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**HIGH COURT OF CHHATTISGARH, BILASPUR****Writ Petition (Cr.) No. 232 of 2018**

Bunty Sahu S/o S/o Late Shri Sant Ram Sahu Aged About 37 Years C/o Ravan Auto Centre, Kabir Chowk, Chatamura, Naka, Near F. C. I. Godown, P. S.- Kotwali, Tehsil And District- Raigarh, Chhattisgarh. R/o Chatamura Naka, Near F. C. I. Godown, P. S.- Kotwali, Tehsil And District- Raigarh, Chhattisgarh. ....Accused., District : Raigarh, Chhattisgarh.

**---- Petitioner****Versus**

1. State Of Chhattisgarh Through Secretary, Department Of Home Affairs (Police), Mahanadi Bhawan, Naya Raipur, District- Raipur, Chhattisgarh., District : Raipur, Chhattisgarh
2. Superintendent Of Police, Raigarh, District- Raigarh, Chhattisgarh., District : Raigarh, Chhattisgarh
3. Station House Officer, Police Station Kotwali Raigarh, (Police Out Post- Jute Mill), District- Raigarh, Chhattisgarh. ....Prosecution., District : Raigarh, Chhattisgarh
4. Gaurav Agrawal S/o S/o Suresh Kumar Agrawal Aged About 26 Years C/o Puja Auto Parts, R/o Bharat Mata Chowk, Bilaspur Road, Sarangarh, Tahsil And P. S. Sarangarh, District- Raigarh, Chhattisgarh. ....Complainant., District : Raigarh, Chhattisgarh

**---- Respondents**


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|---------------------------|------------------------------------|
| For the Petitioner        | : Shri Surfaraj Khan, Advocate.    |
| For the Respondents/State | : Shri Lav Sharma, P.L.            |
| For Respondent No.4       | : Shri Amit Kumar Chaki, Advocate. |

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**Hon'ble Shri Justice Rajendra Chandra Singh Samant****ORDER****08.07.2019**

Heard.

1. This petition has been brought under Article 226 of the Constitution of India praying for quashment of FIR No. 328 of 2018 and other reliefs.

2. It is submitted that the allegation against the petitioner made by respondent No.4/ complainant – Gaurav Agrawal that the petitioner has received an advance of Rs.90,000/- for supply of lubricants and motor parts and he has not supplied the same, does not constitute any offence. It is clearly a dispute of civil nature. It is not disputed that the petitioner is Proprietor of Ravan Auto Parts which is registered for GST and the registration certificate is filed as Annexure-P/2. The documents have also been filed showing business transaction of the petitioner with various other persons and also regarding making purchase of articles to be supplied therefore, lodging of FIR in this case shall abuse the process. Hence, it is prayed that the case be disposed off at the motion stage.

3. Learned counsel for respondents No.1, 2 and 3/ State submits that the FIR has been lodged on the basis of the enquiry which was made on the written complaint filed by respondent No.4. Apart from that, the petitioner is habitual offender who has 17 prosecution cases against him and further, a *prima facie* case is made out against the petitioner in the FIR against him. Hence, the petition be rejected.

4. Learned counsel for respondent No.4 has adopted the arguments submitted by the State counsel/ respondents No.1 to 3 and it is prayed that the petition be dismissed.

5. In reply, it is submitted by counsel for the petitioner that the petitioner has been acquitted in all the previous cases prosecuted against him. Apart from that, this case is totally different which is a case of civil nature converted into a criminal case. Hence, the petition be allowed.

6. Heard counsel for both the parties and perused the documents.

7. The copy of FIR has been filed as Annexure-P/1 according to which, the gist of the complaint is that, complainant/ respondent No.4 is Proprietor of Shop styled as Pooja Auto Parts. On 24.2.2018, he placed an order for purchase of lubricants and auto-parts and made an advance payment of Rs.90,000/- to the petitioner. The petitioner has not supplied these items regarding which the order was placed. On this basis, the FIR has been lodged.

8. Learned counsel for the petitioner placed reliance on the judgment of this Court in the case of **Smt. Renuka Gupta and Another vs. State of Chhattisgarh and Others** reported in **2014 CRI.L.J. 2659**, in which relying on the judgment of the Supreme Court it was held that to hold a person guilty of cheating it is necessary to show that he had a fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep the promise subsequently, one cannot presume that he had a culpable intention to break the promise from the beginning.

9. From the facts of the case in hand, it appears that the petitioner had a concern for making sale and supplies of the articles for which the transaction took place between the petitioner and respondent No.4. There are documents to show that the petitioner is not denying that he has taken an advance for supply of articles but he has not supplied the items so far to respondent No.4.

10. After overall consideration, it appears that it is clearly a case of breach of promise and therefore, it is not covered under the definition of Section 415 of the IPC. Hence, this is a case not to be prosecuted under Section 420 of the IPC because the dispute between the petitioner and respondent No.4 is clearly a case of civil nature. Therefore, on the basis of this discussion and conclusion, I am of the opinion that this petition deserves to be allowed.

11. Accordingly, the petition is allowed and the FIR No. 328 of 2018 lodged against the petitioner for the offence under Section 420 of the IPC in police station Kotwali Raigarh, District Raigarh is hereby quashed.

Sd/-

**(Rajendra Chandra Singh Samant)**  
Judge