

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1977 of 2023

Indrani Sen Choudhary, wife of Late Dharendra Nath Sen, daughter of Late Hari Shankar Choudhary, aged about 70 years, resident of 1-A Ishani Enclave, 44 Peace Road, Lalpur, P.S. Lalpur, P.O. G.P.O., District-Ranchi-834001. Petitioner

Versus

1. The State of Jharkhand
2. Subhash Choudhary, son of Late Hari Shankar Choudhary, resident of Kokar, P.O. Kokar, P.S. Sadar, (Jharkhand). District-Ranchi Opposite Parties

For the Petitioner	: Mr. A.K. Kashyap, Sr. Adv. Mr. Rahul Kumar , Adv. Mr. Praveen Shankar Dayal , Adv.
For the State	: Ms. Ruby Pandey, , Addl. PP
For the O.P. No. 2	: None

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties. Though notice has validly been served upon the opp. party no. 2 but no one turns up on behalf of the opp. party no. 2 in spite of repeated calls.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 482 of CrPC with the prayer for quashing and setting aside the entire criminal proceeding as well as the order dated 16.12.2022 passed in connection with Complaint Case no. 6054 of 2019 by learned JMFC, XXIX, Ranchi whereby and whereunder, learned JMFC, has found *prima facie* case and has taken cognizance of the offence punishable under Section 420, 120B and 34 of the IPC inter alia against the petitioner.
3. The allegation against the petitioner is that the petitioner has sold the joint family property along with five of her sisters -who are the the co-accused persons of this case, to the other co-accused

person namely Aviansh Kr. Singh, even though there has not been any partition of the said property sold; by metes and bounds.

4. Learned senior counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Arshad Neyas Khan vs. State of Jharkhand and Another** reported in **2025 SCC OnLine SC 2058** and submits that in para 19 thereof the Hon'ble Supreme Court of India has reiterated the settled principle of law that for establishing the offence of cheating, the complainant is required to show that the accused person had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale of the said property.
5. Learned senior counsel for the petitioner next relies upon the judgment of this court in the case of **Shaikh Asraf Ali @ Ashraf Ali Seikh @ Asraf Ali Shekh & Others vs. The State of Jharkhand and Others** reported in **2023:JHHC:43910** and submits that therein, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. State of Punjab & Another** reported in **(2023) 5 SCC 360**, paragraph-13 of which reads as under:-

"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court."

(Emphasis supplied)

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the

transaction and to the same effect is the judgment of the Hon'ble Supreme Court of India in the case of the **Uma Shankar Gopalika vs. State of Bihar & Another** 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)

6. It is next submitted by learned senior counsel for the petitioner that the complainant has not come to court with clean hands as though in his statement in Solemn Affirmation recorded on 28.02.2020 in para 5, he has stated that he did not file any Civil Suit but in fact, the complainant filed the Original Suit (P) no. 236 of 2019 in the court of learned Civil Judge, Sr. Div., Ranchi on 15.03.2019.
7. Learned senior counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Krishna Lal Chawla & Others vs. State of Uttar Pradesh & Another** reported in (2021) 5 SCC 435 paragraphs-13 of which read as under:-

"13. It is also crucial to note that in the fresh complaint case instituted by him, Respondent 2 seems to have deliberately suppressed the material fact that a charge-sheet was already filed in relation to the same incident, against him and his wife, pursuant to NCR No. 160 of 2012 (Crime No. 283 of 2017) filed by Appellant 1's son. No reference to this charge-sheet is found in the private complaint, or in the statements under Section 200 CrPC filed by Respondent 2 and his wife. In fact, both the private complaint and the statement filed on behalf of his wife, merely state that the police officials have informed them that investigation is ongoing pursuant to their NCR No. 158 of 2012. The wife's statement additionally even states that no action has been taken so far by the police. It is the litigant's bounden duty to make a full and true disclosure of facts. It is a matter of trite law, and yet bears repetition, that suppression of material facts before a court amounts to abuse of the process of the court, and shall be dealt with a heavy hand (Ram Dhan v. State of U.P. [Ram Dhan v. State of U.P., (2012) 5 SCC 536 : (2012) 3 SCC (Cri) 237] ; K.D. Sharma v. SAIL [K.D. Sharma v. SAIL, (2008) 12 SCC 481]). (Emphasis supplied)"

and submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that it is the

- litigant's bounden duty to make a full and true disclosure of facts. It is then submitted that it is trite law and yet bears repetition, that suppression of material facts before a court amounts to abuse of the process of the court and shall be dealt with a heavy hand.
8. It is next submitted that the allegation against the petitioner is false. It is further submitted that if at all, the petitioner has cheated the co-accused- Avinash Kr. Singh and as the purchaser has no grievance against the petitioner and there is no allegation against the petitioner of deceiving the complainant or inducing the complainant to part with any property or money, hence the complainant cannot institute the case of cheating. It is next submitted that the petitioner has sold her share of land and if at all, there is no partition by metes and bounds, the consequence will follow but the same will certainly not amount to any offence. It is lastly submitted that the prayer as made in this criminal miscellaneous petition be allowed.
 9. Learned Addl. PP on the other hand vehemently opposes the prayer of the petitioner and submits that the materials in the record is sufficient to constitute the offence punishable under Section 420 / 120B of the IPC. It is lastly 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 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 **Mohammed Ibrahim & Others vs. State of Bihar & Another** reported in (2009) 8 SCC 751 that in case, a sale deed is executed by the executants claiming to be the owner of the land, then it is only the purchaser who can prosecute the seller for having been cheated and a third person, cannot prosecute the seller of a land claiming to be the owner.
 11. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner along with the co-accused

persons sold a land to another co-accused person, though there was no partition by metes and bounds of the land sold, between the co-sharers of the land and there is absolutely no allegation against the petitioner of impersonation. It is a settled principle of law that a sale made by a co-sharer of the joint property of which, there is no partition by metes and bounds, is not a void document and that the sale deed will be valid, only for the shares of the sellers over the land in question, as has been held by the Hon'ble Supreme Court of India in the case of **Gajara Vishnu Gosavi v. Prakash Nanasaheb Kamble and Others** reported in **(2009) 10 SCC 654**.

12. Under such circumstances, as the purchaser of the property, the co-accused Avinash Kr. Singh has no grievance against the petitioner and there is no allegation against the petitioner of deceiving the complainant or inducing her to part with any property or money, this Court is of the considered view that continuation of the criminal proceeding at the instance of the complainant, will amount to abuse of process of law. Therefore, this is a fit case, where the entire criminal proceeding as well as the order dated 16.12.2022 passed in connection with Complaint Case no. 6054 of 2019, be quashed and set aside *qua* the petitioner.
13. Accordingly, the entire criminal proceeding as well as the order dated 16.12.2022 passed in connection with Complaint Case no. 6054 of 2019, is quashed and set aside *qua* the petitioner.
14. In the result, this Criminal Miscellaneous Petition is allowed.
15. In view of the disposal of this Criminal Miscellaneous Petition, the interim relief, granted earlier vide order dated 12.07.2024 is vacated.
16. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

