

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1205 of 2022

Shailendra Kumar Jaiswal, aged about 49 years, s/o Sri Bhim Prasad Jaiswal, resident of Koiribandh, Jharia, P.O. & P.S.-Jharia, District-Dhanbad.

... Petitioner

Versus

1. The State of Jharkhand
2. Hemraj Jindal, aged about 74 years, S/o Baburam Jindal, resident of Basera Complex, Ashok Nagar, P.O. Dhanbad, P.S.-Bank More, District-Dhanbad, Jharkhand.

... Opposite Parties

For the Petitioner : Mr. Shadab Eqbal, Advocate
: Mr. Ayush Raj, Advocate
: Mr. Kumar Anshuman, Advocate
For the State : Mr. Shiv Shankar Kumar, Addl.P.P.
For the O.P. No.2 : Mr. Jitendra Kumar Pasari, 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 entire criminal proceeding including the order taking cognizance dated 15.09.2021 in connection with Bankmore P.S. Case No.84 of 2016 corresponding to G.R. Case No.2229 of 2016 for the offences punishable under Sections 406, 420,

407, 468, 471 & 120B of the Indian Penal Code of the Court of learned JMFC, Dhanbad.

3. The brief fact of the case is that the petitioner entered into an agreement with the opposite party no.2 to sale a piece of land for a total consideration of Rs.45 lakhs. He received the advance amount of Rs.4 lakhs and the time period for payment of the remaining amount was 03 months and the agreement was entered into between the parties on 25.02.2015. It is the case of the informant that the co-accused persons who were the owner of the property in question also took several amounts of money from the complainant/informant by making acknowledgement in the back side of the agreement and the petitioner also took Rs.1 lakh. It was alleged that the petitioner, in the beginning of the transaction has intention to cheat the complainant/informant and hatched up a criminal conspiracy to cheat the complainant/informant. Though, the complainant/informant during the period of 03 months, offered to pay the rest consideration amount, but the petitioner and the co-accused persons deferred the matter on false pretexts but neither executed the sale deed nor returned the advance amount taken.

4. The complainant/informant first filed Complaint Case No.1363 of 2016 in the Court of learned Chief Judicial Magistrate, Dhanbad which upon being referred to police under Section 156(3) Cr.P.C. and police registered Bankmore P.S. Case No.84 of 2016 and took up investigation of the case and after completion of the investigation, police submitted charge sheet against the petitioner for having committed the said offences for

which cognizance has been taken; which has already been mentioned in the foregoing paragraphs of this judgment.

5. Learned counsel for the petitioner submits that the case is next fixed to 02.09.2026 for appearance of the accused persons and charge has not yet been framed in this case.

6. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Radheshyam & Others vs. State of Rajasthan & Another** reported in **2024 INSC 1064**, paragraph-06 of which reads as under:-

"6. As already indicated above, a perusal of the complaint which has been registered as the FIR does not spell out any element or ingredient of cheating or breach of trust. Mere non-performance of an Agreement to Sell by itself does not amount to cheating and breach of trust. Respondent no.2 has adequate remedy of filing a Civil Suit for relief of specific performance of a contract which he has already availed and the suit is still pending. The FIR only appears to be an arm-twisting mechanism to pressurise the appellants to execute the Sale Deed or to extract money. Every civil wrong cannot be converted into a criminal wrong. As we find in the present case, respondent no.2 is trying to abuse the criminal machinery for ulterior motives. It is not his case that the appellants duped him to pay the advance amount and entered into an Agreement to Sell. The High Court fell in error in recording a finding that the ingredients of offences under sections 420 and 406 of IPC are present in the instant case.

and submits that therein the Hon'ble Supreme Court of India has held that mere non-performance of an Agreement to Sale by itself does not amount to cheating and breach of trust and in paragraph-12 thereof, it has been held that the amount paid towards consideration cannot be said to have been entrusted to the accused persons and merely because the accused persons are refusing to register the sale deed, it does not amount

to misappropriation of the advance payment. Paragraphs-12 of the case of **Radheshyam & Others vs. State of Rajasthan & Another (supra)** 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)*

7. Learned counsel for the petitioner then submits that admittedly as per the undisputed agreement, the copy of which has been annexed as part of the FIR kept at Page No.42-45 of the brief, the remaining consideration amount of Rs.41 lakhs was to be paid to the petitioner within 03 months, but the complainant has paid certain amount to the co-accused persons namely Sudama Singh and proof of such payment has also been annexed with the FIR at Page No.46-47 of the brief, so it is a clear case of violation of the terms of the contract by the complaint/informant himself and that is the reason, the complainant/informant never dared to file a suit for specific performance of contract, but in order to wreak vengeance, this criminal case has been instituted even though there is absolutely no allegation of any forgery being committed as no false document has been created. It is further submitted that none of the offences in respect of which charge sheet has

been submitted and cognizance has been taken is made out against the petitioner, even if the entire allegation made against the petitioner are considered to be true in their entirety, therefore, it is lastly submitted that the prayer as prayed for by the petitioner in this Cr.M.P., be allowed.

8. 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. It is submitted by the learned counsel for the opposite party no.2 that the petitioner has not come to court with clean hands and though the petitioner was given the privilege of anticipatory bail consequent upon a successful mediation and compromise agreement dated 12.02.2020 in which the petitioner was to pay Rs.11 lakhs to the complainant in instalments within prescribed period of compromise agreement, but he did not honor the agreement and his bail has been cancelled vide order dated 25.02.2022 in Criminal Misc. Case No.06 of 2021 by the learned Additional Sessions Judge-I, Dhanbad, but suppressing the said facts, the petitioner has come to this Court by filing this Cr.M.P.. In support of the principle that the persons who does not come to court with clean hands is not entitled to be heard on the merits of their grievance and in any case, such person is not entitled to any relief is applicable not only to the petitions filed under Article 32, 226 & 136 of the Constitution of India, but also to the cases instituted in every Courts and Judicial Forums; the learned counsel for the opposite party no.2 relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Bhaskar Laxman Jadhav & Others vs.**

Karamveer Kakasaheb Wagh Education Society & Others passed in petition for **Special Leave to Appeal No.30469 of 2009 dated 11.12.2012** wherein in para-48, the Hon'ble Supreme Court of India has quoted the said principle as laid down in the case of **Ramjas Foundation vs. Union of India** reported in (2010) 14 SCC 38.

9. Learned counsel for the opposite party no.2 next relies upon the judgment of the Hon'ble Supreme of India in the case of **Medchl Chemicals & Pharma (P) Ltd. vs. Biological E. Ltd. & Others** reported in (2000) 3 SCC 269 wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that mere fact that the offence was committed during the course of a commercial transaction by itself is not sufficient to quash the complaint and it was also held that if a complaint did not disclose the commission of an offence simply because of the fact that there is a remedy provided for breach of contract that does not by itself clothe the court to come to a conclusion that civil remedy is the only remedy available to the appellant. It is next submitted that, in this case, though the complainant/informant has a civil remedy and he has not availed the same as yet, that cannot be a ground for quashing the entire criminal proceeding. 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, the undisputed facts remains that the admitted case of the complainant/informant that the complainant/informant entered into an

agreement with the petitioner wherein the complainant paid advance of Rs.4 lakhs on the date of agreement itself i.e. on 25.02.2015 and the remaining amount of Rs.41 lakhs was to be paid to the petitioner within three (03) months from the date of that agreement. The undisputed facts remains that subsequent to the said agreement the complainant has paid only Rs.1 lakh more to the petitioner. It is also the admitted case of the complainant that the complainant paid Rs.4,50,000/- to the co-accused Sudama Singh through bank transactions, the documents of which has been annexed with the FIR itself and kept at Page No.46-47 of this brief. The undisputed fact remains that the complainant has not paid the remaining consideration amount of Rs.41 lakhs more to the petitioner during the stipulated period of 03 months.

11. Under such circumstances, this Court is of the considered view that in view of the principle of law reiterated by the Hon'ble Supreme Court of India in the case of **Radheshyam & Others vs. State of Rajasthan & Another (supra)**, the allegations against the petitioner are not sufficient to constitute any of the offences punishable under Section 406, 407 & 420 of the Indian Penal Code.

12. So far as the offences punishable under Section 468 and 471 of the Indian Penal Code are concerned, the essential ingredient to constitute each of the said offences is forgery. The only allegation as is forthcoming from the complaint is that, since the petitioner entered into the agreement without having any intention to honor the agreement, the same amounts to forgery. But this Court is of the considered view that only because the

petitioner without having any intention to comply terms and conditions of an agreement has entered into such agreement, the same cannot be termed to be a false document as defined under Section 464 of the Indian Penal Code and in the absence of any false document, the offence of forgery is not made out and in the absence of the offence of forgery, the offence punishable under Section 468 or 471 of the Indian Penal Code is also not made out.

13. So far as the contention of the opposite party no.2 that the petitioner has not come to court with clean hands is concerned, these are the developments which took place after the institution of the complaint case and part of the judicial proceedings which occurred subsequent to filing of the complaint case and has no bearing on the merits of the case, hence, in the considered opinion of this Court, the same is not a sufficient ground to debar the petitioner from granting the relief under Section 482 of Cr.P.C. on the ground that he has suppressed that NBW has been issued against him upon cancellation of the bail granted to him.

14. In view of the discussions made above, this Court is of the considered view that since, as already discussed above, even if the entire allegations made against the petitioner are considered to be true in their entirety, still none of the offences in respect of which charge sheet has been submitted and basing upon which cognizance of the offences has been taken against the petitioner is made out and the case has been instituted basically for the purpose of wreaking vengeance to arm twist the petitioner to recover the advance amount paid, hence, this Court is of

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the considered view that the continuation of this criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the entire criminal proceeding including the order taking cognizance dated 15.09.2021 in connection with Bankmore P.S. Case No.84 of 2016 corresponding to G.R. Case No.2229 of 2016 for the offences punishable under Sections 406, 420, 407, 468, 471 & 120B of the Indian Penal Code of the Court of learned JMFC, Dhanbad, be quashed and set aside.

15. Accordingly, the entire criminal proceeding including the order taking cognizance dated 15.09.2021 in connection with Bankmore P.S. Case No.84 of 2016 corresponding to G.R. Case No.2229 of 2016 for the offences punishable under Sections 406, 420, 407, 468, 471 & 120B of the Indian Penal Code of the Court of learned JMFC, Dhanbad, is quashed and set aside *qua* the petitioner.

16. In the result, this Cr.M.P., stands allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 13th of August, 2026
AFR/ Abhiraj

Uploaded on 18/08/2026