

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3351 of 2025

1. Rakesh Kumar Singh, age-50 years, S/o Late Sukhram Singh,
R/o-Laxmi Niwas, J.C. Road, P.O. + P.S.-Lalpur, Ranchi.
2. Rajesh Kumar, S/o Sri Shyam Narayan Prasad, age-49 years, R/o
Shiv Shakti Apt. Shivalaya, S.O.P., P.O. + P.S.-Doranda.

... Petitioners

Versus

The State of Jharkhand ... Opposite Party

For the Petitioners	: Mr. Rohit Sinha, Advocate
	: Mr. Paritosh Rai, Advocate
	: Mr. Vijay Shankar, Advocate
	: Md. Imran Hassan, Advocate
For the State	: Ms. Nehala Sharmin, Spl.P.P. (VC)

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 528 of the B.N.S.S., 2023 with the prayer to quash and set aside the FIR as well as the entire criminal proceeding arising out of Namkum P.S. Case No.101 of 2022 registered for the offences punishable under Sections 341, 323, 379, 386, 387, 406, 420,

504, 506 and 120B of the Indian Penal Code against the petitioner, pending in the court of learned Judicial Magistrate, Ranchi.

3. Learned counsel for the petitioners submit that the investigation of the case is still going on and charge sheet has not yet been submitted. It is next submitted that the allegation against the petitioner is that the petitioner no.1 being the Managing Director and the petitioner no.2 being the Director of M/s Shree Nitya Nav Nirman Infrastructure Construction Pvt. Ltd. offered to the complainant, a duplex accommodation of the housing society developed by them for the consideration amount of Rs.23 Lakhs. It is next submitted that consequent upon agreement having been entered into between the parties on 03.12.2013, the complainant along with his wife-Bibha Jha paid Rs.22,88,540/- towards total consideration amount, but the petitioners halted the project in 2017 and stopped the work completely. It is next submitted that on 30.11.2017, the land has been registered in favor of the complainant by duly executed registered sale deed, but for last 8 years prior to filing of the complaint, the construction over the purchased land has not been completed. It is next submitted that in February 2022, when the complainant and his wife went to the site of the said purchased duplex accommodation, the co-accused land owners along with others harassed them, caused hurt to them, demanded extortion, refused to refund the amount paid by them. It is further alleged that the petitioners have also cheated several persons. It is further submitted that the complainant filed Complaint Case No.3860 of 2022 in the Court of learned Judicial Magistrate, Ranchi which upon being

referred to police under Section 156(3) of the Cr.P.C., Namkum P.S. Case No.101 of 2022 was registered.

4. Learned counsel for the petitioners next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Kanishk Sinha and Another vs. State of West Bengal and Another** reported in **2025 SCC OnLine SC 443** and submits that in the said judgment, it has been held by the Hon'ble Supreme Court of India that the observations made by the Hon'ble Supreme Court of India in the case of **Priyanka Srivastava v. State of Uttar Pradesh** reported in **(2015) 6 SCC 287** is prospective in nature.

5. Learned counsel for the petitioners next relies upon the judgment of 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 reiterated the settled principle of law that 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, the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

6. Learned counsel for the petitioners to the same effect next relies upon the judgment 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)

wherein it was held 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. Learned counsel for the petitioners next submits that even though the entire allegations made against the petitioners are considered to be true in their entirety, no offence is made out against the petitioners and the offence is only made out against the co-accused persons, hence, it is lastly submitted that the prayer as prayed for in this Cr.M.P., be allowed.

8. Learned Spl.P.P. appearing for the State on the other hand vehemently opposes the prayer of the petitioners made in the instant Cr.M.P and submits that exercise of the power under Section 156(3) Cr.P.C. is the inherent power of the Magistrate and merely because the complaint was not supported by the affidavit, it will not be a ground to quash the entire criminal proceeding. It is next submitted that there is allegation of causing hurt, committing theft, wrongfully restraining the complainant, criminally intimidating him, demanding extortion, but it is fairly submitted that the same is against the co-accused persons; in a separate instance; where the presence of the petitioners is not claimed even by the complainant. It is next submitted that keeping in view the fact that investigation of the case is at nascent stage, the prayer of the petitioner ought not be allowed. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

9. 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 **Anurag Bhatnagar and Another vs. State (NCT of Delhi) and Another** reported

in 2025 SCC OnLine SC 1514, paragraph 32 & 33 of which reads as under:-

"32. In the facts and circumstances of the case, as the informant had directly moved the Magistrate under Section 156(3) of the CrPC without exhausting his statutory remedies, the Magistrate could have avoided taking action on the said application and could have refused to direct for the registration of the FIR. However, as entertaining an application directly by the Magistrate is a mere procedural irregularity and since the Magistrate in a given circumstance is otherwise empowered to pass such an order, the action of the Magistrate may not be illegal or without jurisdiction.

33. To sum up, the Magistrate ought not to ordinarily entertain an application under Section 156(3) CrPC directly unless the informant has availed and exhausted his remedies provided under Section 154(3) CrPC, but as the Magistrate is otherwise competent under Section 156(3) CrPC to direct the registration of an FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, we are of the opinion that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this count."

that therein it has categorically been held by the Hon'ble Supreme Court of India that since the Magistrate is otherwise competent under Section 156(3) Cr.P.C. to direct the registration of the FIR if the allegations in the application/complaint discloses the commission of a cognizable offence, that the order so passed by the Magistrate would not be without jurisdiction and would not stand vitiated on this court.

10. Now coming to the facts of the case, this is not a case where any petition under Section 156(3) of Cr.P.C. was filed by the complainant; rather the learned Judicial Magistrate, Ranchi *sou moto* has referred the complaint under Section 156(3) of Cr.P.C. and in view of the same, this Court is of the considered view that the FIR is not vitiated only because of

the complaint was not supported by any affidavit, hence, this contention of the petitioners is without any merit.

11. The perusal of the record reveals that the allegations against the petitioners is in respect of the offences punishable under Section 406 & 420 of the Indian Penal Code only and the other offences are related to co-accused persons; in respect of whom separate occurrence in which the presence of the petitioners is not attributed even by the complainant.

12. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case 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 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 the offence of cheating.

13. Now coming to the facts of the case, it is the admitted case of the complainant that consequent upon an agreement of sale, a total

consideration amount was paid to the petitioners by the complainant and his wife and the land has also been sold by the petitioners in exercise of the power vested upon them by way of power of attorney of the owner of the land and the only allegations against the petitioners is that because of some dispute between the petitioners who are the developers and the land owners, the further construction is not going on, so, there is absolutely no allegation of any deception played by the petitioners since the beginning of the transactions between the petitioners and the complainant and his wife.

14. Under such circumstances, 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 420 of the Indian Penal Code is not made out.

15. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, 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.

16. Now coming to the facts of the case, except consideration amount of the house to be purchased by the complainant, there is no allegation of any other entrustment by the complainant to the petitioners. Against receipt of the consideration amount, the petitioners have executed the sale deed in respect of land over which the duplex house is to be built, so, 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 there is no allegation of any dishonest misappropriation of any entrusted property by the petitioners and in the absence of the same, 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 406 of the Indian Penal Code is not made out. As already indicated above, the other offences are not related to the petitioners but in respect of separate occurrence took place involving the co-accused persons in which occurrence, the petitioners are not alleged to be present.

17. Under such circumstances, as none of the offences in respect of which the FIR is registered is made out against the petitioners, hence, this

Court is of the considered view that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the FIR as well as the entire criminal proceeding arising out of Namkum P.S. Case No.101 of 2022 registered for the offences punishable under Sections 341, 323, 379, 386, 387, 406, 420, 504, 506 and 120B of the Indian Penal Code, be quashed and set aside against the petitioners.

18. Accordingly, the FIR as well as the entire criminal proceeding arising out of Namkum P.S. Case No.101 of 2022 registered for the offences punishable under Sections 341, 323, 379, 386, 387, 406, 420, 504, 506 and 120B of the Indian Penal Code, is quashed and set aside *qua* the petitioners only.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 26th of November, 2025
AFR/ Abhiraj

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