IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.945 of 2026
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1. Sita Devi, Aged about 66 years, Wife of – Late Jitendra Mahto, R/o – Imli Tola, P.O. – Chhattar Mandu, P.S. – Ramgarh, District – Ramgarh,
2. Subhash Kumar @ Bablu Kumar, Aged about – 42 years, S/o – Late Jitendra Mahto, R/o – Imli Tola, P.O. – Chhattar Mandu, P.S. – Ramgarh, District – Ramgarh.
3. Deepak Kumar, Aged about – 40 years, S/o – Late Jitendra Mahto, R/o – Imli Tola, P.O. – Chhattar Mandu, P.S. – Ramgarh, District – Ramgarh.

… Petitioners

Versus

1. The State of Jharkhand
2. Kanhai Singh, Aged about 49 years, S/o Ram Naresh Singh, R/o Chatter Mandu, P.O. – Chattar Mandu, P.S. – Ramgarh, Dist.- Ramgarh, Jharkhand.

… Opposite Parties

For the Petitioners : Mr. Bhaskar Trivedi, Advocate
Ms. Shipra Sonam, Advocate
Mr. Bipin Bihari, Advocate
For the State : Mr. Rakesh Kr. Sinha, Addl.P.P.
For the O.P. No.2 : None

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

I.A. No. 16279 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.945 of 2026

1. Heard the parties.

2. Though notice has validly been served upon the opposite party No.2 yet not 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 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the First Information Report being Ramgarh P.S. Case No. 174 of 2021 corresponding to G.R. Case No. 286 of 2022 including the charge sheet submitted in the said case as well as the entire criminal proceedings and the order dated 02.04.2022 passed by the learned Chief Judicial Magistrate, Ramgarh in the said case whereby and where under the learned Chief Judicial Magistrate, Ramgarh has taken cognizance of the offences punishable under Sections 406, 420/34 of the Indian Penal Code against the petitioners.

4. The allegation against the petitioners is that the petitioners approached the complainant-informant to sell their land, took an advance of Rs.19,50,000/- on 15.03.2016 out of the total consideration amount of Rs.24,50,000/- but did not get the sale deed executed in favour of the complainant-informant and after a lapse of three and half years, the petitioner No.1 requested the complainant-informant to return the advance amount and in fact, the petitioners returned only Rs.4,00,000/- of the advance amount but did not return the remaining amount of Rs.15,50,000/- and when the complainant-informant demanded back the money, the petitioners and the others became furious and tried to attack the informant.

5. On the basis of the Complaint Case No.328 of 2021 being referred to police, Ramgarh P.S. Case No. 174 of 2021 was registered and police took up investigation of the case and after completion of the investigation, police found the allegations against the petitioners to be true for having committing the offences punishable under Sections 406, 420/34 of the Indian Penal Code and submitted charge sheet. Basing upon the said charge sheet, the learned Chief Judicial Magistrate, Ramgarh has taken cognizance of the said offences in respect of which charge sheet has been submitted.

6. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **G. Saminathan & Another vs. State, represented by the Sub-Inspector of Police &Another** reported in **2026 SCC OnLine SC 1460** and submits that in

that case, the Hon'ble Supreme Court of India relied upon its own judgment in the case of **Hridaya Ranjan Prasad Verma & Others vs. State of Bihar & Another** reported in **(2000) 4 SCC 168** wherein, 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 offence is said to have committed. Therefore, it is the intention which is the gist of the offence and 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.

7. Learned counsel for the petitioners next submits that in the case of **G. Saminathan & Another vs. State, represented by the Sub-Inspector of Police &Another** (supra), the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Dalip Kaur & Others vs. Jagnar Singh & Another** reported in **(2009) 14 SCC 696** wherein in para-10, the Hon'ble Supreme Court of India has reiterated the settled principle of law 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 the amount of advance, the same would not constitute an offence of cheating.

8. Learned counsel for the petitioners then submits that in the case of **G. Saminathan & Another vs. State, represented by the Sub-Inspector of Police &Another** (supra), the Hon'ble Supreme Court of

India also relied upon its own judgment in the case of **Delhi Race Club (1940) Ltd. & Others vs. State of Uttar Pradesh & Another** reported in **(2024) 10 SCC 690** wherein, the Hon'ble Supreme Court of India has held that the offence punishable under Sections 406 of the Indian Penal Code and 420 of the Indian Penal Code cannot go together.

9. Learned counsel for the petitioners further submits that in the case of **G. Saminathan & Another vs. State, represented by the Sub-Inspector of Police &Another** (supra), the Hon'ble Supreme Court of India also relied upon its own judgment in the case of **Indian Oil Corporation vs. NEPC India Limited & Others** reported in **(2006) 6 SCC 736,** wherein in para-14, it has been observed by the Hon'ble Supreme Court of India that a complainant, who initiates or persists with a prosecution being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. It was further observed that one positive step that can be taken by the courts to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 of the Code of Criminal Procedure more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant.

10. Learned counsel for the petitioners next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Arshad Neyaz Khan Vs. State of Jharkhand & Another** reported in **2025 SCC OnLine**

Sc 2058 and submits that therein in para-22, as the complaint was filed after a delay of eight years, the Hon'ble Supreme Court of India went on to observe that the delay in lodging of the complaint and the F.I.R. coupled with vague allegations, did not inspire any confidence in the court to allow the criminal proceeding to continue against the appellant and further observed that in the case of **Inder Mohan Goswami vs. State of Uttaranchal** reported in **(2007) 12 SCC 1**, it was held by the Hon'ble Supreme Court of India that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressure to the accused.

11. Learned counsel for the petitioners further submits that the complainant has filed (Original) Title Suit No. 29 of 2022 in the court of Civil Judge (Senior Division)-I, Ramgarh. Learned counsel for the petitioners lastly submits 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 of the Indian Penal Code nor the offence punishable under Section 420 of the Indian Penal Code even with the aid of Section 34 of the Indian Penal Code is made out against the petitioners. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

12. Learned Addl. Public Prosecutor appearing for the State on the other hand vehemently opposes the prayer of the petitioners made in this Criminal Miscellaneous Petition and submits that the entire

allegations made against the petitioners if are considered to be true in their entirety, then the offences in respect of which cognizance of the offences has been taken by the learned Chief Judicial Magistrate, Ramgarh against the petitioners, is in fact, being made out against them. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

13. 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 as has been held by the Hon'ble Supreme Court of India in the case of **Dalip Kaur & Others vs. Jagnar Singh & Another** reported in **(2009) 14 SCC 696**, paragraph No.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)*

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 the amount of advance, the same would not constitute an offence of cheating.

14. It is also 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 No.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 amount paid towards consideration cannot be said to have been entrusted with the accused persons by the complainant and merely because the seller is refusing to register the sale, it does not amount to misappropriation of the advance amount paid.

15. Now coming to the facts of the case, the only allegation against the petitioners is that the petitioner No.1 is not paying the part of the consideration amount nor he executed the sale deed in favour of the complainant-informant and the petitioner No.2 was a witness to the agreement for sale entered into between the petitioner No.1 and the complainant-informant.

16. In view of the settled principle of law, there being no allegation against the petitioners of playing deception since the beginning of the transaction between the parties, this Court has no hesitation in holding

that even if the entire allegations made against the petitioners are considered to be true, still the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioners.

17. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under: -

> (*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 any legal contract.*

as has been held 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.**

18. Now coming to the facts of the case, as already indicated above, the only allegation regarding entrustment is payment of advance amount but as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam & Others vs. State of Rajasthan & Another** (supra), the advance amount paid cannot be termed as 'entrusted' as the word 'entrusted' has been used in Section 405 of the Indian Penal Code, the punishment for which has been provided for in Section 406 of the Indian Penal Code.

19. 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 even with the aid of Section 34 of the Indian Penal Code.

20. In view of the discussions made above, as none of the offences in respect of which the cognizance of the offences has been taken by the learned Chief Judicial Magistrate, Ramgarh is made out against the petitioners even if the entire allegations made against the petitioners are considered to be true in their entirety. Hence, this Court is of the considered view that the continuation of the criminal proceedings against the petitioners will amount to abuse of process of law. Therefore, this is a fit case where the First Information Report being Ramgarh P.S. Case No. 174 of 2021 corresponding to G.R. Case No. 286 of 2022 including the charge sheet submitted in the said case as well as the entire criminal proceedings and the order dated 02.04.2022 passed by the learned Chief Judicial Magistrate, Ramgarh in the said case, be quashed and set aside against the petitioners named above.

21. Accordingly, the First Information Report being Ramgarh P.S. Case No. 174 of 2021 corresponding to G.R. Case No. 286 of 2022 including the charge sheet submitted in the said case as well as the entire criminal proceedings and the order dated 02.04.2022 passed by the learned Chief Judicial Magistrate, Ramgarh in the said case, is quashed and set aside against the petitioners named above.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 23rd of November, 2026
AFR/ Saroj

Uploaded on 26/11/2026