and to quash the entire criminal proceedings of the said case, pending in the Court of learned Judicial Magistrate, 1st Class, Dhanbad.

3. It is submitted that the case is next fixed to 02.06.2026 in the trial court, for before charge evidence and charge has not yet been framed against the petitioner.

4. Learned counsel for the petitioner submits that the allegation against the petitioner is that the petitioner purchased refectories bricks from the complainant and paid money intermittently, but did not pay the entire amount and there was outstanding of Rs.30,34,326/- and when the complainant went to petitioner for taking his money the petitioner did *maarpeet* (beating) and abused the complainant.

5. On the basis of complaint, statement of complainant on solemn affirmation and statement of the inquiry witnesses, the learned Judicial Magistrate found *prima facie* case for the offences as indicated above. The learned counsel for the petitioner relied upon the judgement of the Hon'ble Supreme Court of India in the case of **Umashankar Gopalika versus State of Bihar** reported in (2005) 10 SCC 336 para-6 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 there is no allegation against the petitioner of playing deception at the beginning of the transaction between the

parties, hence it is submitted that the offence punishable under Section 420 is not made out.

6. In this respect, learned counsel for the petitioner has relied upon the judgment of Hon'ble Supreme Court of India in the Case of **G. Eswara Rao versus State of Jharkhand and Another** reported in **2026:JHHC:6148**. It is next submitted by the learned counsel for the petitioner that the allegation against the petitioner is false. Even if the entire allegation made against the petitioner are considered to be true in their entirety still no offence, in respect of which prima facie case has been found by the learned Magistrate is made out. Hence, it is submitted that the prayer as prayed for in this Cr.M.P. be allowed.

7. Learned Additional Public Prosecutor and learned counsel for the Opposite party no.2 on the other hand oppose the prayer made in this Cr.M.P. and opposite party no.2 submits that the Court must at this stage treat the entire allegation made in the complaint to be true and submits that only because the transactions took place is a commercial transaction; that will not exclude the case from the purview of the commission of offence of cheating. Hence, it is submitted that this Cr.M.P. being without any merit be dismissed.

8. 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 versus Anil Kumar Agarwal & Anr.**, reported in **(2007) 7 SCC 373** where in Hon'ble Supreme Court of India has observed in paragraph-8,

that when the dispute between the parties is essentially a civil dispute, nonpayment 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.

9. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner has made underpayment of the goods and there is no allegation against the petitioner that the petitioner played deception at the beginning of transaction between the parties. In the absence of this essential ingredient, this court is of the considered view that even if the entire allegation is made against the petitioner, are considered to be true, still the offence punishable under Section 420 of the Indian Penal Code is not made out.

10. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, it is settled principle of law as has been held by the Hon'ble Supreme Court in the Case of **Abhishek Saxena vs. The State of Uttar Pradesh & Anr.** reported in **2023 INSC 1088** passed in Cr.M.P. No. 3628 of 2023 dated 28.11.2023 para-09 which reads as under

"9. As noted earlier, except the statement that 'they beat up me' by the complainant no material whatsoever is available on record in regard to the commission of the said offence. The incident allegedly occurred on 12.06.2016. In the recorded statement of the second respondent-complainant or in the counter affidavit filed by the first respondent there is not even a whisper that after the incident she went to a doctor or underwent any kind of treatment. Needless to say, that there is no statement – at least that injury report was prepared. In this context, it is also to be seen in respect of the incident, the FIR got registered only on 04.09.2016, that too much after the filing of petition No. 13/2016 by the appellant herein. Above all, as noted earlier, basic ingredients to constitute an offence under Section 323, IPC is lacking in the chargesheet."

That the statement that “they beat up me” by the complainant is not sufficient to constitute the offence punishable under Section 323 of the I.P.C.

11. The essential ingredient to constitute the offence punishable under Section 323 of the Indian Penal Code reads as under:-

- (i) The accused voluntarily caused bodily pain, disease or infirmity to the victim
- (ii) The accused did so with the intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

12. Now coming to the facts of the case, there is absolutely no allegation against the petitioner that any bodily pain, disease or infirmity was caused to the victim. In the absence of that, 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 323 of the Indian Penal Code is not made out.

13. So far as the offence punishable under Section 341 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under: -

- (i) The accused obstructed a person;
- (ii) He did it voluntarily
- (iii) It prevented such person from proceeding in certain direction in which he had derived to proceed.

Now coming to the facts of the case, there is no allegation against the petitioner that the petitioner ever obstructed the complainant or anyone voluntarily and such obstruction prevented complainant from proceeding in certain direction in which he had right to proceed. In the

absence of any such allegation this court has no hesitation in holding that even if the entire allegations against the petitioners are considered to be true in their entirety, still the offence punishable under Section 341 of the Indian Penal Code is not made out.

14. 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 was caused that the person to commit a breach of peace or commit any other offence.

Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner has only abused the complainant. There is no allegation against the petitioner that the petitioner has intentionally insulted the complainant, thereby to giving him provocation or knowing it likely that such provocation would make the complainant commit any breach of peace or any other offence and in 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 504 of the I.P.C. is not made out.

15. In view of the discussion made above, as none of the offence in respect of which the *prima facie* case has been found by the learned Magistrate is made out against the petitioner; even if the entire

allegations made against him are considered to be true in their entirety, hence, this Court is of the considered view that the continuation of the criminal proceeding against the petitioner will amount to abuse of process of law. Therefore, this is a fit case where the order taking cognizance dated 28.11.2022 passed by Learned Judicial Magistrate 1st Class, Dhanbad in connection with C.P. Case No. 2827 of 2022 and the entire criminal proceedings of the said case which is pending in the Court of learned Judicial Magistrate, 1st Class, Dhanbad, be quashed and set aside against the petitioner named above.

16. Accordingly, the order taking cognizance dated 28.11.2022 passed by Learned Judicial Magistrate 1st Class, Dhanbad in connection with C.P. Case No. 2827 of 2022 and the entire criminal proceedings of the said case which is pending in the Court of learned Judicial Magistrate, 1st Class, Dhanbad, is quashed and set aside against the petitioner named above.

17. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 05th of May, 2026
AFR/ Amar

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