

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 745 of 2004

M.H. KHUZAIMA, S/o Late. M.J. Khuzaima, High Court Advocate,
Resident of Behind A.G. Church Idris Colony, Kanta Toli, Police
Station Lower Bazar, District –Ranchi.

.... Petitioner

Versus

1. State of Jharkhand
2. Sarwar Mirza, S/o Late Mashiruddin, Resident of Behind A.G.
Church Idris Colony, Kanta Toli, P.S. Lower Bazar, District –Ranchi.

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. M.H. Khuzaima, (In-Person)
	: Mr. R.M. Khuzaima, Advocate
For the State	: Mr. V.S. Sahay, Addl. P.P.
For O.P. No.2	: Mr. A.K. Sahani, Advocate
	: Mr. Pankaj Verma, Advocate

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By the Court:-

I.A. No.158 of 2005

Heard the parties.

The petitioner, appearing in person, submits that this interlocutory application has been filed with a prayer to accept the supplementary grounds as mentioned in this interlocutory application.

Prayer is allowed.

The petitioner is permitted to agitate the supplementary grounds mentioned in this interlocutory application at the time of hearing of this criminal miscellaneous petition.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

I.A. No.30 of 2008

Heard the parties.

The petitioner, appearing in person, submits that this interlocutory application has been filed with a prayer to accept the additional supplementary grounds as mentioned in this interlocutory application.

Prayer is allowed.

The petitioner is permitted to agitate the supplementary grounds mentioned in this interlocutory application at the time of hearing of this criminal miscellaneous petition.

This interlocutory application is disposed of accordingly.

(Anil Kumar Choudhary, J.)

I.A. No.1543 of 2008

Heard the parties.

The petitioner, appearing in person, submits that he does not want to press this interlocutory application.

Accordingly, this interlocutory application is rejected as not pressed.

(Anil Kumar Choudhary, J.)

Cr.M.P. No. 745 of 2004

1. Heard the parties.
2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of Cr.P.C. with the prayer to quash the entire Complaint Case No. 810 of 2003 as well as the order dated 29.06.2004, passed by the learned Judicial Magistrate -1st Class, Ranchi by which cognizance has been taken by the learned Judicial Magistrate of the offence punishable under Section 420 of the Indian Penal Code.

3. The brief facts of the case is that the complainant is the tenant of the petitioner. The complainant was paying rent of the tenanted premises regularly. The petitioner wanted to sell the tenanted premises for a consideration amount of Rs.2,80,000/-. The complainant paid the advance amount of Rs.2,00,000/-. An unregistered agreement to sale was prepared. The complainant was ready to perform his part of the contract but the petitioner took time on the ground of taking permission. When the complainant pressurized the petitioner, the petitioner sent a notice for vacating the premises and claimed arrear rent of Rs.3,30,000/-. The complainant made remodelling of the tenanted premises with the consent of the petitioner. On notice being sent by the petitioner, the complainant came to know that the land is a leasehold land which belongs to the government, hence no instrument conveying the title of the said property can be registered. By alleging that the petitioner has cheated the complainant, the complainant filed the complaint case. On the basis of the complaint, statement of the complainant under solemn affirmation and the statement of the inquiry witnesses, the learned Judicial Magistrate -1st Class, Ranchi found *prima-facie* case for the offence punishable under Section 420 of the Indian Penal Code.
4. It is submitted by the petitioner appearing in person that the dispute between the parties is a civil dispute and a cloak of criminal colour has been given to a purely civil dispute by the complainant to harass the petitioner, who is admittedly the

landlord of the complainant. It is next submitted that prior to institution of this complaint case, the petitioner instituted Eviction Title Suit No. 21 of 2003 in the court of Munsif, Ranchi against the complainant on 10.07.2003 as the complainant did not pay the rent for a period of more than six years. It is next submitted that the Eviction Title Suit No. 21 of 2003 filed by the petitioner in the court of Munsif, Ranchi has been decreed in favour of the petitioner. It is then submitted that the petitioner has filed a petition for renewal of the lease case no. 09/2002-03 and the complainant has also filed a petition in the court of L.R.D.C., Ranchi with the prayer that renewal of the lease be made in his name. The petitioner has also instituted Money Suit No. 01 of 2004 in the court of Munsif, Ranchi against the complainant for non-payment of the arrears of the rent outstanding against the complainant. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

5. 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 allegations made against the petitioner are sufficient to constitute the offence punishable under Section 420 of the Indian Penal Code. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
6. Having heard the rival 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 as has been held by 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 in order to constitute the offence of cheating, the accused person must deceive the victim since the beginning of the transaction between the parties.

7. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Dalip Kaur and Ors. Vs. Jagnar Singh & Anr.** reported in (2009) 14 SCC 696, para 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 nonrefunding 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)

Wherein the Hon’ble Supreme Court of India has observed that if the dispute between the parties was essentially a civil dispute, resulting from a breach of contract on the part of the accused person by non-refunding the amount of advance, the same would not constitute an offence of cheating.

8. Now coming to the facts of the case, the undisputed fact remains that the complainant is the tenant of the petitioner. There was an agreement for sale. The complainant alleges that the petitioner has neither refunded the alleged advance amount nor executed the sale deed in terms of the agreement whereas, it is the case of the petitioner that the complainant has stayed in his tenanted premises without paying any rent for a period of over six years and that amounts to more than the amount he has paid in advance.
9. Be that as it may, there is absolutely no allegation in the complaint that the petitioner played deception since the beginning of the transaction between the parties; as admittedly the complainant stayed for considerable period of time as a tenant in the house of the petitioner and subsequent thereto, there was an agreement for sale. The allegations are basically of non-refunding of the advance amount.
10. In view of the principle of law settled by the Hon’ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Anr.** (supra) and **Dalip Kaur and Ors. Vs. Jagnar Singh**

& Anr. (supra), this Court is of the considered view that even if the entire allegation 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 and the complaint has been filed for wreaking vengeance by giving a cloak of a criminal case to a civil dispute and undisputedly the petitioner filed Eviction Title Suit No. 21 of 2003 against the complainant before filing of this complaint and subsequent thereto, the petitioner has filed Money Suit No. 01 of 2004 against the complainant.

11. In view of the discussions made above, since 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 this Court is of the considered view that continuation of this criminal proceeding will amount to abuse of process of law. Therefore, this is a fit case where the entire Complaint Case No. 810 of 2003 as well as the order dated 29.06.2004, passed by the learned Judicial Magistrate -1st Class, Ranchi by which cognizance has been taken by the learned Judicial Magistrate of the offences, be quashed and set aside.
12. Accordingly, the entire Complaint Case No. 810 of 2003 as well as the order dated 29.06.2004, passed by the learned Judicial Magistrate -1st Class, Ranchi by which cognizance has been taken

by the learned Judicial Magistrate of the offences, is quashed and set aside.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 16th September, 2025
AFR/Sonu-Gunjan/-