

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 822 of 2022

Ashok Kumar Verma, aged about 55 years, son of Kailash Prasad Verma, Resident of village -Ramnagar Road, Lower Boddam Bazar, P.S. -Sadar, P.O. & District -Hazaribagh.

.... Petitioner

Versus

1. The State of Jharkhand
 2. Debjeet Banerjee, son of late Mihir Baran Banerjee, Resident of Sadar Hospital, Opposite Tower No.1, P.S. -Sadar, P.O. & District -Hazaribagh.
- Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Shailendra Jit, Advocate
For the State	: Mrs. Vandana Bharti, Addl. P.P.
For the O.P. No.2	: Mr. Ashok Kr. Singh, 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 482 of the Code of Criminal Procedure with the prayer to quash the order dated 04.12.2021, passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No.2048 of 2019 whereby and where under the learned Chief Judicial Magistrate, Hazaribagh has found *prima-facie* case for the offence punishable under Section 420 of the Indian Penal Code against the petitioner as well as against the co-accused Malay Sameer.

3. The allegation against the petitioner is that the petitioner was the Field Officer of Palash Food and Beverages Company and the complainant was appointed by the said company as the distributor. The complainant invested Rs.5,00,000/- but he was not given the stipulated commission. Later on, the co-accused joined as the National Head of one Solo Juice Company and he has paid Rs.60,000/- to the informant towards the godown rent and after institution of the case transferred Rs.50,000/- each twice to the bank account of the complainant. The informant first filed Complaint Case No. 1792 of 2015 which upon being referred to police, Hazaribagh (Sadar) P.S. Case No. 1342 of 2015 was registered and police took up investigation of the case. After completion of the investigation, the allegation against the petitioner was not found to be true and the dispute regarding the co-accused was found to be a civil dispute. Thereafter, the complainant filed protest-cum-complaint petition which was registered as Complaint-cum-Protest Case No. 2048 of 2019 and on the basis of the same as well as the statement on solemn affirmation of the complainant and the statement of the inquiry witnesses, the learned Chief Judicial Magistrate found *prima-facie* case for the offence punishable under Section 420 of the Indian Penal Code.
4. It is submitted by the learned counsel for the petitioner, relying upon the Judgment of the Hon'ble Supreme Court of India in the

case of **Uma Shankar Gopalika vs. State of Bihar & Anr.** reported in
(2005) 10 SCC 336, paragraph no. 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)

That therein it has been categorically held by the Hon'ble Supreme Court of India that in order to constitute the offence of cheating, the accused must play deception since the very inception and if the intention to cheat has developed later on, the same will not amount to cheating.

5. It is next submitted by the learned counsel for the petitioner that admittedly the petitioner is a Field Officer i.e. the employee of the company, to whom the money was claimed to be entrusted by the complainant and there is no allegation against the petitioner of either deceiving the complainant or inducing him to part with any property. Therefore, the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioner even if the entire allegations made against the petitioner are considered to be true in their entirety. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

6. The learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer as prayed for by the petitioner in this criminal miscellaneous petition and submits that the materials in the record are sufficient to constitute the offence punishable under Section 420 of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petitioner being without any merit be dismissed.
7. 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 in order to constitute the offence of cheating, the accused person must play deception since the beginning of the transaction between the parties, as has been held by the Hon'ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Anr.** (supra).
8. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of playing deception since the beginning of the transaction between the parties. Admittedly, the petitioner is only the employee of the Palash Food and Beverages Company with which dealings were made by the complainant. The said Palash Food and Beverages Company has not been arrayed as an accused.
9. Under such circumstances, 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

against the petitioner. Therefore, continuation of this criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the order dated 04.12.2021, passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No.2048 of 2019, be quashed and set aside *qua* the petitioner.

10. Accordingly, the order dated 04.12.2021, passed by the learned Chief Judicial Magistrate, Hazaribagh in connection with Protest-cum-Complaint Case No.2048 of 2019, is quashed and set aside *qua* the petitioner.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 21st January, 2026
AFR/Sonu-Gunjan/-

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