

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 4125 of 2023

Ram Kisan Prasad @ Ram Kishun Prasad, aged about 57 years, son of Kapil Deo Prasad, resident of 32, D Road, Adarsh Nagar, Baridih Basti, P.O.-Baridih, P.S.-Sidhgora, Dist.-East Singhbhum (Jharkhand), PIN Code-831017.

.... Petitioner

Versus

1. The State of Jharkhand
2. Om Prakash Singh, son of late Banparsat Singh, resident of Khadiya Basti, Sankosai Road No.4, P.O.-M.G.M., P.S.-Ulidihi Mango, Dist.-East Singhbhum (Jharkhand)

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioner	: Mr. Yashvardhan, Advocate
	: Mr. Aditya Aman, Advocate
For the State	: Mr. Kumari Rashmi, Addl. P.P.
For O.P. No.2	: Mr. Anurag Kashyap, Advocate

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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 482 Cr.P.C. with a prayer to quash the entire criminal proceeding including the order taking cognizance dated 01.09.2023 passed by the learned Judicial Magistrate 1st Class, Jamshedpur in connection with Complaint Case No. 5255 of 2025 by which the learned Judicial Magistrate 1st Class, Jamshedpur (East Singhbhum) has found *prima facie* case for the offences punishable under Sections 323, 406 and 417 of Indian Penal Code against the petitioner.

3. The brief fact of the case is that marriage of the son of the petitioner was settled with the daughter of the complainant. The complainant paid some money to the petitioner but because of some untoward occurrence, the marriage could not be solemnized. The petitioner has paid back part of the amount but is not repaying the entire amount.
4. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Prof. R.K. Vijayasathya & Anr. Vs. Sudha Seetharam & Anr.** reported in (2019) 16 SCC 739, paragraph nos. 13 and 16 of which reads as under:-

"13. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

13.1. A person should have been entrusted with property, or entrusted with dominion over property;

13.2. That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so; and

13.3. That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

16. The ingredients to constitute an offence of cheating are as follows:

16.1. There should be fraudulent or dishonest inducement of a person by deceiving him:

16.1.1. The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

16.1.2. The person so induced should be intentionally induced to do or to omit to do anything which he would not do or omit if he were not so deceived; and

16.2. In cases covered by 16.1.2. above, the act or omission should be one which caused or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

wherein the Hon'ble Supreme Court of India has discussed the ingredients to constitute the offence punishable under Sections 406 and 417 of Indian Penal Code.

5. It is next submitted by the learned counsel for the petitioner that there is absolutely no allegation against the petitioner of causing hurt to anybody hence, the offence punishable under Section 323 of Indian Penal Code is not made out. It is further submitted by the learned counsel for the petitioner that there is no allegation of entrustment of any money to the petitioner or the dishonest misappropriation of the same and in the absence of the same, the offence punishable under Section 406 of Indian Penal Code is also not made out. It is then submitted by the learned counsel for the petitioner that in the absence of any allegation that the petitioner had any intention to deceive the complainant or anybody else, the offence punishable under Section 417 of Indian Penal Code is not made out. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.
6. The learned Additional Public Prosecutor and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer as made in this criminal miscellaneous petition

and submits that besides the allegation made, the petitioner threatened the complainant also. It is next submitted by learned Addl. P.P. that non-refunding of the amount taken by the petitioner amounts to the offence punishable under Section 406 and 417 of Indian Penal Code. 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 available in the record, it is pertinent to mention here that there is no allegation against the petitioner of dishonestly misappropriating any entrusted amount and in the absence of the same, this Court is of the considered view that the offence punishable under Section 406 of Indian Penal Code is not made out.
8. In the absence of any allegation against the petitioner that the petitioner has played deception since the beginning of the transaction between the parties, the offence punishable under Section 417 of Indian Penal Code is not made out against the petitioner either; even if the entire allegation made against the petitioner are considered to be true, in its entirety.
9. In view of the discussions made above, this Court is of the considered view that the 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 including the order taking cognizance dated 01.09.2023 passed by the learned

Judicial Magistrate 1st Class, Jamshedpur (East Singhbhum) in connection with Complaint Case No. 5255 of 2025 be quashed and set aside.

10. Accordingly, the entire criminal proceeding including the order taking cognizance dated 01.09.2023 passed by the learned Judicial Magistrate 1st Class, Jamshedpur (East Singhbhum) in connection with Complaint Case No. 5255 of 2025 is quashed and set aside.
11. In the result, this criminal miscellaneous petition is allowed.
12. In view of the disposal of this criminal miscellaneous petition, Interlocutory Application No. 8667 of 2025 is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 7th July, 2025
AFR/Sonu-Gunjan/-