

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.749 of 2020**

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1. Abhishek Kumar @ Abhishek Kumar, Aged about 35 years, S/o Gayashankar Prasad, R/o Kusum Bihar, Kola Kusuma, House No. B-13 P.S. & P.O. & Koyala Nagar, District- Dhanbad.
 2. Pankaj Kumar @ Prasun Tiwary @ Pankaj Tiwary @ P. Tiwary @ Pankaj Prasun Tiwary, Aged about 38 years, S/o Late Krishn Kant Tiwari, R/o Rajbari Road, Jharia, P.S. & P.O.- Jharia, District- Dhanbad.

... Petitioners

Versus

1. The State of Jharkhand.
2. Sanjay Singh, S/o Late B. Singh, resident of Tetulmari, P.O. Sijna, P.S. Tetulmari, District- Dhanbad. ... Opposite Parties

For the Petitioners	: Mr. Sidharth Sudhanshu, Advocate. Mr. Lukesh Kumar, Advocate.
For the State	: Mr. Nehala Sharmin, Addl.P.P.
For the O.P. No.2	: Mr. Pratiush Lala, 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 entire criminal proceedings arising out of Complaint Case No. 2924 of 2016 including order taking cognizance for the offences punishable under Sections 420 and 406 of the Indian Penal Code dated 28.11.2019 passed by the learned Judicial Magistrate, 1st Class, Dhanbad.

3. Learned counsel for the petitioners draws the drawing attention of this Court towards Supplementary Affidavit dated 28.04.2026 and

submits that it has been mentioned therein that the case is fixed on 15.05.2025 before the learned trial court for the purpose of appearance and charge has not yet been framed in this case. It is then submitted that the allegation against the petitioners is that the petitioners entered into an agreement for sale of their land and took advance, but the men of the petitioners did not allow the complainant to carry out the construction of boundary wall and refused to return the advance taken.

4. Learned counsel for the petitioners submits that the allegation against the petitioners is false. It is next submitted that even if the entire allegation made is against the petitioners are considered to be true in their entirety, still the offences, in respect of which *prima facie* case has been found by the learned Magistrate; is not made out. Learned counsel for the petitioners relies upon the judgment of this Court in the case of *Satyabhama Dubey @ Satyabhama Devi and Others versus State of Jharkhand and Others* reported in 2024 Supreme (Jhk) 171 and submits that this Court in that case, relied upon the judgment of Hon'ble Supreme Court in the Case of **Vir Prakash Sharma vs. Anil Kumar Agarwal & Another** reported in (2007) 7 SCC 373, para-8 of which reads as under:-

"8. The dispute between the parties herein is essentially a civil dispute. Non-payment 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. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case. Section 405 of the Penal Code reads, thus:

"405. Criminal breach of trust. – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates

or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'." Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made."

and submit that therein the Hon'ble Supreme Court of India observed that when the dispute between the parties is essentially a civil dispute non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence.

5. It is next submitted that in that case this Court also relied upon the judgment of the Hon'ble Supreme Court of India in case of **Ram Biraji Devi and Another versus Umesh Kumar Singh and Another** reported in **AIR 2006 SC 2035** where it has been held that the dispute with regard to sale of property in which some advance has been received, but refused to execute the sale deed was merely a civil liability and it is submitted that in this case also, the only allegation against the petitioners is that they have refused to execute the sale deed in respect of the property in connection of which they have received the advance; hence the allegations even if are considered to be true are not sufficient to make out any offence. It is then submitted that in that case this Court also relied upon the judgment of Hon'ble Supreme Court of India in **Umashankar Gopalika versus State of Bihar & Another** reported in **(2005) 10 SCC 336** para-06 of which reads as under:-

"6.xxxxxxxxxxxxxxxxxxxxxx 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 I.P.C.”. (Emphasis supplied)

wherein it was held by the Hon’ble Supreme Court of India 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.

6. It is next submitted that in this case there is absolutely no allegation against the petitioners of playing deception at the very inception and in absence of the same, the offence punishable under Section 420 is not made out.

7. It is further submitted that in that case this Court also relied upon the judgment of Hon’ble the Supreme Court of India in **Binod Kumar & Others versus State of Bihar & Another reported in (2014) 10 SCC 663**, paragraph-18 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 the Hon’ble The Supreme Court of India has reiterated the settled principle of law 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 persons dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the accused persons did not pay the money to the complainant does not amount to criminal breach of trust. It is next submitted that in this case also, in absence of any material to suggest that the petitioners dishonestly disposed of the entrusted property in some way or dishonestly retained the same; the offence punishable under Section 406 of the I.P.C. is not made out.

8. Learned counsel for the petitioners further relied upon the judgment of this Court in the case of **Maya Rani versus State of Jharkhand & Another** reported in **2025:JHHC:19884** and submits that in that case this Court relied upon the Judgment of Hon’ble The Supreme Court of India in the case of **Satishchandra Ratanlal Shah vs. State of Gujarat & Another** reported in **(2019) 9 SCC 148** wherein it has been held by Hon’ble Supreme Court of India that a mere breach of promise, agreement or contract does not, *ipso facto*, constitute the offence of the criminal breach of trust contained in Section 405 of Indian Penal Code; without there being a clear case of entrustment. It is further submitted that in that case, this Court relied upon the judgment of Hon’ble the Supreme Court of India in the case of **Radheyshyam & Others versus**

State of Rajasthan & Another reported in **2024 SCC Online SC 2311**,
para-12 of which reads as under:-,

“12. In the present case, the appellants were not entrusted with any property by respondent no. 2 - complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out.” (Emphasis supplied)

And submits that it has been held by the Hon’ble Supreme Court of India that the amount paid towards consideration cannot said to have been entrusted with the accused persons and in that case it was also observed by the Hon’ble Supreme Court of India that a mere breach of contract does not constitute the offence of cheating or breach of trust. Hence, it is submitted that prayer as prayed for in this Cr.M.P. be allowed.

9. Learned Special Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer and submit that if the allegation made against the petitioners considered to be true in their entirety, then each of the offences in respect of which the cognizance has been taken by the learned Judicial Magistrate is made out against the petitioners. Hence, it is submitted that this Cr.M.P. is being devoid of 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 it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam & Others versus State of Rajasthan & Another** reported in **2024 SCC Online SC 2311**, that the amount paid towards consideration cannot said to have been entrusted with the accused persons. In this case, the only allegation against the petitioners is that the petitioners paid money towards the part consideration amount of the land to be sold. Under such circumstances, this Court is of the considered view, there is no material to suggest entrustment of any money to the petitioners nor there is any material to suggest any dishonest misappropriation of the entrusted property and in the absence of the same, even if the entire allegations made against the petitioner are considered to be true in their entirety still, the offence punishable under Section 406 of the I.P.C. is not made out.

11. So far as the offence punishable under Section 420 of the I.P.C. is concerned, it is settled principle of law that as has been held by Hon'ble Supreme Court of India in Case of **Umashankar Gopalika versus State of Bihar & Another** reported in **(2005) 10 SCC 336** that in order to constitute the offence punishable under Section 420 of the I.P.C.; the accused persons must play deception since very beginning of the transaction between the parties.

12. Now coming to the facts of the case, there is absolutely no allegation against the petitioners of playing deception since the very beginning of the transaction. Hence, this Court has no hesitation in holding that even if the entire allegations made against the petitioners

are considered to be true in their entirety, still the offence punishable under Section 420 of the Indian Penal Code is not made out.

13. In view of the discussion made above, this Court of the considered view that neither the offence punishable under Section 420 of the Indian Penal Code nor the offence punishable under Section 406 of the Indian Penal Code is made out against the petitioners even with the aid of Section 120B of the Indian Penal Code, even if the entire allegations made against the petitioner are considered to be true in their entirety. Therefore, the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law. Hence, this is a fit case where the entire criminal proceedings including the order taking cognizance dated 28.11.2019 passed by the learned Judicial Magistrate 1st Class, Dhanbad in connection with Complaint Case No. 2924 of 2016 be quashed and set aside against the petitioners named above.

14. Accordingly, the entire criminal proceedings including the order taking cognizance dated 28.11.2019 passed by the learned Judicial Magistrate 1st Class, Dhanbad in connection with Complaint Case No. 2924 of 2016, is quashed and set aside against the petitioners named above.

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

(Anil Kumar Choudhary, J.)