

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2740 of 2022**

1. Devender Pal Vij, aged about 54 years, S/o Late R. P. Vij, Resident of Flat No. 406, Gharonda Apartment, Dangra Toli, Ranchi, P.S. Lower Bazar, P.O. & District Ranchi.
2. Sonal Vij, aged about 48 years, wife of Devender Pal Vij, Resident of Flat No. 406, Gharonda Apartment, Dangra Toli, Ranchi, P.S. Lower Bazar, P.O. & District Ranchi
..... Petitioners

Versus

1. The State of Jharkhand
2. M/s. Indobe Ventures, a Proprietorship through its Authorized Signatory-Cum-Operational Manager, Abhimanue Kumar Pandey, aged about 29 years, S/o Anil Kumar Pandey, Resident of Megahaatuburu Type Q No. 19, Khajuria, P.O. & P.S.- Meghahatuburu, District -West Singhbhum
..... Opposite Parties

For the Petitioner : Mr. Nipun Bakshi , Adv.
For the State : Ms. Priya Shrestha, Spl. 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 the O.P.No. 2 has appeared through its lawyer in this case 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 Cr.P.C. with the prayer of quashing and setting aside entire criminal proceeding of Complaint Case no. 167 of 2022 and the order taking cognizance dated 18.06.2022 passed by learned CJM, Ranchi in Complaint case no. 167 of 2022 by which, learned Magistrate has found sufficient materials to proceed against the petitioner for having

- committed the offences punishable under Sections 420, 406, 34 of IPC, pending in the court of learned CJM, Ranchi.
3. The allegation against the petitioner no. 1 is that the petitioner no. 1 entered into an agreement dated 10.10.2017 with the complainant to run the five busses of the company of the complainant but the petitioner no. 1 has not paid the outstanding rental dues of the said buses amounting to Rs. 20,00,000/- though it is the admitted case of the complainant that after the said agreement, about Rs. 10,00,000/- to Rs. 11,00,000/- has been paid to the accounts of the company.
 4. Learned counsel for the petitioner relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Lalit Chaturvedi and Others v. State of Uttar Pradesh and Another** reported in **2024 SCC OnLine SC 171** wherein the Hon'ble Supreme Court of India in para 9 has observed that in the absence of deception by making false and misleading representation, dishonest concealment or any other act of omission or inducement of the complainant to deliver any property at the time of contracts being entered, the criminal offence under Section 420 of IPC read with Section 415 of IPC is not established and in para 10 of the said judgment, the Hon'ble Supreme Court of India relied upon the judgment in the case of **Wolfgang Reim vs. State** reported in **2012 SCC OnLine Del 3341** has held that same act or transaction cannot result in the offence of cheating and criminal breach of trust simultaneously.
 5. It is next submitted that there is absolutely no allegation against the petitioner no.2 and she has been arrayed as an accused only because she is the wife of the petitioner no. 1; as a pressure tactic to abuse the process of the court. It is next submitted that as the opposite party no. 2 could not arrange the valid permit fitness certificate for the busses, the same could not be plied by the petitioner no. 1. It is further submitted that there is no allegation that the petitioners have played deception since the beginning of the transaction between the parties and the opposite party no. 2

- infuriated by refusal of the petitioners to utilize his buses without permission and fitness certificate, lodged this false and motivated complaint against the petitioners. It is next submitted that the dispute between the parties is at the most a civil dispute and a cloak of criminal case has been given to a purely civil dispute for the purpose of wrecking vengeance, hence, it is submitted that the prayer as made in this Criminal Miscellaneous Petition be allowed.
6. Learned Spl. PP on the other hand vehemently oppose the prayer of the petitioner and submits that the allegations against the petitioner as contained in the complaint, the statement of the complainant on Solemn Affirmation and the statement of the inquiry witnesses are considered to be true in their entirety, all the offences in respect of which, sufficient materials has been found by learned Chief Judicial Magistrate for proceeding against the petitioners, are in fact made out, hence, it is submitted that this Criminal Miscellaneous Petition being without any merit, be dismissed.
7. 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 **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)*

wherein the Hon'ble Supreme Court of India has 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 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.

8. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Binod Kumar and Others v. State of Bihar and Another** reported in (2014) 10 SCC 663, para 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)

Wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the accused persons. It must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

9. Now coming to the facts of the case, the only allegation against the petitioners is that the petitioner no. 1 has not paid certain outstanding dues in respect of the bus he took from the opposite party no. 2 for running the same for the school and admittedly, a substantial amount has been paid by the petitioner no. 1 to the opposite party no. 2 and there is no allegation against the petitioners of playing any deception since the beginning of the transaction between the parties.

10. Under such circumstances, this Court has no hesitation in holding that even if the entire allegations made against the petitioners are considered to be true in their entirety still the offence punishable under Section 420 of IPC is not made out.
11. So far as the offence punishable under Section 406 of IPC is concerned, there is absolutely no material in the record to suggest the entrustment of any property by the complainant to the petitioners and the only allegation against the petitioners is that the petitioner no. 1 has not paid the amount that was due and payable to the complainant by the petitioner no. 1 for running the buses in terms of the agreement and in the absence of the essential ingredients of entrustment of any property and in the absence of any allegation that the petitioners have dishonestly misappropriated any property, this Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true in their entirety, still the offence punishable under Section 406 of IPC is not made out even with the aid of Section 34 of IPC against either of the two petitioners and since none of the offences in respect of which learned Chief Judicial Magistrate has found sufficient materials to proceed against the petitioners is made out and basically, the dispute between the parties is at the most a civil dispute and a cloak of criminal case has been given to a civil dispute only for the purpose of wrecking vengeance, 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 entire criminal proceeding, of the Complaint Case no. 167 of 2022 and the order taking cognizance dated 18.06.2022 passed by learned CJM, Ranchi in Complaint case no. 167 of 2022 be quashed and set aside *qua* the petitioners.
12. Accordingly entire criminal proceeding, the Complaint case being the Complaint Case no. 167 of 2022 and the order taking cognizance dated 18.06.2022 passed by learned CJM, Ranchi in

Complaint case no. 167 of 2022, is quashed and set aside *qua* the petitioners.

13. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 8th May, 2026
Smita / AFR

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