

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 2670 of 2025

Sanjay Kumar Singh, s/o Janardan Prasad, age 45 years, r/o Spring Valley, Phase II, Block E, Flat 5C, Lower Burdwan Compound, P.O. & P.S.-Lalpur, Dist.-Ranchi

.... Petitioner

Versus

The State of Jharkhand

.... Opp. Party

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....

For the Petitioner : Mr. Yogesh Modi, Advocate
For the State : Mr. Pankaj Kumar, P.P.

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By the Court:-

1. Heard the parties.
2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the entire criminal proceeding in connection with Lalpur P.S. Case No. 207 of 2024, corresponding to G.R. Case No.562 of 2025 as also to quash the charge sheet submitted in the said case as well as the order taking cognizance dated 21.02.2025 passed by the learned Judicial Magistrate 1st Class-XXXII, Ranchi whereby and where under, the learned Judicial Magistrate 1st Class-XXXII, Ranchi took cognizance of the offence punishable under Sections 406 and 420

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

3. The allegation against the petitioner is that the informant was running a coaching institute at Ranchi. He decided to shift to Delhi and an agreement with the petitioner was entered into for running the said coaching institute with certain conditions. An agreement dated 01.12.2019 was prepared between the parties and in terms of that agreement, the petitioner paid Rs.8,00,000/- by way of eight bearer cheques; each for Rs.1,00,000/- with the condition that the said cheques will be deposited only when the petitioner instructs the informant to deposit the same in the bank. Subsequently, another agreement was entered into and as per the said agreement, the informant worked as lecturer of mathematics in the said coaching institute run by the petitioner; for Rs.1,50,000/- per month as salary and the petitioner handed over 12 bearer cheques of Rs.1,50,000/- each with the condition that the said cheques would be deposited by the informant in the bank, only when told to do so by the petitioner. The petitioner thereafter, entered into an agreement of partnership with the informant on 27.06.2020 to open the branches of the said coaching institute at other places and in this respect, the petitioner issued 11 bearer cheques for total amount of Rs.28,50,000/-. On 15.05.2021 without informing the petitioner, the informant deposited one of the cheques for Rs.1,25,000/- which was dishonoured because funds were insufficient in the account of the petitioner. Thereafter,

the petitioner issued different cheques in total for Rs.58,00,000/- to the informant but the same were dishonoured on being presented in the bank. The informant went into depression and hence, he could not take steps for institution of the case under the penal provision of Negotiable Instruments Act, against the petitioner. After recovery from depression, the informant approached the petitioner for payment of money but the petitioner threatened the informant of implicating him in false cases and harassed him.

4. On the basis of the written report submitted by the informant, police registered Lalpur P.S. Case No. 207 of 2024 and took up investigation of the case. After completion of investigation, police submitted charge sheet against the petitioner for having committed the offences punishable under Sections 420 and 406 of Indian Penal Code and the learned Judicial Magistrate 1st Class-XXXII, Ranchi found *prima facie* case and took cognizance of the said offences.
5. It is submitted by the learned counsel for the petitioner by relying upon the judgment of this Court in the case of **Jitendra Kumar Singh vs. The State of Jharkhand & Anr.** reported in 2025 (3) JLJR 118 that in that case, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Satish Chandra Ratan Lal Shah vs. State of Gujarat & Anr.** reported in (2019) 9 SCC 148, wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that mere inability of the

accused to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as *mens rea* is the crux of the offence. It is next submitted by the learned counsel for the petitioner that in this case also, there is no material to suggest that the petitioner had any fraudulent or dishonest intention right at the beginning of the transaction between the parties. It is further submitted by the learned counsel for the petitioner that the allegations against the petitioner are false and the dispute between the parties is basically a civil dispute or at best the offence punishable under Section 138 of Negotiable Instrument Act is attracted, the cognizance of which can only be taken on filing of a complaint and not by lodging the FIR. It is next submitted by the learned counsel for the petitioner that the informant has suppressed the material fact that the informant has filed a complaint case the number of which is of course is not known to the petitioner, the copy of which is kept at Annexure-2 series at page no.44 of the brief which was filed on 17.08.2023. Hence, it is submitted that the prayer as prayed for in this criminal miscellaneous petition be allowed.

6. Learned Public Prosecutor appearing for the State on the other hand opposes the prayer and submits that circumstances of the case go to show that the petitioner had the intention to deceive the informant since the beginning of the transaction between the parties and to gain the confidence of the informant, the petitioner

issued cheques from time to time. 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 the materials in the record, it is pertinent to mention here that since the FIR was registered for the offence under the penal provisions of Bharatiya Nyaya Sanhita, 2023, the charge sheet ought to have been submitted in respect of the offences punishable under the penal provision of Bharatiya Nyaya Sanhita instead of the offences punishable under the penal provision of the Indian Penal Code and the learned Judicial Magistrate 1st Class-XXXII, Ranchi has also committed illegality by failing to consider that, though being aware that the FIR was registered for the offences punishable under the penal provision of Bharatiya Nyaya Sanhita, 2023, as has been mentioned in the impugned order dated 21.02.2025 but he has taken cognizance of the offences punishable under the penal provision of Indian Penal Code; which he ought not have done. Otherwise also, 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** 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)

that in order to constitute the offence of cheating, the accused must have played deception since the very inception of the transaction between the parties and 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 **Satish Chandra Ratan Lal Shah vs. State of Gujarat & Anr.** (supra) that mere inability of the accused to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.
9. Now coming to the facts of the case, the undisputed fact remains that the petitioner had issued some cheques to the informant towards the amount due and payable to the informant by the petitioner. The dishonour of cheque or non-payment of the cheque amount by the drawer of the cheque to the drawee in discharge of a legal liability by itself cannot constitute the offence of cheating or criminal breach of trust.
10. Further, there is absolutely no allegation against the petitioner of playing deception since the beginning of the transaction between the parties nor there is any allegation of entrustment of any property to the petitioner by the informant or anyone else and further, there is no allegation against the petitioner of dishonest misappropriation of any entrusted property. Hence, even if the

entire allegations made against the petitioner are considered to be true in its entirety, still neither the offence punishable under Section 420 nor the offence punishable under Section 406 of Indian Penal Code is made out.

11. Under such circumstances, this Court is of the considered view 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 in connection with Lalpur P.S. Case No. 207 of 2024, corresponding to G.R. Case No.562 of 2025 as also the charge sheet submitted in the said case as well as the order taking cognizance dated 21.02.2025 passed by the learned Judicial Magistrate 1st Class-XXXII, Ranchi be quashed and set aside.
12. Accordingly, the entire criminal proceeding in connection with Lalpur P.S. Case No. 207 of 2024, corresponding to G.R. Case No.562 of 2025 as also the charge sheet submitted in the said case as well as the order taking cognizance dated 21.02.2025 passed by the learned Judicial Magistrate 1st Class-XXXII, Ranchi 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/-