

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 87 of 2023

1. Rakesh Kumar, aged about 57 years, son of Sri Shivnath Prasad Shrivastava
2. Mamta Devi @ Mamta Srivastav, aged about 50 years, wife of Rakesh Kumar
3. Mayank Kumar Srivastava @ Mayank Raj, aged about 24 years, son of Rakesh Kumar

All resident of village Sandi (Teliya), P.O. -Bharechnagar Sandi and P.S. Mandu, District -Ramgarh (Jharkhand)

.... Petitioners

Versus

1. The State of Jharkhand
2. Arun Kumar Khatri, aged about 63 years, son of Sri Girja Prasad Sinha, Resident of Ramgarh College Colony, Near Reliance Tower, P.O. and P.S. + District - Ramgarh (Jharkhand) presently residing in Rajrappa Project, Qr. No. B6/5, P.O. and P.S. -Rajrappa, District - Ramgarh (Jharkhand).

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners

.....
: Mr. Kumar Harsh, Advocate
: Ms. Khushboo Kumari, Advocate
: Mr. Suraj Kishore Prasad, Advocate
: Mr. V.K. Vashistha, Spl. P.P.
: None

For the State

For the O.P. No.2

By the Court:-

1. Heard the parties.
2. No one turns up on behalf of the opposite party no.2 in-spite of repeated calls.
3. 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 First Information Report in connection with Mandu (Kujju) P.S. Case No. 124 of 2021 and also to quash the order dated 21.11.2022, passed by the learned A.C.J.M., Ramgarh, in which cognizance has been taken for the offences punishable under Sections 406/420/323/504/34/120B of the Indian Penal Code.

4. The allegation against the petitioners is that the complainant through a property broker approached the petitioner no.1 for purchase of his land for total consideration of Rs.29,00,000/- and agreement for sale was entered into between the parties on 08.08.2018 and the complainant paid Rs.8,00,000/- as part payment. The petitioners agreed to transfer the land and house within six months that is before 07.02.2019. The complainant is ready and willing to perform his part of the contract but the accused persons have not transferred the same but requested for three months' time for which an agreement for extension was entered into on 04.04.2019 and during the extended period also the petitioners did not transfer the land and during these period, the accused persons of the case took Rs.21,00,000/- but one of the cheque of Rs.3,00,000/- was not presented by the accused within the validity period, hence the amount has not been credited. The complainant approached the accused persons several times and by this act of the petitioners, the complainant got shocked and got a cardiac attack. The complainant filed Complaint Case No. 234 of 2021 in the Court of Chief Judicial Magistrate, Ramgarh and the

same was referred to police under Section 156(3) Cr.P.C. On the basis of the same Mandu (Kujju) P.S. Case No. 124 of 2021 has been registered. Police after investigation of the case submitted a charge sheet alleging commission of the offences punishable under Section 406/420/323/504/34/120B of the Indian Penal Code and on the basis of the same; the learned Magistrate took cognizance of the said offences against the petitioners.

5. It is submitted by the learned counsel for the petitioners relying upon the Judgment of Hon'ble Supreme Court of India in the case of **Hridaya Ranjan Prasad Verma Vs. State of Bihar**, reported in (2000) 4 SCC 168, para-15 of which reads as under:-

"15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

And submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed.

6. The learned counsel for the petitioners next relies upon the Judgment of Hon'ble Supreme Court of India in the case of **Dalip Kaur and Others v. Jagnar Singh and Another**, reported in (2009) 14 SCC 696 wherein, it has been held 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 an offence of cheating

7. The learned counsel for the petitioners next relies upon the Judgment of Hon'ble Supreme Court of India in the case of **Ankur Gupta Vs. State of Uttar Pradesh and Another**, reported in (2017) SCC Online SC 2023, the relevant part of paragraph no.7 of which reads as under:-

"7. xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx xxxxx Since the appellant is not a party to the agreement or any transaction between the complainant and other accused, there is no reason as to why he should face criminal trial and that too for the offences under Sections 406, 420 IPC etc. xxxxxxxx xxxxx. (Emphasis Supplied)"

And submits that the Hon'ble Supreme Court of India has reiterated the settled principle of law that if an accused person is not a party to the agreement or any transaction between the complainant and other accused, there is no reason, as to why he should face criminal trial and that too for the offences under Section 406/420 of the Indian Penal Code.

8. It is next submitted by the learned counsel for the petitioners that there is absolutely no allegation against the petitioner nos. 2

& 3. The alleged entrustment or entering into an agreement is only against the petitioner no.1. It is next submitted that there is no allegation of dishonest misappropriation of the entrustment made to the petitioner no.1 nor is there any allegation of any intentional insult having been caused by any of the petitioners to the informant or by anyone else. Hence, it is submitted that the offence punishable under Section 504 of the Indian Penal Code is not made out against the petitioners. It is then submitted that there is no allegation against the petitioners of causing hurt to anyone. Hence, the offence punishable under Section 323 of the Indian Penal Code is not made out against the petitioners. It is therefore submitted that the prayer as prayed for by the petitioners in this criminal miscellaneous petition be allowed.

9. The learned Special Public Prosecutor on the other hand vehemently opposes the prayer as prayed for in this criminal miscellaneous petition and submits that the allegations made against the petitioners are sufficient to constitute the offence in respect of which the cognizance has been taken by the learned Magistrate. Hence, at this nascent stage, the entire criminal proceeding ought not to be quashed. It is lastly submitted that this criminal miscellaneous petition being without any merit be dismissed.
10. 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 if the dispute between the parties was

essentially a civil dispute resulting from a breach of contract on the part of the accused persons, by non-refunding of the advance amount, the same would not constitute an offence of cheating, as has been held by the Hon'ble Supreme Court of India in the case of **Dalip Kaur and Others v. Jagnar Singh and Another** (supra) and similarly is the legal position in respect of an offence of criminal breach of trust, 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)

11. Now coming to the facts of the case, there is absolutely no allegation against the petitioner nos. 2 & 3. They are neither party to the agreement nor any entrustment was made to them. So far as the petitioner no.1 is concerned, there is no allegation of his having playing deception since the beginning of the transaction between the parties.
12. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Anr.** reported in (2005) 10 SCC 336, paragraph no. 6 of which reads as under :-

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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)

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. There is no allegation of any dishonest misappropriation against any of the petitioners and there is no allegation of entrustment against the petitioner nos. 2 & 3. 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, still the offence punishable under Section 420 or 406 of the Indian Penal Code is not made out.

13. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, there is no allegation against the petitioners of having caused hurt to anyone. Hence, the offence punishable under Section 323 of the Indian Penal Code is not made out. In the absence of any allegation against the petitioners

of intentionally insulting anyone, the offence punishable under Section 504 of the Indian Penal Code is also not made out.

14. In view of the discussions made above, since none of the offences in respect of which the cognizance has been taken by the learned Magistrate is made out against the petitioners, hence continuation of this criminal proceeding will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding including the First Information Report in connection with Mandu (Kujju) P.S. Case No. 124 of 2021 and also the order dated 21.11.2022, passed by the learned A.C.J.M., Ramgarh, in which cognizance has been taken for the offences punishable under Sections 406/420/323/504/34/120B of the Indian Penal Code, be quashed and set aside.
15. Accordingly, the entire criminal proceeding including the First Information Report in connection with Mandu (Kujju) P.S. Case No. 124 of 2021 and also the order dated 21.11.2022, passed by the learned A.C.J.M., Ramgarh, in which cognizance has been taken for the offences punishable under Sections 406/420/323/504/34/120B of the Indian Penal Code is quashed and set aside.
16. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)