

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1449 of 2023

Rajesh Arora (aged about 51 years), s/o Sri Darshan Lal, posted as
Circle Head, Punjab National Bank, Circle Officer, Sector-4, P.O. &
P.S.-Sector-4, Bokaro, Dist.-Bokaro, PIN-827004, Jharkhand

.... Petitioner

Versus

1. The State of Jharkhand
2. Manoj Kumar, s/o Hari Ram Agarwal, resident of Bhagwati
Medical, Fal Mandi, Main Road, Chas, P.O. & P.S.-Chas, Dist.-
Bokaro, PIN-827013, Jharkhand

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioner	: Mr. Pratyush Kumar, Advocate
For the State	: Mrs. Kumari Rashmi, Addl. P.P.

.....

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 Cr.P.C. with the
prayer to quash the entire criminal proceeding including the order
dated 19.09.2022 passed by the learned Chief Judicial Magistrate,
Bokaro in connection with Complaint Case No. 520 of 2020 by
which the learned Chief Judicial Magistrate, Bokaro has found
prima facie case *inter alia* against the petitioner for having
committed the offences punishable under Sections 406 and 420 of

Indian Penal Code and directed for issuance of summons against the petitioner.

3. The allegation against the petitioner is that with the insistent and persuasion of accused persons of the case particularly the co-accused-Satyendra Mishra, the complainant agreed and got convinced to purchase the landed property mortgaged with the bank by Arjun Kumar Singh through a tripartite agreement but even though the petitioner paid the entire loan amount of the mortgager of the property with the bank namely Arjun Kumar Singh, but the petitioner being the officer of the bank cheated and committed criminal breach of trust.
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 **Sushil Sethi & Anr. vs. State of Arunachal Pradesh & Ors.** reported in (2020) 3 SCC 240 that therein, the Hon'ble Supreme Court of India relied upon its own judgment in the case of **State of Haryana vs. Bhajan Lal** reported in 1992 Supp (1) SCC 335 wherein, the Hon'ble Supreme Court of India has categorized the cases by way of illustrations wherein the powers under Article 226 or the inherent powers under Section 482 Cr.P.C. could be exercised either to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is next submitted by the learned counsel for the petitioner that in that case, the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Vesa Holdings (P) Ltd. vs. State of Kerela** reported in

(2015) 8 SCC 293, wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that for the purpose of constituting the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. It is then submitted by the learned counsel for the petitioner that in that case, the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Hira Lal Hari Lal Bhagwati vs. CBI** reported in (2003) 5 SCC 257 in paragraph no.40 of which the Hon'ble Supreme Court of India reiterated the settled principle of law as was done in the case of **Vesa Holdings (P) Ltd. vs. State of Kerela** (supra). It is further submitted by the learned counsel for the petitioner that in that case, the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **V.Y Jose vs. State of Gujarat** reported in (2009) 3 SCC 78 which is also to the same effect. It is then submitted by the learned counsel for the petitioner that in that judgment also, the Hon'ble Supreme Court of India also relied upon its judgment of **Sharad Kumar Sanghi vs. Sangita Rane** reported in (2015) 12 SCC 781, wherein, the Hon'ble Supreme Court of India reiterated the settled principle of law that in the absence of any specific allegation against the Managing Director of vicarious liability, in the absence of company being arrayed as a party, no proceedings can be initiated against such Managing Director or any officer of a company. It is next submitted by the learned counsel for the petitioner that in that

case, the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Joseph Salvaraj A. vs. State of Gujarat** reported in **(2011) 7 SCC 59**, wherein it was held by the Hon'ble Supreme Court of India that when dispute between the parties constitutes only a civil wrong and not a criminal wrong, the courts would not permit a person to be harassed although, no case for taking cognizance of the offence has been made out. It is further submitted by the learned counsel for the petitioner that in that case, the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Inder Mohan Goswami vs. State of Uttaranchal** reported in **(2007) 12 SCC 1** wherein the Hon'ble Supreme Court of India reiterated the settled principle of law that courts must ensure that criminal prosecution is not used as an instrument of harassment.

5. Learned counsel for the petitioner next relied upon the judgment of this Court in the case of **Maya Rani vs. State of Jharkhand & Anr.** reported in **2025 SCC OnLine Jhar 2950** wherein, this Court relied upon the judgment of Hon'ble Supreme Court of India in the case of **Radheyshyam vs. State of Rajasthan** reported in **2024 SCC OnLine SC 2311**, paragraph no. 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)

wherein, the Hon'ble Supreme Court of India has categorically held that the amount paid towards consideration cannot be said to have been entrusted with the accused persons and in that case it was also observed by the Hon'ble Supreme Court of India that a mere breach of contract does not constitute the offence of cheating or breach of trust.

6. It is further submitted by the learned counsel for the petitioner that this Court in that case also relied upon the judgment of **Uma Shankar Gopalika vs. State of Bihar** reported in (2005) 10 SCC 336, paragraph no. 6 of which reads as under:-

6. Xxxxx 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 in the absence of any deception played at the very inception by the accused person, the offence of cheating is not made out.

7. Learned counsel for the petitioner further relied upon the judgment of this Court in the case of **Ram Kripal Singh Construction Pvt. Ltd. & Ors. vs. The State of Jharkhand & Anr.** passed in Cr.M.P. No. 398 of 2023 dated 10.10.2023 wherein, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Satish Chandra Ratanlal Shah vs. State of**

Gujarat & Anr. reported in **(2019) 9 SCC 148** and in paragraph nos. 10 and 12 of that judgment which reads as under:-

10. *It is also a settled principle of law that in order to establish the offence punishable under Section 406 of Indian Penal Code the following ingredients are to be established :-*

- (i) *Mens rea*
- (ii) *There must be dishonest misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract*
- (iii) *The accused dishonestly used or disposed of the property.*

12. *So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, the essential ingredients of the said offence is :-*

- (i) *Deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission,*
- (ii) *Fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and*
- (iii) *Such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property*

*as has been held by the Hon'ble Supreme Court of India in the case of **Mohammed Ibrahim & Ors. vs. State of Bihar & Anr.**, reported in **(2009) 8 SCC 751**.*

Wherein this Court dealt with the essential ingredients of the offences punishable under Sections 406 and 420 of Indian Penal Code.

8. It is next submitted by the learned counsel for the petitioner that even if the entire allegations made against the petitioner are considered to be true in their entirety, even then the offence for which the *prima facie* case has been found by the learned Chief Judicial Magistrate, Bokaro, is not made out against the petitioner. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

9. Learned Addl. P.P. appearing for the State on the other hand opposes the prayer and submits that if the allegation made in the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, are considered to be true in its entirety then both the offences punishable under Sections 420 and 406 of Indian Penal Code is made out. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
10. Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that the case of the complainant is that the complainant entered into a tripartite agreement with the mortgager of the property as well as with the bank to purchase the property belonging to the mortgager upon paying the entire loan amount for which the mortgager had mortgaged his property with the bank but perusal of the record reveals that in his statement under solemn affirmation the complainant has categorically stated that he has paid only some rupees of the loan amount. It is crystal clear that it is a virtual admission of the complainant that he has not fulfilled his obligation under the tripartite agreement of paying the entire loan amount taken by the mortgagor -namely Arjun Kumar Singh, with the bank.
11. Under such circumstances, this Court is of the considered view that even if the entire allegations made in the complaint, statement of the complainant on solemn affirmation and the

statement of the inquiry witnesses are considered to be true in their entirety yet, in the absence of any allegation against the petitioner that the petitioner played deception since the beginning of the transaction between the parties, the offence punishable under Section 420 of Indian Penal Code is not made out.

12. So far as the offence punishable under Section 406 of Indian Penal Code is concerned, in the absence of any allegation of entrustment of any property to the petitioner or in the absence of any allegation of dishonest misappropriation of the entrusted property against the petitioner, this Court has no hesitation in holding that even if the entire allegation made against the petitioner are considered to be true, still the offence punishable under Section 406 of Indian Penal Code is not made out.

13. In view of the discussions made above, as neither the offence punishable under Section 420 of Indian Penal Code nor the offence punishable under Section 406 of Indian Penal Code is made out against the petitioner, this Court has no hesitation in holding that continuation of the 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 dated 19.09.2022 passed by the learned Chief Judicial Magistrate, Bokaro in connection with Complaint Case No. 520 of 2020 be quashed and set aside.

14. Accordingly, the entire criminal proceeding including the order dated 19.09.2022 passed by the learned Chief Judicial Magistrate,

Bokaro in connection with Complaint Case No. 520 of 2020 is quashed and set aside.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 15th September, 2025
AFR/Sonu-Gunjan/-