

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 838 of 2025

1. Vijay Kumar Verma, aged about 54 yrs., s/o late D. Prasad, r/o Ward No.2, P.O.+P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand
2. Pratik Kumar Agarwal, aged about 29 yrs., s/o Prabhat Kumar Agarwal, r/o Ward No.8, P.O.+P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand
3. Saurabh Kumar Chaudhary, aged about 32 yrs., s/o Giridhari Lal Choudhary, r/o Ward No.8, near Garage Chowk, P.O.+P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand
4. Dinesh Kumar Pattanayak @ Dinesh Kumar Pattnayak, aged about 52 yrs, s/o Ajit Pattanayak, r/o Tola-Radha Krishna Mandir, P.O.-Seraikella, P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand
5. Malay Acharya, aged about 37 yrs., s/o Subodh Kuma Acharya, r/o 8 Indratandi, P.O.+P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand

.... Petitioners

Versus

1. The State of Jharkhand
2. Shib Kumar Padihari, aged about 44 yrs., s/o late Kalakar Parihari, r/o Ward No.4, P.O.+P.S.-Seraikella, Dist.-Seraikella-Kharswan, Jharkhand

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Abhishek Kr. Dubey, Advocate
	: Mr. Yuvraj Singh, Advocate
For the State	: Mr. Subodh Kr. Dubey, Addl. P.P.
For O.P. No.2	: Mr. Jitendra N. Upadhyay, Advocate

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the entire criminal proceeding including the order dated 06.10.2023 passed by the learned C.J.M., Seraikella in connection with Seraikella P.S. Case No. 51 of 2021, corresponding to G.R. No. 477 of 2023 whereby and where under, the learned Chief Judicial Magistrate, Seraikella has taken cognizance of the offences punishable under Sections 406, 420 and 120B of the Indian Penal Code after submission of the charge sheet *inter alia* against the petitioners for having committed the said offences.
3. The allegation against the petitioners is that the petitioners are brokers/criminals and posed as a genuine purchaser. The petitioner nos.1 to 3 have purchased the land of the informant executed by his co-sharer namely Alok Parihari, who is also the co-accused, in excess of the share of Alok Parihari and the petitioner nos.4 and 5 are the witnesses to the said sale deed. It is further alleged that the petitioners were stealing the land belonging to the informant from the co-accused person.
4. The informant filed C.C. No. 271 of 2021 in the court of C.J.M., Seraikella which upon being referred to police under Section 156(3) Cr.P.C., Seraikella P.S. Case No. 51 of 2021, corresponding to G.R. No. 477 of 2023 was registered. Police took up investigation of the case and after completion of investigation, police submitted charge sheet against the petitioners for having committed the offences punishable under Section 420, 406 and

120B of the Indian Penal Code and the learned Chief Judicial Magistrate, Seraikella took cognizance of the said offences.

5. Learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Mohammed Ibrahim & Ors. vs. State of Bihar & Anr.** reported in (2009) 8 SCC 751 and submits that therein the Hon'ble Supreme Court of India has categorically held that when a sale deed is executed conveying a property claiming ownership thereto, it is only the purchaser who can allege that the vendor has cheated him and not the third party.

6. It is next submitted by the learned counsel for the petitioners that in paragraph no.18 of that case which reads as under:-

"18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of "cheating" are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property."

the Hon'ble Supreme Court of India has enumerated the essential ingredients to constitute the offence of cheating.

7. It is next submitted by the learned counsel for the petitioners that the essential ingredients to constitute the offence punishable under Section 406 of the Indian Penal Code is dishonest misappropriation of the entrusted property and in this case, there

is no allegation of any entrustment of the property of the petitioners to the complainant-informant or anyone else. Hence, in the absence of any entrustment, there cannot be any dishonest misappropriation of the entrusted property therefore, it is submitted that even if the entire allegations made against the petitioners are considered to be true in their entirety, still the offence punishable under Section 406 of the Indian Penal Code is not made out either. It is submitted by the learned counsel for the petitioners that as none of the offences in respect of which the cognizance of the offences has been taken by the learned Chief Judicial Magistrate, Seraikella is made out even if the entire allegations made against the petitioners are considered to be true in their entirety, hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

8. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently oppose the prayer as prayed for by the petitioners in this criminal miscellaneous petition and submits that the materials in the record are sufficient to constitute the offence punishable under Sections 406, 420 and 120B of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
9. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law that if a sale deed

is executed conveying a property claiming ownership thereto, it is only the purchaser who can allege that vendor has cheated him.

10. Now coming to the facts of the case, the undisputed fact remains that the petitioner nos.1 to 3 are the purchasers of the property sold by the co-accused-Alok Parihari and the petitioner nos.4 and 5 are only the attesting witnesses of the said sale deed. There is no allegation against the co-accused Alok Parihari of impersonating for someone else. The undisputed fact remains that Alok Parihari has sold the land to the petitioner nos.1 to 3 claiming to be the owner of the land. Under such circumstances, certainly it is not open to the informant to allege that co-accused Alok Parihari has cheated the petitioner nos.1 to 3.

11. In order to constitute the offence punishable under Section 420 of the Indian Penal Code, as already indicated above, the prosecution has to establish that the victim was deceived and he was dishonestly or fraudulently induced to part with any of the money.

12. Now coming to the facts of the case, there is no allegation against the petitioners of deceiving the complainant or inducing him to part with any money nor there is such allegation as well against the petitioners or against anyone else.

13. Under such circumstances, this Court is of the considered view 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.

14. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the essential ingredient of the said offence is dishonest misappropriation of the entrusted property etc.
15. Now coming to the facts of the case, there is absolutely no allegation of entrustment of any property to the petitioners. In the absence of any entrustment, the question of dishonest misappropriation thereof does not arise. Therefore, this Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true in their entirety, still, the offence punishable under Section 406 of the Indian Penal Code is not made out.
16. So far as the offence punishable under Section 120B of the Indian Penal Code is concerned, it is pertinent to mention here that the essential ingredients to constitute the offence punishable under Section 120B of the Indian Penal Code are as under:-
 - (i) An agreement between two or more persons to commit an offence
 - (ii) In doing so, either commit or caused to be done an illegal act or act which is not in itself illegal, by illegal means
 - (iii) such an act done or caused to be done; was an offence punishable under the Indian Penal Code and

(iv) If the act so done was not an offence than an overt act had been done by one or more parties to such agreement in pursuance thereof.

17. Now coming to the facts of the case, as already indicated above, the materials available in the record is inadequate to establish any illegal act having been committed by the petitioners nor any offence is made out against the petitioners. Further, there is no overt act which has been attributed to the petitioners in pursuance of any agreement between them or with the co-accused person.
18. Under such circumstances, this Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true in their entirety, still, the offence punishable under Section 120B of the Indian Penal Code is also not made out.
19. In view of the discussions made above, as none of the offences in respect of which cognizance has been taken by the learned Chief Judicial Magistrate, Seraikella is made out hence, this Court is of the considered view that continuation of the entire criminal proceeding will amount to abuse of process of law therefore, this is a fit case where the entire criminal proceeding including the order dated 06.10.2023 passed by the learned C.J.M., Seraikella in connection with Seraikella P.S. Case No. 51 of 2021, corresponding to G.R. No. 477 of 2023 be quashed and set aside against the petitioners.
20. Accordingly, the entire criminal proceeding including the order dated 06.10.2023 passed by the learned C.J.M., Seraikella in

connection with Seraikella P.S. Case No. 51 of 2021, corresponding to G.R. No. 477 of 2023 is quashed and set aside against the petitioners.

21. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 27th November, 2025
AFR/Sonu-Gunjan/-

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