

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. M. P. No. 784 of 2025

Md Azam, aged about 49 years, son of Sheikh Ashraf Ali @ SK.
Ashraf Ali, resident of House No. 15, Block No. 2, Shastrinagar,
PO & PS - Kadma, Town Jamshedpur, District- East Singhbhum.

... ..**Petitioner**

Versus

1. The State of Jharkhand.
2. Bihar State Co-operative Milk Producer Federation Ltd.
(COMFED), Patna represented by its authorized representative
Sri Prakash Kumar Keshri, son of late Shivpujan Ram Keshri,
resident of Flat No. 1032, K - Block, City Palace Adityapur, PO &
PS - Adityapur, Jamshedpur, District - Singhbhum East.

... ..**Opp. Parties**

For the Petitioner : Mr. Sourav Kumar, Advocate
: Mr. Pratik Sen, Advocate
For the State : Mr. Rajesh Kumar, Addl. P.P.
For the O.P. No. 2 : None

PRESENT

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

I.A. No. 5395 of 2026

Heard the parties.

This Interlocutory Application has been filed with the prayer for
early hearing of this criminal miscellaneous petition.

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. 784 of 2025

2. Though, the Opposite Party No. 2 has appeared through his lawyer, no one turns up on behalf of the Opposite Party No. 2 in spite of repeated calls.
3. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section of the 528 of the B.N.S.S., 2023, with the prayer to quash the entire criminal proceeding including the order dated 06.02.2017 passed in connection with Adityapur P.S. Case No. 332 of 2014 corresponding to G.R. Case No. 964 of 2014 whereby and whereunder the learned Chief Judicial Magistrate, Seraikella found *prima facie* case for the offence punishable under Sections 406/ 420 /34 of the Indian Penal Code inter alia against the petitioner.
4. The allegation against the petitioner is that the petitioner in furtherance of common intention with the co-accused person, deceived the Opposite Party No. 2 – informant by making him believe that Rs. 7,00,000/- and 8.5 lakh deposited by Md. Shafiullah on 10.05.2013 and 15.05.2013 respectively belongs to him and induced the informant so deceived to part with milk and allied products from the said amount to be given willfully to the petitioner. On the basis of written report

submitted the informant, Police registered Adityapur P.S. Case No. 332 of 2014 and took up investigation of the case. After completion of the investigation, Police found the allegation against the petitioner to be true and submitted charge-sheet against the petitioner and other co-accused person for having committed the offences punishable under Sections 406/ 420 /34 of the Indian Penal Code and basing upon the same, the learned Chief Judicial Magistrate, Seraikella, has taken cognizance of the offences vide order dated 06.02.2017 in the said G.R. Case No. 964 of 2014, as already indicated above in this judgement.

5. It is submitted by the learned counsel for the petitioner that the case is next fixed to 02.05.2026 in the trial court, for appearance of the petitioner as the petitioner has not appeared before the trial court. It is further submitted that the allegations made against the petitioner is false and the petitioner is innocent. It is then submitted that the co-accused, namely, Md. Shafiullah authorized the petitioner to use his name as the said Md. Shafiullah was going to Ajmer. It is next submitted that no offence punishable under any penal provision is made out against the petitioner, even if the entire allegation made against the petitioner is considered to be true in its entirety. Hence, it is submitted that the prayer as prayed for in this Cr.M.P., be allowed.

6. Learned Addl. P.P. on the other hand vehemently opposes the prayer of the petitioner and submits that there is direct and specific allegation against the petitioner of having cheated the informant

federation and having dishonestly induced it to part with milk and other products. It is next submitted that it is a settled principle of law that the learned Magistrate while taking cognizance basing upon the report submitted by the Police after investigation of the case, cannot add or subtract any section to the offences mentioned in the charge-sheet and the same can only be done at the time of framing of charge. So, no illegality has been committed by the learned Magistrate by taking cognizance of the offences for which charge sheet has been submitted, basing upon charge-sheet submitted by the Police. It is also submitted that because of non-cooperation of the petitioner, in not appearing before the trial court, though, he is pretty-well aware about the pendency of the case and about the requirement of his appearance before the court concerned, the consideration of the charge has not been done by the trial court. Hence, it is submitted that the prayer as prayed for in this Cr.M.P. being without any merit, be dismissed.

7. Having heard the submissions made at the bar and after going through the materials on record, this Court finds that the undisputed fact is that the petitioner has deceived the informant by fraudulently claiming to have deposited Rs. 7,00,000/- on 10.05.2013 and 8.5 lakh on 15.05.2013 respectively by him with the informant for supply of milk which is not in dispute that the petitioner never deposited and induced the informant so deceived, to part with property by supplying milk and milk products to the petitioner which the informant ought not have supplied, had it been

not so deceived. This, in the considered opinion of this Court, is sufficient to constitute the offence punishable under Section 420 of the Indian Penal Code and the contention of the petitioner that Md. Shafiullah told him to utilize the same, as he was going to Ajmer, is at best the defence of the petitioner; which the petitioner can take during trial of the case but the same cannot be considered at this stage in exercise of the power under Section 528 of the BNSS. It being a settled principle of law that the defence of the accused person or the veracity of the evidence put forth by an accused, cannot be considered by the Hon'ble High Court in exercise of the power under Section 482 of the Cr.P.C. which corresponds to Section 528 of the BNSS, as has been observed by the Hon'ble Supreme Court of India in the case of State of *Madhya Pradesh vs. Awadh Kishore Gupta & Ors.* reported in *2004 2 Supreme 501*.

8. It is also a settled principle of law that the High court in exercise of its power under Section 482 of the Cr.P.C., cannot enter into a mini trial in exercise of its power under Section 482 of the Cr.P.C., as has been reiterated by the Hon'ble Supreme Court of India in the case of State of *Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.* reported in *2022 LiveLaw SC 594*, relevant portion of which reads as under:-

“ Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction

and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)

9. It is also a settled principle of law that the Magistrate in a case which is based on a Police Report, cannot add or subtract any sections at the time of taking cognizance; as the same would be permissible by the trial court only at the time of framing of charge as has been held by the Hon'ble Supreme Court of India in the case of State of *Gujarat Vs. Girish Radhakrishnan Varde* reported in (2014) 3 SCC 659, paragraph no. 15 of which reads as under:-

"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during

investigation as also the facts disclosed in the FIR and the charge-sheet." (Emphasis supplied)

10. In view of the discussions made above, as this Court has already held that if the allegations made against the petitioner is considered to be true in their entirety, still the offence punishable under Section 420 of the Indian Penal Code is made out, hence, this Court is of the considered view that this is not a fit case where the prayer as made in this Cr.M.P. is to be acceded to in exercise of its power under Section 528 of the B.N.S. by this Court.

11. Accordingly, this Cr.M.P. being without any merit, is *dismissed*.

(Anil Kumar Choudhary, J.)