

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 282 of 2025

Bada Harun Ansari, aged about 58 years, Son of Ajal Ansari Resident of village- Sidpahari, P.O.-Chhailapathar, P.S. Masalia, District- Dumka, Jharkhand.

..... Petitioner

Versus

1. The State of Jharkhand
2. Radhe Shyam Agarwal, Son of Late Inderlal Agarwala, Resident of Bhuli, Block-B, Q. No.- 21, P.O.- Bhuli, P.S.- Bhuli, O.P.- Bankmore, District- Dhanbad, Jharkhand.

..... Opposite Parties

For the Petitioner	: Mr. Sanjeev Kr. Thakur, Adv.
For the State	: Mr. Vineet Kr Vashistha, 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 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 528 of BNSS with the prayer for quashing and setting aside the entire criminal proceeding as well as the order dated 02.08.2024 passed by JMFC, Dhanbad in connection with C.P.Case no. 242 of 2021 whereby and whereunder, the learned Magistrate, has found *prima facie* case for the offence punishable under Sections 408 read with Section 34 of IPC.
3. The allegation against the petitioner is that the petitioner along with the co-accused persons, who were the employees of the complainant's showroom came to the showroom of complainant for purchase of a tractor. They took a tractor worth Rs. 5.5 lakhs but did not pay for the same.

4. It is submitted by learned counsel for the petitioner that it is the admitted case of the complainant that though the petitioner paid money to the co-accused persons, the co-accused persons did not give the said money to the complainant and when the complainant asked for the money from the co-accused persons, they assaulted the complainant and committed theft of Rs. 1100/- from his pocket. It is further alleged that even though the complainant has not issued any sale letter, the tractor has been found registered in the office of DTO, Dumka.
5. It is submitted by learned counsel for the petitioner that the allegation against the petitioner is false. The petitioner is the *bonafide* purchaser of the vehicle and admittedly he has paid money to employees of the complainant and except that there is no other allegation against the petitioner. It is then submitted that even if the entire allegations are considered to be true in its entirety still the offence punishable under Sections 408 / 34 of IPC is not made out. It is lastly 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 materials in the record is sufficient to constitute the offence punishable under Sections 408 / 34 of IPC. 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 **Vir Prakash Sharma vs. Anil Kumar Agarwal & Anr.** reported in (2007) 7 SCC 373, para 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)

Wherein, the Hon'ble Supreme Court of India has observed that when the dispute between the parties, is essentially a civil dispute, non-payment or underpayment of the price of the goods by itself does not amount to commission of offence of cheating or criminal breach of trust.

8. Now coming to the facts of the case, it is the admitted case of the complainant that the petitioner has paid the consideration amount of tractor to the employees of the complainant as promised by him.
9. Under such circumstances, this Court is of the considered view that the even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under Section 408/34 of IPC is not made out against the petitioner, hence, continuation of this criminal proceeding against the petitioner 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 02.08.2024 passed by learned JMFC, Dhanbad in connection with C.P.Case no. 242 of 2021 be quashed and set aside *qua* the petitioner.
10. Accordingly, the entire criminal proceeding as well as the order dated 02.08.2024 passed by leanerd JMFC, Dhanbad in connection with C.P.Case no. 242 of 2021 , is quashed and set aside *qua* the petitioner.
11. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 24th November, 2025
Smita / AFR
Uploaded on 12/12/2025