IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.690 of 2025
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1. Sanjay Kumar Tulsyan @ Sanjay Kumar @ Sanjay Kumar Tulsiyan, aged about 58 years, son of Late Meghraj Tulsyan
2. Shobha Tulsyan, aged about 50 years, wife of Sanjay Kumar Tulsyan and Daughter of Jagdish Prasad Goyal.

Both resident of Meghraj Tower, Bara Gamharia, Post Gamharia, Police Station Adityapur, District Seraikella Kharsawan

… Petitioners

Versus

1. The State of Jharkhand
2. Ritu Diwan, wife of Sri. Yogesh Diwan, resident of Bara Gamharia, Near IDBI Bank, Post Gamharia, Police Station Adityapur, District Seraikella Kharsawan.

… Opposite Parties

For the Petitioners : Mr. Abhishek Kumar Dubey, Advocate
For the State : Mrs. Priya Shrestha, Spl.P.P.
For the O.P. No.2 : Mr. Ashish Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- **I.A. No.12229 of 2026**

1. Heard the parties.

2. Learned counsel for the petitioners submits that this interlocutory application has been filed for early hearing of this Criminal Miscellaneous Petition.

3. Since the hearing of this Criminal Miscellaneous Petition is being taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.690 of 2025

1. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to set aside the entire criminal proceedings in connection with Complaint Case No. 1426 of 2023 including the order dated 22.02.2024 passed by the learned Additional Chief Judicial Magistrate, Seraikella in the said case whereby and where under the learned Additional Chief Judicial Magistrate, Seraikella has found *prima facie* case for the offences punishable under Sections 420, 406 of the Indian Penal Code and passed summoning order.

2. The allegation against the petitioners is that the petitioner No.1 in the year 2002, took Rs.60,000/- for selling his land but did not give the said land and later on, sold the same land to his wife; who is the petitioner No.2 herein, in the year 2015.

3. On the basis of the complaint, the statement on solemn affirmation of the complainant and the statement of the inquiry witnesses, the learned Additional Chief Judicial Magistrate, Seraikella has found *prima facie* case for the offences as already indicated above.

4. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Gurukanwarpal Kirpal Singh vs. Surya Prakasam & Others** reported in **2022 LiveLaw (SC) 519** and submits that therein, the Hon'ble Supreme Court of India relied upon its own judgment in the case of **Dalip Kaur & Others vs. Jagnar Singh & Another** reported in **(2009) 14 SCC 696**, wherein the Hon'ble Supreme Court of India has observed that if the dispute between the parties is essentially a civil dispute resulting from a breach of contract on the part of the accused person by non-refunding the amount of advance, the same would not constitute the offence of cheating.

5. Learned counsel for the petitioners next submits that even if the entire allegations made against the petitioners are considered to be true in their entirety, still no offence is made out against the petitioners as the amount paid towards consideration of a sale cannot be termed as money 'entrusted' as the word 'entrusted' has been used in Section 405 of the Indian Penal Code; for which, the punishment has been provided for in Section 406 of the Indian Penal Code. It is further submitted that there is no allegation against the petitioners that the petitioners played deception since the beginning of the transaction between the parties; hence, in the absence of the same, the offence of cheating is not made out against the petitioners. It is, therefore, submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

6. 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 petitioners made in this Criminal Miscellaneous Petition and submit that if the entire allegations made against the petitioners are considered to be true in their entirety, then both the offences punishable under Section 420 of the Indian Penal Code as well as Section 406 of the Indian Penal Code is made out against the petitioners. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit be dismissed.

7. 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 it is a settled principle of law that as has been reiterated by 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 No.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)*

that in order to constitute the offence of cheating, the accused must play deception since the beginning of the transaction between the parties and if the intention to cheat has developed later on, the same will not amount to cheating.

8. Now coming to the facts of the case, the undisputed fact remains that there is absolutely no allegation against the petitioners of playing deception since the beginning of the transaction between the parties

which admittedly took place in the year 2002. The sale of the said land by the petitioner No.1 to the petitioner No.2 admittedly took place in the year 2015. 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 in their entirety, then the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioners.

9. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, it is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam & Others vs. State of Rajasthan & Another** reported in **2024 SCC OnLine SC 2311** paragraph-12 of which reads as under:-

> *"**12**. In the present case, the appellants were not entrusted with any property by respondent no. 2 - complainant. The only delivery made was of part payment towards an Agreement to Sell between the parties. The amount paid towards consideration cannot be said to have been entrusted with the appellants by respondent no. 2. Additionally, merely because the appellants are refusing to register the sale, it does not amount to misappropriation of the advance payment. Since there was no entrustment of property, the offence of misappropriation of such property and thereby criminal breach of trust cannot be said to be made out." (Emphasis supplied)*

that the money paid as an advance payment cannot be termed as property entrusted as the word 'entrusted' has been used under Section 405 of the Indian Penal Code; for which, the punishment has been provided for in Section 406 of the Indian Penal Code.

10. Here the only money paid by the complainant is towards consideration of the land to be sold by the petitioner No.1 to the

complainant. Hence, it cannot be said that there is any allegation against the petitioners of any entrustment of money nor is there any allegation of dishonest misappropriation of any entrusted property against the petitioners; merely because the petitioner no.1 did not execute any sale deed in respect of the property. 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 in their entirety, still the offence punishable under Section 406 of the Indian Penal Code is not made out against the petitioners.

11. In view of the discussions made above, as neither the offence punishable under Section 420 of the Indian Penal Code nor the offence punishable under Section 406 of the Indian Penal Code is made out against the petitioners, even if the entire allegations against them are considered to be true, in their entirety; therefore, the continuation of the criminal proceeding against the petitioners will amount to abuse of process of law. Hence, this Court is of the considered view that this is a fit case where the entire criminal proceedings in connection with Complaint Case No. 1426 of 2023 including the order dated 22.02.2024 passed by the learned Additional Chief Judicial Magistrate, Seraikella in the said case, be quashed and set aside against the petitioners named above.

12. Accordingly, the entire criminal proceedings in connection with Complaint Case No. 1426 of 2023 including the order dated 22.02.2024 passed by the learned Additional Chief Judicial Magistrate, Seraikella in

the said case, is quashed and set aside against the petitioners named above.

13. In the result, this Criminal Miscellaneous Petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 01st of September, 2026
AFR/ Saroj

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