

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2496 of 2021

Malay Dutta age about 55 years, son of Sri Jiban Kumar Dutta,
Resident of Flat No.502, Dream Palace, New Baradwari, P.O.-Sakchi,
P.S.-Sitaramdera, Town Jamshedpur, District East Singhbhum.

... Petitioner

Versus

1. The State of Jharkhand
2. Natraj Subramaniam Siva, son of Late A.N. Siva, resident of Sivari
151, New Baradwari, P.O.-Sakchi, P.S.-Sitaramdera, Town
Jamshedpur, Dist.-East Singhbhum.

... Opposite Parties

For the Petitioner : Mr. Rajesh Kumar, Advocate
For the State : Mr. Manoj Kr. Mishra, Addl.P.P.
For the O.P. No.2 : Mr. Amit Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure with the prayer to quash and set aside the First Information Report registered as Sitaramdera P.S. Case no.45 of 2015 corresponding to G.R. No.576 of 2015 including charge sheet no.229 of 2021 dated 12.10.2021 and the order taking cognizance dated 12.04.2022 passed by learned Judicial Magistrate-1st Class, Jamshedpur whereby and where under the learned Judicial Magistrate-1st Class, Jamshedpur has taken

cognizance of the offences punishable under Sections 420/406/120B of the Indian Penal Code against the petitioner.

3. The brief facts of the case is that the petitioner entered into an oral agreement with the informant to sell a flat, the informant paid Rs.15 lakhs but the petitioner did not handover the flat to the informant but undertook to pay Rs.30 lakhs instead of Rs.15 lakhs taken by the informant, to compensate the loss of the informant and entered into an agreement in this respect, but actually returned only Rs.2,50,000/- and did not pay the rest amount. In the complaint it has categorically been mentioned that in para-4 that the petitioner failed to handover the flat to the informant due to unexplained and unavoidable reasons.

4. The Complaint Case No.3881 of 2014 filed by the informant was referred to police under Section 156(3) of Cr.P.C. and basing upon the same, police registered Sitaramdera P.S. Case no.45 of 2015 and after investigation of the case police submitted charge sheet.

5. Learned counsel for the petitioner next relies upon the judgment of this Court in the case of **Latika Chari & Others vs. The state of Jharkhand** in **Cr.M.P. No.1873 of 2023** and submits that therein this Court relied upon the judgment of **Dalip Kaur & 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 non-refunding 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 reiterated the settled principle of law that the dispute between the parties is basically a civil dispute resulting from the alleged breach of contract on the part of the petitioner, hence, the offence punishable under Section 406 is not made out and in the absence of any dishonest misappropriation of any entrusted property by the petitioner, the offence punishable under Section 420 of IPC is also not made out.

6. It is next submitted that in that case, this Court also relied upon the judgement of 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)

and submits 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 will not amount to cheating.

7. It is next submitted that in that case, this Court also relied upon the judgement 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, paragraph nos. 11 of which reads as under:-

"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment." (Emphasis supplied)"

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that a mere breach of a promise, agreement or contract does not, *ipso facto*, constitute the offence of criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment.

8. Learned counsel for the petitioner next submits that the allegation against the petitioner is false and in the absence of any written agreement, the contention of the petitioner that he paid Rs.15 lakhs for purchase of flat, is highly improbable and his further case that in *lieu* of Rs.15 lakhs, the petitioner undertook to pay Rs.30 Lakhs to the informant, also makes

the case improbable. It is next submitted that even if the entire allegations against the petitioner are considered to be true in their entirety, still neither the offence punishable under Section 406 of the Indian Penal Code nor the offence punishable under Section 420 of the Indian Penal Code even with the aid of Section 120B of the Indian Penal Code is made out against the petitioner. It is lastly submitted that the prayer, as prayed for in the instant Cr.M.P, be allowed.

9. Learned Addl.P.P. appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P and submit that the petitioner does not dispute receipt of Rs.15 lakhs received from the informant, hence, it is submitted that all the offences is made out against the petitioner. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

10. Having heard the rival submissions made at the Bar and after carefully 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 **Radheyshyam & Others vs. State of Rajasthan & Another** reported in **2024 SCC OnLine SC 2311**, para-12 of which reads as under:-

"12.xxxx 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)

that the amount paid towards consideration cannot be said to have been entrusted with the accused person by the complainant and merely because the seller is refusing to register the sale, it does not amount to misappropriation of the advance amount paid.

11. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Vir Prakash Sharma vs. Anil Kumar Agarwal & Another** reported in (2007) 7 SCC 373 paragraph-8 of which reads as under:-

"8. The dispute between the parties herein is essentially a civil dispute. Non-payment or underpayment of the price of the goods by itself does not amount to commission of an offence of cheating or criminal breach of trust. No offence, having regard to the definition of criminal breach of trust contained in Section 405 of the Penal Code can be said to have been made out in the instant case. Section 405 of the Penal Code reads, thus:

"405. Criminal breach of trust. – Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits 'criminal breach of trust'." Neither any allegation has been made to show existence of the ingredients of the aforementioned provision nor any statement in that behalf has been made." (Emphasis supplied)

that where the dispute between the parties is essentially a civil dispute, non-payment or under-payment of the price of the goods by

itself does not amount to commission of an offence of cheating or criminal breach of trust.

12. Now coming to the facts of the case, it is the admitted case of the informant that the petitioner could not handover the flat to the informant due to certain unexplained and unavoidable reasons, so that rules out the contention that the petitioner played deception since the beginning of the transaction between the parties and in the absence of the same, this Court has no hesitation in holding that even if the allegations 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 even with the aid of Section 120 B of the Indian Penal Code against the petitioner.

13. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, there is absolutely no allegation of any dishonest misappropriation of any entrusted property by the petitioner.

14. As already indicated above, the amount of advance paid in respect of agreement to sell does not amount to entrustment, therefore, in the absence of the essential ingredients of the offence punishable under Section 406 of the Indian Penal Code, of there being an entrustment and dishonest misappropriation of the entrusted property, this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 406 of the Indian Penal Code is not made out

even with the aid of Section 120B of the Indian Penal Code against the petitioner.

15. In view of the discussion made above, since none of the offences in respect of which the learned Judicial Magistrate-1st Class, Jamshedpur has taken cognizance is made out even if the entire allegations made against the petitioner are considered to be true in their entirety, this Court is of the considered view that the continuation of this criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the First Information Report registered as Sitaramdera P.S. Case no.45 of 2015 corresponding to G.R. No.576 of 2015 including charge sheet no.229 of 2021 dated 12.10.2021 and the order taking cognizance dated 12.04.2022 passed by learned Judicial Magistrate-1st Class, Jamshedpur, be quashed and set aside against the petitioner.

16. Accordingly, the First Information Report registered as Sitaramdera P.S. Case no.45 of 2015 corresponding to G.R. No.576 of 2015 including charge sheet no.229 of 2021 dated 12.10.2021 and the order taking cognizance dated 12.04.2022 passed by learned Judicial Magistrate-1st Class, Jamshedpur, is quashed and set aside *qua* the petitioner only.

17. In the result, this Cr.M.P., stands allowed.

(Anil Kumar Choudhary, J.)