

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.4405 of 2022

Ritesh Kumar Saw, aged about 41 years, son of Ratan Kumar Saw,
resident of Ghanshi Road, Jharia, P.O. and P.S. – Jharia, District-
Dhanbad. ... Petitioners

Versus

1. The State of Jharkhand
2. Rakesh Kumar Mandal, son of Kamla Kar Mandal, resident of : At
& P.O.- Pargha, Koradih, P.S.- Baliapur, District- Dhanbad

... Opposite Parties

For the Petitioner	: Mr. Ashim Kr. Sahani, Advocate
For the State	: Ms. Nehala Sharmin, Spl.P.P.
For the O.P. No.2	: Mr. Shailesh Kr. Singh, Advocate Mr. Abhijeet Kr. Singh, 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, 1973 with a prayer to set aside the order dated 01.09.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.2093 of 2018 whereby and where under the learned Magistrate has found *prima facie* case against the petitioner for having committed the offences punishable under Sections 406, 420, 467 and 468 of the Indian Penal Code.

3. The brief fact of the case is that the petitioner took Rs.5,00,000/- from the complainant to help the complainant to get license for a Petrol Pump. The petitioner returned Rs.3,00,000/- but did not return the remaining amount of Rs.2,00,000/- and proposed that the petitioner be employed by the complainant

so that the amount of Rs.2,00,000/- due and payable by the petitioner to the complainant, can be adjusted from the salary, to which the petitioner will be entitled by virtue of the said employment. It is further alleged that after the petitioner was employed by the complainant in his petrol pump, the complainant trusted him, gave his cheques and also put signatures on non-judicial stamp papers and ultimately the petitioner obtained a cheque for Rs.23,56,000/- issued by the complainant and presented the same for encashment. The said cheque was dishonoured. The petitioner issued notice and filed a case in the court involving the offence punishable under Section 138 of the N.I. Act. After getting the notice from the court, the complainant has filed this case.

4. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. The 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."

and submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that a mere 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.

5. Learned counsel for the petitioner next relies upon the judgment of this Court in the case of **Vodafone Idea Limited & Another vs. The State of Jharkhand & Another** passed in **Cr.M.P. No.3463 of 2018** dated 27.03.2023 and submits that therein this Court had relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Hari Prasad Chamaria vs. Bishun Kumar Surekha & Another** reported in **AIR 1974 SC 301** relevant portion of paragraph-4 of which reads as under:-

"XXXXXXXXXXXXX There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

and submits that therein in the facts of that case where the accused persons did not abide by their commitment that they would show the appellant to be the proprietor of their corporation and also render accounts to him in the month of December, creates a civil liability but the same will not be sufficient to

fasten the criminal liability upon the accused persons of that case for the offence of cheating.

6. It is next submitted that the undisputed fact remains that the petitioner first instituted C.P. Case No.2095 of 2017 against the opposite party No.2 herein and the learned Judicial Magistrate-1st Class has taken cognizance of the offence punishable under Section 138 of N.I. Act and directed issuance of summons. It is next submitted that on 25.05.2013, an agreement was entered into between the petitioner and the opposite party No.2. The petitioner paid a sum of Rs.3,00,000/- as working capital and thereafter paid Rs.1,82,000/- and lastly a sum of Rs.50,000/-. The opposite party No.2, in discharge of his liability, issued a cheque of Rs.23,56,000/- in favour of the petitioner; but by suppressing the same, to set up a defence in the said C.P. Case No.2095 of 2017, this false case has been foisted against the petitioner. Hence, it is submitted that even if the entire allegations made against the petitioner are considered to be true in their entirety, still none of the offences for which the learned Magistrate has found *prima facie* case, is made out against the petitioner. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

7. Learned Spl.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. Learned Spl.P.P. appearing for the State and the learned counsel for the opposite party No.2 submits that the offence punishable under Section 406 of the Indian Penal Code is made out against the petitioner, as the cheque which was entrusted to the petitioner has dishonestly been misappropriated by him. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

8. 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 so far as the offence punishable under Section 420 of the Indian Penal Code is concerned, it is a settled principle of law that to constitute the said offence, the accused must play deception since the beginning of the transaction between the parties.

9. Now, coming to the facts of this case, there is absolutely no allegation against the petitioner of playing any deception since the beginning of the transaction between the parties. Hence, 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 420 of the Indian Penal Code is not made out against the petitioner.

10. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the essential ingredients of the same is that

- (i) There must be entrustment; and
- (ii) there must be misappropriation or conversion to one's own use or use in violation of a legal direction or obtaining legal possession.

as has been held by the Hon'ble Supreme Court of India in the case of **Ram Narayan Popli vs. Central Bureau of Investigation** reported in (2003) 3 SCC 641.

11. Now, coming to the facts of the case there is no allegation of entrustment of any property upon the petitioner and in the absence of any property being entrusted to the petitioner, the question of dishonest misappropriation of the entrusted property does not arise and in this case also there is no allegation of any dishonest misappropriation of any property by the petitioner.

12. Under such circumstances, 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 against the petitioner.

13. So far as the offences punishable under Sections 467 and 468 of the Indian Penal Code are concerned; to constitute the said two offences, the essential ingredient is forgery.

14. Now, coming to the facts of the case, the admitted fact remains that the opposite party No.2 put his signature on the agreement. Of course, it is the plea of the opposite party No.2 that by the time he put his signature, the paper was blank and later on the same was filled up unilaterally by the petitioner. The opposite party No.2 also admits that he has put his signature on the cheque but again, he has taken the plea that by the time he has put his signature in the cheque, the cheque was not filled up. But when the signature of the opposite party No.2 on both the agreement and the cheque is admitted, certainly the agreement or the cheque cannot be treated as a false document as defined in Section 464 of the Indian Penal Code. The opposite party No.2 may have a civil remedy but certainly no offence punishable in law is made out against the petitioner; even if the entire allegations made against the petitioner are considered to be true in their entirety. Therefore, this Court is of the considered view that this is a fit case where the order dated 01.09.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.2093 of 2018, be quashed and set aside.

15. Accordingly, the order dated 01.09.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.2093 of 2018 is quashed and set aside.

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

17. In view of disposal of the instant Cr.M.P., pending interlocutory application, if any, stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 09th of July, 2025
AFR/ Animesh