IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2435 of 2024
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1. Smt. Krishna Priya, aged about 78 years, W/o Late Anant Priya, R/o Flat No.405, Gulmohar Apartment, Talpuri A-Block, P.O.-Bhilai West & P.S.-Bhilainagar, District-Durg (Chattisgarh).
2. Rajeev Priya, aged about 55 years, S/o Late Anant Priya, R/o Flat No.405, Gulmohar Apartment, Talpuri A-Block, P.O.-Bhilai West & P.S.-Bhilainagar, District-Durg (Chattisgarh).
3. Rakesh Priya, aged about 51 years, S/o Late Anant Priya, R/o Flat No.505, Block C, Sun Towers Vaibhav Khand, Indirapuram, P.O.-Shipra Sun City, P.S.-Indirapuram, District-Ghaziabad (U.P.).
4. Ritesh Priya, aged about 47 years, S/o Late Anant Priya, R/o House No.TB-C-31, Waghali, P.O. & P.S.-Wagholi, District-Pune (Maharashtra).

… Petitioners

Versus

1. The State of Jharkhand

2. LIC Housing Finance Ltd. through Sri Rahul Atharva S/o Sri C.P. Singh, aged about 44 years, Area Manager, LIC Housing Finance Ltd. Area Office, Arjan Palace, IInd Floor, Main Road, P.O. & P.S.-Chutia, District-Ranchi.

… Opposite Parties

For the Petitioners : Mr. Sidhartha Roy, Advocate
For the State : Ms. Anuradha Sahay, Addl.P.P.
For the O.P. No.2 : Mr. Navneet Sahay, 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 528 of the BNSS, 2023 with the prayer to quash and set aside the entire criminal proceeding in connection with Chutia P.S. Case No.206 of 2022 registered for the offences punishable under Sections 420/406/120B & 34 of the Indian Penal Code against the petitioners arising out of complaint case no.559 of 2020.

3. Learned counsel for the petitioners submits that the investigation of the case is going on and charge sheet has not yet been submitted.

4. The allegation against the petitioners is that the petitioners with the co-accused Ajay Prasad took a housing loan from the complainant in respect of a flat; which was constructed by the co-accused persons on the land belonging to the predecessor in interest of the petitioners, namely Anant Priya. The undisputed facts remains that the Anant Priya entered into a development agreement with the co-accused builder and after his death, the petitioners have executed a sale deed in favour of the wife of Ajay Prasad namely co-accused Nitu Devi in which the co-accused builders and Ajay Prasad are also parties. The informant/opposite party no.2 filed Complaint Case No.559 of 2020 in the Court of learned Judicial Magistrate-1st Class, Ranchi which upon being referred under Section 175(3) of BNSS, 2023 to police; police registered Chutia P.S. Case No.206 of 2022 and took up investigation of the case and it is submitted by the learned counsel for the petitioner that the investigation of the case is still going on.

5. Learned counsel for the petitioners relies upon the judgement of the Hon'ble Supreme Court of India in the case of **Vijay Kumar Ghai & Others vs. State of West Bengal & Others** reported in **2022 LiveLaw (SC) 305** and submits that in that case, the Hon'ble Supreme Court of India relied upon its own judgement 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 reiterated by the Hon'ble Supreme Court of India that only in those cases, breach of contract would amount to cheating where there was any deception played at the very inception and if the intention to cheat has developed later on, the same will not amount to cheating.

6. Learned counsel for the petitioners submit that even if the entire allegations made against the petitioners are considered to be true in their entirety still neither the offence punishable under Section 406 nor Section 420 of the Indian Penal Code is made out against the petitioners even with the aid of either Section 120B or Section 34 of the Indian Penal Code. It is

lastly submitted that the prayer, as prayed for in the instant Cr.M.P, be allowed.

7. Learned Addl.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 petitioners made in the instant Cr.M.P and submit that even if the entire allegations made against the petitioners are considered to be true in their entirety still both the offences punishable under Section 406 as well as Section 420 of the Indian Penal Code is made out against the petitioners and since the investigation of the case is going on at this nascent stage, the entire criminal proceeding ought not be quashed. It is lastly 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 the essential ingredients to constitute the offences punishable under Section 420 of the Indian Penal Code are as follows:-

(i) Deceit, that is to say dishonest or fraudulent misrepresentation, and;

(ii) inducing the person deceived to part with property.

9. Now coming to the facts of the case, there is absolutely no allegation against any of the petitioners of either deceiving the complainant/informant or making him part of any property and in the absence of these two essential ingredients and additionally in the absence of any allegation that the petitioners played deception since the beginning

of the transaction between the complainant/informant with Ajay Prasad, 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 420 of the Indian Penal Code is not made out against the petitioners even with the aid of Section 120B or 34 of the Indian Penal Code.

10. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, it is pertinent to mention here the essential ingredients to constitute the offence punishable under Section 406 are as follows:-

> *(i)There must be an entrustment; and*
> *(ii) there must be misappropriation or conversion to one's own use or use in violation of a legal direction or of legal contract.*

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

11. Now coming to the facts of the case, there is absolutely no allegation against the petitioners of any property being entrusted to the petitioners by the complainant/informant/opposite party no.2 or anyone else and in the absence of the same, the dishonest misappropriation of any entrusted property which is a *sine qua non* to constitute the offence punishable under section 406 of the Indian Penal Code does not arise, therefore, 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 406 of Indian Penal

Code is not made out even with the aid of Section 120B or 34 of the Indian Penal Code.

12. In view of the discussions made above as none of the offences in respect of which the FIR is registered is made out against the petitioners even if the entire allegations made against the petitioners are considered to be true in their entirety, 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 entire criminal proceeding in connection with Chutia P.S. Case No.206 of 2022 registered for the offences punishable under Sections 420/406/120B & 34 of the Indian Penal Code against the petitioners in pursuance of complaint case no.559 of 2020, be quashed and set aside.

13. Accordingly, the entire criminal proceeding in connection with Chutia P.S. Case No.206 of 2022 registered for the offences punishable under Sections 420/406/120B & 34 of the Indian Penal Code against the petitioners in pursuance of complaint case no.559 of 2020, is quashed and set aside *qua* the petitioners.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 06th of July, 2026
AFR/ Abhiraj

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