

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.748 of 2020

Binod Kumar, aged about 43 years, S/o Late Braj Kishore Prasad,
R/o Yashoda Tower, Tagore Hill Road, Morabadi, P.O.-Bariatu, P.S.-
Bariatu, District-Ranchi.

... Petitioner

Versus

1. The State of Jharkhand
2. Bikram Singh, S/o Late Ram Pratap Singh, R/o Ratu Road, P.S.-
Sukhdeo Nagar, P.O.-Hehal, District-Ranchi.

... Opposite Parties

For the Petitioner	: Mr. Lukesh Kumar, Advocate
For the State	: Mr. V.S. Sahay, Addl.P.P.
For the O.P. No.2	: Mr. Yogesh Modi, Advocate
	: Ms. Arom Iqbal, 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 the prayer to quash and set aside the order taking cognizance dated 05.08.2019 passed in Complaint Case No.3729 of 2018 by the learned Judicial Magistrate-1st Class, Ranchi whereby and where under the learned Judicial Magistrate-1st Class, Ranchi has found *prima facie* case for the offences punishable under Sections 420/406 of the Indian Penal Code against the petitioner.

3. The allegation against the petitioner is that the petitioner, being a developer approached the complainant to develop his land but did not develop his land and by deceiving with dishonest and fraudulent intention made the complainant to part with his original title documents of the land, under the guise of using the same for the purpose of obtaining a sanction map for construction of the building over the said land, but even then the petitioner stopped construction and upon repeated demand of the complainant, the petitioner has not given the same to the complainant.

4. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Vijay Kumar Ghai & Others vs. The State of West Bengal & Others** reported in **2022 LiveLaw (SC) 305** and submits that therein the Hon'ble Supreme Court of India has discussed the ingredients of the offence punishable under Section 420 of the Indian Penal Code in para-32 and the ingredients of Section 406 of the Indian Penal Code in the light of its earlier judgments.

5. Learned counsel for the petitioner next relies upon the judgment of this Court in the case of **Bimlendra Kumar Choudhary & Others vs. The State of Jharkhand & Another** reported in **2025:JHHC:25967** and submits that in that case, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Dalip Kaur & Ors. vs. Jagnar Singh & Anr.** reported in **(2009) 14 SCC 696**, para 10 of which reads as under:-

“10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the

very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])” (emphasis supplied)

wherein the Hon’ble Supreme Court of India has reiterated the settled principle of law that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance, the same would not constitute the offence of cheating.

6. It is next submitted that, in that case, this Court also relied upon the judgment of 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)

wherein it was held 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 will not amount to cheating.

7. It is further submitted that, in that case, this Court also relied upon the judgment of 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)

wherein it has categorically been held by the Hon'ble Supreme Court of India that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused persons but it must also be shown that the accused person dishonestly disposed of the same in some way or dishonestly retained the same.

8. Learned counsel for the petitioner further submits that the allegation against the petitioner is false and nowhere, it has been mentioned that the petitioner was to return the title documents which he took from the complainant in the guise of getting the map sanctioned for construction of building over the land of the complainant, hence, it is lastly submitted that the prayer as prayed for, in this Cr.M.P., be allowed.

9. 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 all the essential ingredients to constitute the offence of cheating is made out against the petitioner as the petitioner dishonestly induced the complainant to deliver his title documents of his land by dishonest and fraudulent intention and the complainant after being so deceived, as made to part with his title documents of his property, which the complainant ought not have been parted with, had he not been so deceived. Hence, it is submitted that the same is sufficient to constitute the offence punishable under Section 420 of the Indian Penal Code. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

10. 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 the essential ingredients to constitute the offence punishable under Section 420 of the Indian Penal Code are as follows:-

- (1) *There should be fraudulent or dishonest inducement of a person by deceiving him;*
- (2) *(a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or*
(b) The person so induced to do anything which he would not do or omit if he were not so deceived, and

*(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property as has been reiterated by the Hon'ble Supreme Court of India in the case of **R.S. Nayak vs. A.R. Antulay** reported (1986) 2 SCC 716.*

11. Now coming to the fact of the case, there is direct and specific allegations that the petitioner fraudulently and dishonestly induced the complainant by deceiving him to part with his title documents which obviously the petitioner was to return after getting the map approved for construction of the building on the land belonging to the complainant, so, in the considered opinion of this Court, if the allegation against the petitioner are considered to be true in their entirety, the same is sufficient to constitute the offence punishable under Section 420 of the Indian Penal Code, therefore, this Court is of the considered view that this is not a fit case where the prayer as prayed for by the petitioner in this Cr.M.P. is to be acceded in exercise of the power under Section 482 of the Cr.P.C.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 21st of January, 2026
AFR/ Abhiraj

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