

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.479 of 2023

Jageshwar Gope, aged about 55 years, son of Girdhari Gope, resident
of Urimari, P.O.-Urimari (Sayal), P.S.-Sayal, District-Hazaribagh.

... Petitioner

Versus

1. The State of Jharkhand, and
2. Jamil Ansari, son of Israil Ansari, resident of Jhirkey, P.O. & P.S.-
Gomia, District-Bokaro.

... Opposite Parties

For the Petitioner : Mr. Pankaj Verma, Advocate
For the State : Mrs. Kumari Rashmi, Addl.P.P.
For the O.P. No.2 : Mr. Randhir Kumar, Advocate
: Ms. Pinki Kumari, 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 dated 11.04.2022 passed by learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat in Gomia P.S. Case No.23 of 2015 arising out of G.R. No.175 of 2015 whereby and where under the learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat has taken cognizance of the offences punishable under Sections 420, 406, 468 & 120B of the Indian Penal Code against the petitioner.

3. The brief fact of the case is that the petitioner and the opposite party no.2 used to do contractual job together with the Kathara Colliery of Central Coalfields Limited. The complainant authorized the petitioner to file a bid in a tender floated by the Kathara Colliery of Central Coalfields Limited, on behalf of the complainant and gave Rs.58,300/- by way of bank draft to be deposited along with bid documents. The allegation against the petitioner is that the petitioner instead of depositing bid in the name of the complainant, deposited the demand draft for Rs.58,300/- along with the bid submitted in his own name and ultimately the petitioner succeeded in the said tender and work order was allotted to the petitioner and he did the work.

4. Learned counsel for the petitioner submits that vide order dated 01.07.2019 in A.B.A. No.2543 of 2019, the petitioner has been granted anticipatory bail by this Court subject to the condition that the petitioner deposits a demand draft of Rs.58,300/- as ad interim victim compensation and the said amount has already been paid by the petitioner to the opposite party no.2 and the learned counsel for the opposite party no.2 also acknowledges the receipt of the said amount of Rs.58,300/-. It is next submitted that the petitioner has no evil intention as admittedly, the petitioner and the complainant/opposite party no.2 were doing contractual work together, so the said demand draft was given by the complainant/opposite party no.2 and has been used by the petitioner, hence, the petitioner do not claim the said Rs.58,300/- which has already been paid by the petitioner to the opposite party no.2 in terms of the order

dated 01.07.2019 in A.B.A. No.2543 of 2019. It is next submitted that since it is a case of accidental error and there is no allegation of any deception being played by the petitioner since the beginning of the transactions between the parties, hence, the offence punishable under Section 420 is not made out.

5. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, it is submitted that there is no allegation against the petitioner of committing any dishonest misappropriation of any entrusted amount, hence, the offence punishable under Section 406 of the Indian Penal Code is not made out.

6. So far as the offence punishable under Section 468 of the Indian Penal Code is concerned, it is submitted that there is no allegation of creation of any false document against the petitioner, hence, neither the offence of forgery nor the offence of cheating for forgery punishable under Section 468 of the Indian Penal Code is made out. Therefore, it is submitted that as none of the offences in respect of which the cognizance has been taken by the learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat is made out, hence, the prayer as prayed for, in this Cr.M.P., be allowed.

7. Learned Addl.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 by the petitioner getting the work allotted in his name instead of complainant/opposite party no.2, huge loss has been sustained by the

complainant. Therefore, 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 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 as has been held by the Hon'ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Another** reported in (2005) 10 SCC 336 paragraph-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)

9. Now, coming to the facts of the case, it is the admitted case of the petitioner and the opposite party no.2 that they were doing contractual work together much prior to the alleged occurrence, there is absolutely no allegation against the petitioner that the petitioner played deception since the beginning of the transaction between the parties and in the absence of the same, 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 the Indian Penal Code is not made out.

10. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, that one of the essential ingredients to constitute the said offence is dishonest misappropriation of the property as has been held 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)

11. Now, coming to the facts of the case, admittedly, the opposite party no.2 gave the demand draft to be deposited with the Kathara Colliery of Central Coalfields Limited and the same has been deposited with Kathara Colliery of Central Coalfields Limited but the same being deposited along with the bid documents in the name of the petitioner instead of being deposited along with the bid documents in the name of the opposite party

no.2/complainant. There is no allegation against the petitioner that the petitioner dishonestly misappropriated the said demand draft amount rather it is the admitted case of the parties that the petitioner paid back the said amount of Rs.58,300/- to the opposite party no.2/complainant which is even acknowledged by the learned counsel for the opposite party no.2/complainant. Further as the demand draft was drawn in favour of Kathara Colliery of Central Coalfields Limited, it cannot be said that the said amount was entrusted to the petitioner.

12. Under such circumstances, this Court is of the considered view that even if the allegations 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.

13. So far as the offence punishable under Section 468 of the Indian Penal Code is concerned, one of the essential ingredients to constitute the said offence is creation of a false document. As neither, there is any allegation of creating any false document nor the other ingredient of the offence punishable under Section 468 of the Indian Penal Code has been at least and they often of cheating as already indicated above he is not made out, the offence of cheating for forgery punishable under Section 468 of the Indian Penal Code is not made out.

14. Under such circumstances, this Court is of the considered view that even if the allegations against the petitioner are considered to be true in their entirety still the offence punishable under Section 468 of Indian Penal Code is not made out.

15. In view of the discussions made above, as none of the offences for which the FIR has been registered is made out against the petitioner, hence, this Court is of the considered view that the continuation of this criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order dated 11.04.2022 passed by learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat in Gomia P.S. Case No.23 of 2015 arising out of G.R. No.175 of 2015, be quashed and set aside.

16. It is made clear that in view of the submissions made by the learned counsel for the petitioner, the petitioner is debarred from claiming back Rs.58,300/- already paid by the petitioner to the opposite party no.2/complainant in terms of the order dated 01.07.2019 in A.B.A. No.2543 of 2019.

17. Accordingly, the entire criminal proceeding including the order dated 11.04.2022 passed by learned Sub-Divisional Judicial Magistrate, Bermo at Tenughat in Gomia P.S. Case No.23 of 2015 arising out of G.R. No.175 of 2015, is quashed and set aside against the petitioners.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th of September, 2025
AFR/ Abhiraj