IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2819 of 2023

Roop Narayan Choudhary, Aged about 53 years, Son of Hari Ram Choudhary, Resident of Garabasa, Station Road, P.O. & P.S.: Bagbera, Jamshedpur, District: East Singhbhum, Jharkhand

… Petitioner

Versus

1. The State of Jharkhand
2. Sanwar Mal Sharma, Aged about 51 years, Son of Bodu Ram Sharma, Resident of Ram Tekri Road, P.O. & P.S.: Jugsalai, Jamshedpur, District: East Singhbhum, Jharkhand

… Opposite Parties

For the Petitioner : Mr. Vishal Kr. Tiwary, Advocate
Md. Imran Beig, Advocate
Mr. Manjeet Kr. Choudhary, Advocate
For the State : Mr. Vineet Kr. Vashistha, Spl. P.P.
For the O.P. No.2 : Mr. Rohit Sinha, Advocate (Through V.C.)
Mr. Akhilesh Shrivastava, 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 the prayer to quash and set aside the entire criminal proceeding arising out of Complaint Case No.25 of 2019 including the order taking cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Jamshedpur whereby and where under the learned Judicial Magistrate-1st Class, Jamshedpur has taken

cognizance of the offences punishable under Sections 420 & 120B of the Indian Penal Code against the petitioner.

3. Learned counsel for the petitioner submits that charge has not been framed in this case and the trial is yet to begin.

4. The brief fact of the case is that the complainant along with the co-accused persons incorporated the company in the name and style of TATANAGAR STEEL FORGE LIMITED Company. The petitioner and Mrs. Jhuma Devi Choudhary were having a stake of 50% whereas the opposite party No.2- Binod Kumar Sharma and Kamlesh Kumar Sharma were having the stake of remaining 50%. It is alleged that in the year 2010-11, the co-accused Sudhir Rai one of the shareholders of the said TATANAGAR STEEL FORGE LIMITED Company transferred 90,000 of his shares in the said company, to the petitioner. The petitioner assured the complainant/opposite party No.2 to ensure transfer of remaining 50,000 shares of the co-accused Sudhir Rai and 40,000 shares of the company to the opposite party No.2/complainant but cheated and did not do the same. It is further alleged that on 21.09.2016, the Annual General Meeting of the Company was held in which 7,29,655 shares of the company, by way of cheating, were transferred in the name of petitioner, co-accused Roopnarayan Choudhary, Jhooma Choudhary, Prashant Narayan Choudhary, Sidharth Narayan Choudhary. It is further alleged that such transfer of shares were made by committing forgery by using the signature of the complainant/opposite party No.2 and his associates by forging the

digital signature of the complainant/opposite party No.2 and his associates which was put to prepare a Directors' Report and such signed papers of the complainant/opposite party No.2 were utilized by the petitioner to show that the co-accused Sudhir Rai and his associate Binod Kumar Sharma have resigned from the Board of Directors of the Company.

5. The learned Judicial Magistrate-1st Class, Jamshedpur considering the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, found *prima facie* case for the offences punishable under Section 420 and 120B of the Indian Penal Code and ordered for issuance summons against the petitioner and the co-accused persons.

6. Learned counsel for the petitioner draws the attention of this Court towards the judgment of this Court in the case of the co-accused person namely Sudhir Rai against whom vide judgment dated 19.06.2023 passed in Cr.M.P. No.308 of 2023, the entire criminal proceeding has been quashed and submits that assuming for the sake of argument that the entire allegations made in the complaint, statement of the complainant on solemn affirmation as well the statement of the inquiry witnesses are considered to be true in their entirety; still the only allegation against the petitioner is that the co-accused Sudhir Rai transferred 90,000 shares of the said company to the petitioner and some other shares were also transferred by the respective shareholders in favour of the petitioner, whereby the percentage of the complainant

was reduced to 13.8% from the original percentage of 50%. It is further alleged that the complainant and Binod Sharma were shown to have rejoined as Directors of the said company. The further allegation is that the letter pad which was used by the petitioner and other co-accused persons for the purpose of showing that the complainant and Binod Kumar Sharma have resigned from the Directorship of the company, the same was, in fact given by the complainant and Binod Kumar Sharma for the purpose of sending the Directors' Report to the Registrar of the Company. It is also alleged that the company accepted the resignation of the complainant and Binod Sharma by using DIR 11 on 17.06.2015 and on 19.06.2016 DIR 12 was filed on behalf of the company in the Registrar of Company by using the digital signature of the complainant without his consent after taking the same from Shyam Sharma and the same was committed by way of a criminal conspiracy with the co-accused persons.

7. It is next submitted that the only allegation against the petitioner is that he has acquired some shares of the company from the respective shareholders other than the complainant and the same, by no stretch of imagination, can amount to deceiving the complainant and inducing him to part with any property nor is there any allegation that the complainant has parted with any property either being induced or deceived by the petitioner. It is further submitted that the complainant has approached the National Company Law Tribunal, Kolkata Bench in respect of transfer of shares of the petitioner without his knowledge and

consent of the petitioner and also for restoration of his Directorship in the company which is still *sub judice* before the National Company Law Tribunal, Kolkata Bench. Thus, when the matter is *sub judice* before the competent civil forum prior to the outcome of the same, simultaneously filing a criminal case with false allegation against the petitioner is not permissible. It is next submitted that the complainant has in fact, resigned from the Directorship of the company and not only his digital signature was used with his consent but also he has submitted a physical hard copy of his resignation letter, the copy of which has been kept at page-8 of the Supplementary Affidavit dated 23.01.2024 and the complainant/opposite party No.2 has not dared to question the genuineness of the same. It is next submitted that in the Annual General Meeting held on 21.09.2016, the undisputed fact remains that the none of the 7,29,655 shares of the company, which were transferred to the name of the petitioner and other co-accused persons, belong to the complainant.

8. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Lalit Chaturvedi & Others vs. State of Uttar Pradesh & Another** reported in **2024 SCC OnLine SC 171** paragraph-10 of which reads as under:-

> *"**10**. The charge-sheet also refers to Section 406IPC, but without pointing out how the ingredients of the said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. [Wolfgang Reim v. State, (2012) 173 Comp Cas 86 : 2012 SCC OnLine Del 3341; Mahindra and Mahindra Financial Services Ltd. v. Delta Classic (P) Ltd., (2009) 151 Comp Cas 661 : 2009*

> *SCC OnLine Gau 105 : (2011) 6 Gau LR 604; Mukesh Sharma v. State of H.P., 2024 SCC OnLine HP 426] For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later." (Emphasis supplied)*

and submits that therein the Hon'ble Supreme Court of India has reiterated the settled principle of law that for the offence of cheating, dishonest intention must exist right at the inception of the transaction and in this respect, learned counsel for the petitioner also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. State of Punjab & Another** reported in **(2023) 5 SCC 360.**

9. Learned counsel for the petitioner further relies upon the judgment of the Hon'ble Supreme Court of India 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)*

and submits that therein the Hon'ble Supreme Court of India has also reiterated the settled principle of law that unless the accused played deception since the beginning of the transaction

between the parties, the offence of cheating will not be made out even if the intention to cheat has developed later on.

10. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

11. 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. and submit that the petitioner has committed forgery. It is next submitted that the exercise of the power under Section 482 of the Code of Criminal Procedure, 1973 is an exception and not a rule. It is next submitted that even if the entire allegations made against the petitioner are considered to be true in their entirety, then the offence punishable under Section 420 read with Section 120B of the Indian Penal Code is made out against the petitioner. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

12. 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 offence punishable under Section 420 of the Indian Penal Code are:-

> *(i) deceit, that is to say dishonest or fraudulent misrepresentation, and*
> *(ii) Inducing the person so deceived to part with property*

as has been reiterated 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.**

13. Now, coming to the facts of the case; the only allegation against the petitioner is that though initially the petitioner and his associates had 50% share of the company but the petitioner purchased and acquired shares from other shareholders so that his share has gone up substantially and the percentage of the share of the complainant has gone down to 13.8%. There is no allegation against the petitioner that the petitioner has either committed any act of deceit or dishonestly or fraudulently induced the complainant or anyone else to part with any property. In the absence of this essential ingredient, this Court has no hesitation in holding 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.

14. So far as the offence punishable under Section 120B of the Indian Penal Code is concerned, the essential ingredient to constitute the said offence are:-

> *(i) An agreement between two or more persons to commit an offence;*
> *(ii) In doing so the accused either did or caused to be done:*
> *(a) an illegal act, or*
> *(b) an act, which is not in itself illegal, by illegal means.*
> *(iii) Such an act done or caused to be done was an offence punishable under the Indian Penal Code;*
> *(iv) If the act so done was not an offence then an overt act had been done by one or more parties to such agreement in pursuance thereof.*

15. Now, coming to the facts of the case, in order to constitute the offence punishable under Section 120B of the Indian Penal Code, the

accused has either done an illegal act or an act which is though not legal by illegal means. Now, coming to the facts of the case, the only offence alleged to have been committed by the petitioner in criminal conspiracy was the offence punishable under Section 420 of the Indian Penal Code. As mentioned in the foregoing paragraphs of this judgment, for cogent reasons, this Court has already held that the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioner. There is no overt act attributed to have been done by the petitioner along with anyone in pursuance of such criminal conspiracy. So, in the considered opinion of this Court, the offence of criminal conspiracy is also not made out against the petitioner even if the entire allegations made against the petitioner are considered to be true in their entirety. Though the learned counsel for the complainant strenuously argued that the offence of forgery has been committed but the fact remains that though the learned Judicial Magistrate has not found any *prima facie* case in respect of any offence relating to forgery yet the said order of the learned Magistrate was never challenged by the complainant.

16. Under such circumstances, this Court is of the considered view that continuation of this criminal prosecution against the petitioner when none of the offences are made out against the petitioner, will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceeding arising out of Complaint Case No.25 of 2019 including the order taking cognizance dated 18.08.2022 passed by

learned Judicial Magistrate-1st Class, Jamshedpur, be quashed and set aside *qua* the petitioner named above.

17. Accordingly, the entire criminal proceeding arising out of Complaint Case No.25 of 2019 including the order taking cognizance dated 18.08.2022 passed by learned Judicial Magistrate-1st Class, Jamshedpur, is quashed and set aside *qua* the petitioner named above.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 18th of December, 2025
AFR/ Animesh
Uploaded on- 05/01/2026