

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1172 of 2023

1. Vameshwar Prasad Singh aged about 68 years, Son of Late Rajendra Narayan Singh, Permanent address- Vill- Boro, P.O.- Boro, P.S. Pachamba, Dist- Giridih, Present Address- R/O- N.H.-2, Chandi Sthan, Kramdiha, P.O.- Darioura, P.S.- Gurua, District- Gaya, State- Bihar.

2. Narad Mohan Singh aged about 58 years, Son of Late Rajendra Narayan Singh, Permanent address- Vill- Boro, P.O.- Boro, P.S. Pachamba, Dist- Giridih, Present Address- R/O- More No.15, Patel Nagar, Sai Home, Phage No.202 B, P.O+ P.S.- Hatiya, District- Ranchi

... Petitioners

Versus

1. The State of Jharkhand

2. Md. Taj Akhtar, Son of Md. Shamim Akhtar, Resident of Village Maulana Azad Chouk, P.O. + P.S. Nagar, District- Giridih

... Opposite Parties

For the Petitioners	: Mr. Ashok Kumar Singh, Advocate
For the State	: Ms. Ruby Pandey, Addl. P.P.
For the O.P. No.2	: Mr. Kamdeo Pandey, 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, 1973 with a prayer to quash the entire criminal proceeding arising out of Giridih Nagar P.S. Case No.37 of 2023 registered for the

offence punishable under Sections 406, 420, 467, 468, 471 of the Indian Penal Code.

3. Learned counsel for the petitioners submits that the investigation of the case is still going on and charge-sheet has not yet been submitted in this case.

4. The allegation against the petitioners is that the petitioners entered into an agreement for sale with the informant, took an advance and thereafter also took some more money but subsequently they entered into an agreement with other persons and executed power of attorney in favour of them also.

5. Learned counsel for the petitioners submits that even if the entire allegations made against the petitioners are considered to be true in their entirety still none of the offences in respect of which the F.I.R. has been registered, is made out against either of the petitioners. It is further submitted that there is no allegation of any impersonation being committed by the petitioners in execution of the power of attorney in favour of anyone and in the absence of the same, the question of forgery does not arise.

6. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Vinod Natesan vs. State of Kerala & Others** reported in (2019) 2 SCC 401 and submits that therein it has been mentioned that as in the facts of that case when the dispute between the parties was a civil dispute and it was tried to be converted into a criminal dispute, therefore, the Hon'ble Supreme

Court of India was of the view that the continuation of the criminal proceeding against the accused will be an abuse of process of law.

7. Learned counsel for the petitioners next relies upon the judgment of this Court in the case of **Reena Lata @ Rina Lata vs. The State of Jharkhand & Another** reported in **2026:JHHC:1072** and submits that therein this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Dalip Kaur & Others vs. Jagnar Singh & Another** reported in **(2009) 14 SCC 696**, paragraph-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)*

and submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that if the dispute between the parties is essentially a civil dispute resulting from the breach of contract on the part of the accused person by non-refunding the amount of advance, the same would not constitute the offence of cheating.

8. 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 & Anr.** 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 the Hon’ble Supreme Court of India has reiterated the settled principle of law that in order to constitute the offence of cheating, the accused must play deception since the beginning of the transaction between the parties and if the intention to cheat has developed later on, the same cannot amount to cheating.

9. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

10. 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 petitioners made in the instant Cr.M.P. and submit that during the subsistence of the agreement to sale between the petitioners and the informant, the petitioners have sold the property to a third party by executing power of attorney and thus, the power of attorney is a forged one and they have also cheated the informant and they have not even returned the advance money and the subsequent money taken by them. Hence, it is submitted that all the offences in respect of which the F.I.R. has been lodged, is made out against each of the petitioners, therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

11. 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 vs. 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)

that the amount paid towards consideration cannot be said to have been entrusted with the accused person by the complainant and merely because the seller is refusing to register the sale, it does not amount to misappropriation of the advance amount paid.

12. In the case of **Murari Lal Gupta vs. Gopi Singh** reported in **(2005) 13 SCC 699** paragraph-6 of which reads as under:-

"6. We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which

the respondent parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie. The complaint filed by the respondent and that too at Madhepura against the petitioner, who is a resident of Delhi, seems to be an attempt to pressurise the petitioner for coming to terms with the respondent." (Emphasis supplied)

therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that merely because an agreement to sell was entered into and which agreement, the accused persons of the case failed to honour, it cannot be said that the seller has cheated the respondent and no case for prosecution under Section 420 or Section 406 of the Indian Penal Code is made out.

13. Now, coming to the facts of the case; there is absolutely no allegation against either of the petitioners of playing deception since the beginning of the transaction between the parties rather it is the case of the petitioners that since the informant did not pay the entire consideration amount in terms of the agreement, hence, they executed a power of attorney to sell their land to a third party. In the absence of the essential ingredient to constitute the offence punishable under Section 420 of the Indian Penal Code, that the accused must have played deception since the beginning of the transaction between the parties, this Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true still the offence

punishable under Section 420 of Indian Penal Code is not made out against the petitioners.

14. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam & Others vs. State of Rajasthan & Another (supra)** that the amount paid towards consideration cannot be said to have been entrusted with the accused person and in the absence of any allegation that the petitioners dishonestly misappropriated any entrusted property, this Court has no hesitation in holding that even if the entire allegations made against the petitioners are considered to be true still the offence punishable under Section 406 of Indian Penal Code is not made out against the petitioners.

15. So far as the offences punishable under Sections 467, 468 and 471 of the Indian Penal Code are concerned, the essential ingredients to commit each of such offence is forgery.

16. Now, coming to the facts of the case; the only ground of the informant claiming forgery to have been committed by the petitioners is that during the subsistence of the agreement for sale with the informant, they have sold the property to a third party; through their power of attorney holder. There is no allegation that the petitioners have created any false document as defined in Section 464 of the Indian Penal Code.

17. Under such circumstances, 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 of forgery is not made out against the petitioners and in the absence of the same, none of the offence punishable under Sections 467, 468 and 471 of the Indian Penal Code is not made out against the petitioners.

18. In view of the discussions made above, as none of the offence in respect of which the F.I.R. has been registered, is made out against the petitioners even if the entire allegations made against them are considered to be true in their entirety, hence, this Court is of the considered view that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law, therefore, this is a fit case where the entire criminal proceeding arising out of Giridih Nagar P.S. Case No.37 of 2023, be quashed and set aside *qua* the petitioners named above.

19. Accordingly, the entire criminal proceeding arising out of Giridih Nagar P.S. Case No.37 of 2023, is quashed and set aside *qua* the petitioners named above.

20. In the result, this Criminal Miscellaneous Petition stands allowed.

(Anil Kumar Choudhary, J.)

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