

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1373 of 2026**

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1. Divyendu Bhardwaj, aged about 41 years, son of Late Om Sharma.
 2. Komal @ Komal Sharma, aged about 31 years, wife of Divyendu Bhardwaj, both are resident of M-24, Sanjay Nagar, Sector-23, P.O. & P.S. Sanjay Nagar, District- Ghaziabad, State (U.P.)

... Petitioners

Versus

The State of Jharkhand ... Opposite Party

For the Petitioners : Mr. Gautam Kumar, Advocate
For the State : Mrs. Anuradha Sahay, Addl.P.P.

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 528 of the B.N.S.S., 2023 with the prayer to quash the first information report being Chira Chas P.S. Case No. 14 of 2025 registered under Sections 316(2), 318(4), 352, 351(2), 3(5) of the Bharatiya Nayaya Sanhita (B.N.S.) and also for quashing the entire criminal proceeding arising out of the said case which is now pending before the Court of learned Chief Judicial Magistrate, Bokaro.

3. It is submitted by the learned counsel for the petitioner that the investigation of the case is still going on and charge-sheet has not yet been submitted against the petitioners. It is next submitted that the petitioner no.1 is the brother and petitioner no. 2 is the sister-in-law

(Bhabhi) of the co-accused- Shubham Bhardwaj. The co-accused Shubham Bhardwaj entered into a MOU (Memorandum of Understanding) -cum-work order with the informant and co-accused Shubham Bhardwaj issued four cheques of HDFC Bank, two for 50,00,000/- each and one for 60,00,000/- and one for 90,00,000/- to the informant. Thereafter, informant supplied material as told by Shubham Bhardwaj and petitioner no.1 and commercial transaction took place between the parties. A sum of Rs.2,68,55,829/- was outstanding against the Almighty Infra Height Private Limited but for last one year before institution of the first information report, no money was sent by the Almighty Infra Height Private Limited. Though in the month of November, the petitioner no. 1- Divyendu Bhardwaj assured of giving 50 lakhs over phone, but he did not pay anything. The only allegation against petitioner no.2 Komal Sharma is that she along with petitioner no.1 abused the complainant/informant over phone and threatened to kill him and threatened to implicate the informant in a false case, if he again demands back his money and to ruin the informant and also after hatching conspiracy with the co-accused persons has instituted a false case against the informant, by which respect and social prestige of the petitioner has been affected and on the basis of the written report submitted by the informant, police registered the case and investigation of case is going on.

4. Learned counsel for the petitioners relying upon the judgment of Hon'ble Supreme Court of India in the case of **Lalit Chaturvedi & Others versus State of Uttar Pradesh and Another** reported in (2024) 12 SCC

483 submits that in that case Hon'ble Supreme Court of India in that case, relied upon its own judgment in the case of **V.Y. Jose versus State of Gurajat** reported in (2009) 3 SCC 78 wherein it has been held that a contractual dispute or breach of contract *per se* could not lead to initiation of a criminal proceeding. Learned counsel for the petitioners next relies upon the judgment of Hon'ble Supreme Court of India in the case of **Delhi Race Club (1940) Limited & Others versus State of Uttar Pradesh & Another** reported in (2024) 10 SCC 690 in para-35 in which Hon'ble Supreme Court of India discussed the difference between the criminal breach of trust and cheating and in para 36 of which the Hon'ble Supreme Court of India has mentioned the ingredients to constitute the offences punishable under Sections 406 and 420 of the I.P.C. It is next submitted that the allegation against the petitioners is false and even if the entire allegation made against the petitioner are considered to be true in their entirety, still none of the offences is made out against the petitioners. It is then submitted that in the absence of any allegation of any alarm being caused to the informant, the offence punishable under Section 351(2) is not made out and otherwise also it being a non-cognizable offence for the said offence only or for that matter the offence punishable under Section 352, the F.I.R. will not be sustainable. It is next submitted that the offence punishable under Section 352 of the B.N.S., 2023 is not made out, in absence of any allegation of intentional insult or to provoke the complainant to commit breach of peace or any other offence. In this respect, learned counsel for the petitioner relies upon the judgment of this Court in the Case of **Pravin Kujur and Another versus**

State of Jharkhand and Another reported in (2004) (4) East Cr C 14 (Jhr)] para 4 in which this Court relied upon the Judgment of Hon'ble Supreme Court of India in the case of **Vikram Johar versus State of Uttar Pradesh and Another** reported in (2019) 14 SCC 207 in para 24 and 25 of which read as under:-

"24. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that the appellant with two or three other unknown persons, one of whom was holding a revolver, came to the complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that the appellant came and abused the complainant does not satisfy the ingredients as laid down in para 13 of the judgment of this Court in Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715]"

"25. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:

"... The prosecution must prove:

- (i) That the accused threatened some person.*
- (ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;*
- (iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."*

(emphasis supplied)

And also the judgement of the Supreme Court of India in the case of **Fiona Shrikhande (Fiona Shrikhande versus State of Maharashtra & Another** reported in **(2013) 14 SCC 44** para 13 of which reads as under:

"13. Section 504 IPC comprises of the following ingredients viz. (a) intentional insult, (b) the insult must be such as to give provocation to the person insulted, and (c) the accused must intend or know that such provocation would cause another to break the public peace or to commit any other offence. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The person who intentionally insults intending or knowing it to be likely that it will give provocation to any other person and such provocation will cause to break the public peace or to commit any other offence, in such a situation, the ingredients of Section 504 are satisfied. One of the essential elements constituting the offence is that there should have been an act or conduct amounting to intentional insult and the mere fact that the accused abused the complainant, as such, is not sufficient by itself to warrant a conviction under Section 504 IPC."

In which Hon'ble Supreme Court of India reiterated that unless the insult alleged is of such a degree to provoke the person to break public peace or to commit any other offence, The offence punishable under Section 504 of the I.P.C. is not made out. Hence, the prayer as prayed for made in this Cr.M.P. be allowed.

5. It is next submitted by learned counsel for the petitioner is that prior to the present F.I.R. the petitioner no.2 has already lodged Madhuban Commissionerate (Ghaziabad) P.S. Case No. 403 of 2024 against the informant, the copy of which has been kept as Annexure-02. Hence, it is submitted that the prayer as prayed by the petitioners in this criminal miscellaneous petition be allowed.

6. The learned Add.P.P. vehemently opposes the prayer and submits that if the allegation made against the petitioner are considered to be true in their entirety, then all the offences in respect of which F.I.R. has been registered are made out against the petitioners. Hence, it is submitted that at this nascent stage, when the investigation of the case is going on, entire criminal proceedings ought not to be quashed and this Cr.M.P. being without any merit be dismissed.

7. Having heard the 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 the settled principle of law as has been held by Hon'ble Supreme Court of India in the case of **Vir Prakash Sharma v. Anil Kumar Agarwal and Another** reported in (2007) 7 SCC 373 para-08 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. (emphasis supplied)

Wherein the Hon'ble Supreme Court of India has observed that when the dispute between the parties is essentially a civil dispute non-payment or underpayment of the price of the goods by itself does not amount to commission of the offence of cheating or criminal breach of trust.

8. 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)

wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that every breach of contract would not give rise to an offence of cheating and only in those cases the breach of contract would amount to cheating; where there was any deception played at the very inception and if the intention to cheat has developed later on, the same cannot amount to cheating.

9. The Hon'ble Supreme Court of India in the case of **Binod Kumar & Others vs. State of Bihar & Another** reported in (2014) 10 SCC 663, paragraph-18 of which 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)

reiterated the settled principle of law that to make out a case of criminal breach of trust, it is not sufficient to show that the property 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.

10. It is also a settled principle of law as has been held by Hon'ble Supreme Court of India in the case of **Delhi Race Club (1940) Limited & Others versus State of Uttar Pradesh & Another** reported in (2024) 10 SCC 690 in para-43

"43. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously." (emphasis supplied)

That the offence of criminal breach of trust and the offence of cheating cannot co-exist simultaneously.

11. Now coming to the facts of the case, this is a clear case of commercial transaction between the parties in which the informant claims under-payment of the articles sold by it to the business establishment of the brother of the petitioner no.1 who is the brother-in-

law of the petitioner no.2. There is no allegation against the petitioner that the petitioners have played deception since the beginning of the transaction between the parties and in absence of the same this Court has no hesitation in holding that even if the entire allegation made against the petitioners are considered to be true, still the offence punishable under Section 318(4) of the B.N.S., 2023 is not made out.

12. So far as the offence punishable under Section 316(2) of the B.N.S., 2023 is concerned, there is no clearcut case of entrustment of any property, as the articles were admittedly sold in course of a commercial transaction by a seller to a purchaser; therefore the same, in the considered opinion of this Court cannot be termed as “property entrusted” as the said words have been used in Section 316(1) of the B.N.S. Because the words “property entrusted” means the ownership of the property still remains with the person entrusting the property and the ownership is not transferred to the person to whom, the property is entrusted; which is not the case, in case of sale of a property. As with the sale, the ownership of the property is transferred to the purchaser and the purchaser is at liberty to use the property the way he likes it, without the control of the seller. There is no allegation of any dishonest misappropriation of any entrusted property, hence this Court is of the considered view that keeping in view the essential ingredients of Section 406 of the I.P.C. which corresponds to Section 316 of the B.N.S. as mentioned in the case of **Delhi Race Club (1940) Limited & Others versus State of Uttar Pradesh & Another** (Supra) even if the entire allegations made against the petitioners are considered to be true in their

entirety still the offence punishable under Section 316(2) of the B.N.S., 2023 is not made out. So far as the offence punishable under Section 351(2) and 352 of B.N.S., 2023 are concerned, they are non-cognizable offences and in respect of such offences only, F.I.R. is not sustainable but otherwise also mere allegation that the petitioners abused the informant over phone by itself is insufficient to satisfy the ingredients of Section 352 of the B.N.S., 2023; in the absence of any material to suggest that the same was of such a nature so as to provoke the informant commit breach of peace or any other offence. In the absence of any allegation that the threatening given by the petitioners was with intent to cause alarm to the informant; this court is of the considered view that the offence punishable under Section 351(2) of the B.N.S., 2023 is not made out. Moreover, in the facts of the case reading between the lines, these offences appear to ornamental in nature. In view of such facts of the case, this Court is of the view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the none of the offences in respect of which F.I.R. has been registered is made out against the petitioners. Therefore, continuation of these criminal proceedings against the petitioners will amount to abuse of process of law. Hence, the first information report being Chira Chas P.S. Case No. 14 of 2025 registered under Sections 316(2), 318(4), 352, 351(2), 3(5) of the Bharatiya Nayaya Sanhita (B.N.S.), 2023 and the entire criminal proceedings of the said case which is pending in the Court of learned Chief Judicial Magistrate, Bokaro, is quashed and set aside against the petitioners named above.

13. In the result, this Cr.M.P. stands allowed.
14. In view of disposal of the instant Cr.M.P., pending I.A. if any stands disposed of accordingly.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 08th of May, 2026
AFR/ Amar
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