(2026:JHHC:27409)

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1001 of 2025
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1. Dharmendra Rai @ Dharmendra Ray, aged about 51 years, S/o Gandhi Rai, R/o Gram Sakla, P.O. + P.S.-Sidhwalia, Dist.-Gopalganj (Bihar) 841423.
2. Sanjay Kumar Poddar, aged about 41 years, S/o Om Prakash Poddar, R/o Mirjhhat Road, Mohaddih Nagar, P.S.-Kutubganj, Dist.-Bhagalpur (Bihar) 812005.
3. Sanjeev Bose @ Sanjib Bose, aged about 38 years, S/o of Bijoy Kumar Bose, R/o Amasole (M.Corp.), P.O.-Head Post Office, P.S.-Sadar Police Station, Dist.-Bardhaman (West Bengal)-713301.
4. Dinesh Goyal, aged about 57 years, S/o Late Narsingh Das Goyal,
5. Hemant Goyal, aged about 38 years, S/o Anil Kumar Goyal,
6. Anil Kumar Goyal, aged about 61 years, S/o Late Narsingh Das Goyal,

   Petitioner Nos.4 to 6 are R/o Goyal House, 135, Salkia School Road, Howrah, P.O.-Howrah & P.S.-Golabari, Town & Dist.-Howrah-711101 (West Bengal).
7. M/s Narsingh Ispat Udyog Private Limited, registered office-Diamond Heritage, 16 Strand Road, Fairley Place, B.B.D. Bag, 15th Floor, Room No.1512, P.S.-Hare Street, Kolkata, West Bengal-700001, through its Director Sri Hemant Goyal, S/o Anil Kumar Goyal, Resident of Goyal House, 135, Salkia School Road, Howrah, P.O.-Howrah & P.S.-Golabari, Town & Dist.-Howrah-711101 (West Bengal).

… Petitioners

Versus

1. The State of Jharkhand
2. Prakash Kumar Agarwal, S/o Late Birdhi Chand Agarwal, R/o

Ratanjee Road, P.O. & P.S.-Dhansar, District-Dhanbad, Jharkhand.

… Opposite Parties

For the Petitioners : Mr. M.A. Niyazi, Sr. Advocate
: Mr. Nitin Kr. Pasari, Advocate
: Mr. Shubham Gurung, Advocate
For the State : Mr. Bhola Nath Ojha, Spl.P.P.
For the O.P. No.2 : Mr. Rajendra Krishna, Sr. Advocate
: Mr. Jay Shanker Tiwary, Advocate
: Mr. Manish Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

I.A. No.12718 of 2026

Heard the parties.

Learned senior counsel for the petitioners submits that this interlocutory application has been filed with the prayer for early hearing of the instant Cr.M.P.

Since, the hearing of instant Cr.M.P. is taken up today, hence, this interlocutory application stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.1001 of 2025

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 order taking cognizance dated 22.09.2025 passed by learned Judicial Magistrate-1st Class, Dhanbad by which the learned Judicial Magistrate-1st Class, Dhanbad has taken cognizance of the offences punishable under Sections 406, 420, 120B, 467,

468, 471, 504 & 506/34 of the Indian Penal Code against the petitioner in connection with Dhansar P.S. Case No.155 of 2021 corresponding to G.R. Case No.468 of 2024.

3. This case has a chequered history. The FIR of Dhansar P.S. Case No.155 of 2021 was sought to be quashed by the petitioners by filing W.P.(Cr). No.279 of 2021. By the judgment dated 28.09.2021, a co-ordinate bench of this Court rejected the prayer to quash the entire criminal proceeding *inter alia* holding that there is *prima facie* allegation that there is non-supply of coal as agreed to between the parties, particularly, the sub-standard coal in the form of ash/dust and *prima facie*, it cannot be said that the ingredients of the offences for which the FIR is registered is not made out. Prima facie, the allegation of filthy language, abuse and threatening of life are also made in the FIR. The petitioners challenged the said order passed by the co-ordinate bench in W.P.(Cr). No.279 of 2021 by filing Special Leave to Appeal (Crl.) No.148 of 2022 and vide order dated 24.01.2022, the Hon'ble Supreme Court of India found no reason to interfere with the order impugned before it and dismissed the said Special Leave Petition; while leaving it open that all the contentions on the merits of the case were raised before the competent court. Police took up investigation of the case and after completion of the investigation found the allegations against the petitioners to be true and submitted charge sheet no.29 of 2024 against the petitioners for having committed the offences punishable under Sections 406, 420, 120B, 467, 468, 471, 504 & 506/34 of the Indian Penal Code, but the learned Judicial Magistrate-1st

Class, Dhanbad vide order dated 07.02.2024 has taken cognizance of the offences punishable under Sections 420, 120B & 506 of the Indian Penal Code, but did not take cognizance of the offences punishable under Sections 406, 467, 468, 471, 504 & 34 of the Indian Penal Code.

4. Being aggrieved by the said order dated 07.02.2024 passed in G.R. Case No.468 of 2024, the informant filed Criminal Revision No.46 of 2024 and the same was heard and disposed of by the learned Additional Sessions Judge-XVI, Dhanbad vide order dated 10.06.2025. The learned Additional Sessions Judge-XVI, Dhanbad found fault with the learned Judicial Magistrate-1st Class, Dhanbad having found *prima facie* case for the offence punishable under Sections 420, 120B & 506 of the Indian Penal Code only and for not taking cognizance and issuing summons in respect of the offences punishable under Sections 406, 467, 468, 471, 504 & 34 of the Indian Penal Code against all the accused persons without assigning any reason and set aside the order dated 07.02.2024 passed by the learned Judicial Magistrate-1st Class, Dhanbad in G.R. Case No.468 of 2024 and directed the learned Judicial Magistrate-1st Class, Dhanbad to pass appropriate fresh order in accordance with law. The said order dated 10.06.2025 passed by the learned Additional Sessions Judge-XVI, Dhanbad in Criminal Revision No.46 of 2024 has been challenged by the petitioners in this Court by filing Cr.M.P. No.2737 of 2025, but the said Cr.M.P. No.2737 of 2025 has been dismissed as withdrawn vide order dated 18.12.2025, thus the said order dated 10.06.2025 passed by the learned Additional Sessions Judge-XVI, Dhanbad in Criminal Revision

No.46 of 2024 has attained finality. In terms of the order dated 10.06.2025 passed in the said Criminal Revision No.46 of 2024, the learned Judicial Magistrate-1st Class, Dhanbad vide order dated 22.09.2025 took cognizance of the offences punishable under Section 406, 420, 120B, 467, 468, 471, 504 & 506/34 of the Indian Penal Code; which order is also impugned in this criminal miscellaneous petition.

5. The allegation against the petitioners is that the petitioner nos. 1, 2 & 3 are the employees of the petitioner no.7 and the petitioner nos. 4 to 6 are the directors of the petitioner no.7. The petitioners in furtherance of common intention with the co-accused persons as a pre-planned conspiracy took the informant to confidence and deceived the informant and induced him so deceived, to part with 20% advance of the value of 25000 tons of imported coal to be supplied by the petitioner no.7 to the informant. There is allegation that all the petitioners were involved in the said deception, inducement and parting of money by the informant. There is also allegation that the petitioners have altogether taken Rs.4,63,000,00/- and as the last consignment 4057 tons of imported coal was insisted by the petitioners to be received by the informant on the guise of cyclone was likely to come on Paradip Port and if the coal is not lifted, the same will be washed out in water and when the informant expressed his inability to lift, transport and upkeep of the said huge amount of coal; as he was already having 8800 tons of imported coking coal with him in stock. The petitioners with well-planned conspiracy told the informant that the entire work of lifting, transportation, arrangement

to upkeep the coal will be done by their personnel, hence, the informant need not worry and the petitioners also assured that not only they will ensure delivery but will also make safe upkeeping of the supplied coal. The petitioners without the consent of the informant delivered 4057 tons of goods saying the same to be imported coal on 09.10.2021 & 10.10.2021 worth Rs.5,36,96,878/- at the site of the plant of the informant and the petitioners themselves covered the coal with Tarpaulin brought by them from all sides and sealed the same and told the informant that the informant should first make hard coke from the 8800 tons of coal which is already in stock with the informant and after 02 months, the 4057 tons of imported coal could be used by him. The petitioners were having the intention of cheat since the beginning of the transaction between the parties, but the informant was unaware about the same and he was thus deceived.

6. The chemist of the informant informed the informant after 02 days of delivery of the said 4057 tons of coal, he was terrorized and enticed by the petitioners and the chemist of the informant was promised by the petitioners; that he will be bribed of Rs.10 lakhs to ensure that the goods weighing 4057 tons purported to be the imported coking coal ought not be used by the informant for 02 months.

7. The informant talked to Paradip Port Authorities and came to know that there was no cyclone warning during the relevant time and about 300 tons of the imported coking coal was used by the informant in his furnace for preparing hard coal, but the informant was stunned to find

that instead of hard coke being prepared, the entire coal was turned to ashes and lumps of raw coal came out from the furnace, the video recording of the same has been made by the informant. On being verified, the informant came to know that the petitioners have committed cheating and in the name of raw imported coking coal, they have supplied waste coal which was not suitable for the plant of the informant.

8. There is also allegation that the petitioners have committed forgery for the purpose of cheating by making a false document of tax invoice by mentioning therein that the imported coal they were supplying was dispatched from Haldia Dock, though Haldia Dock brought by MV Explorer Oceania, though in fact, the said materials supplied in the name of imported coking coal came through Paradip Port.

9. Learned senior counsel for the petitioners submits that the case is next fixed to 15.09.2026 for consideration of the discharge petition of the petitioners.

10. Learned senior counsel for the petitioners next submits that since it is a settled principle of law that in order to constitute the offence of cheating the accused persons must play deception since the beginning of the transaction between the parties and in this case, admittedly, the major portion of imported coking coal has actually been supplied, hence, it cannot be said that the petitioners have played deception since the beginning of the transaction between the parties. Therefore, the offence punishable under Section 420 of the Indian Penal Code is not made out.

11. Learned senior counsel for the petitioner then submits that as the offence punishable under Section 406 & 420 of the Indian Penal Code cannot go together; the learned Judicial Magistrate-1st Class, Dhanbad has committed an error by taking cognizance of both the offences punishable under Section 406 & 420 of the Indian Penal Code. It is further submitted that since the informant has filed Commercial Suit No.08 of 2023 in the Court of learned District Judge-II-cum-Commercial Court, Dhanbad for realization of money from the petitioners, hence, the dispute between the parties is a civil dispute and a cloak of criminal case has been given to purely civil dispute for the purpose of wreaking vengeance. It is also submitted that this is a case of malicious prosecution of the petitioners.

12. Learned senior counsel for the petitioners relies upon the judgement of the Hon'ble Supreme Court of India in the case of **V.Y. Jose and Another vs. State of Gujarat and Another** reported in **(2009) 3 SCC 78** and submits that in para-28 thereof, it has been held by the Hon'ble Supreme Court of India that a matter which essentially involves dispute of a civil nature should not be allowed to be the subject matter of a criminal offence.

13. Learned senior counsel for the petitioners further submit that the entry made in the tax invoice dated 10.08.2021 that the materials were supplied to the informant from the direct dispatch from Haldia Dock which has received through MV Explorer Oceania is a typographical error, but as by that no injury has been caused to the informant, no offence of forgery is made out and in the absence of that, the offence

punishable under Section 467 or 468 of the Indian Penal Code is not made out.

14. In support of the contention that the offences punishable under Section 406/420 of the Indian Penal Code cannot run simultaneously, the learned senior counsel for the petitioners relies upon the judgement of the Hon'ble Supreme Court of India in the case of **Delhi Race Club (1940) Limited and Others vs. State of Uttar Pradesh and Another** reported in **(2024) 10 SCC 690**.

15. Learned senior counsel for the petitioners further relies upon the judgement of the Hon'ble Supreme Court of India in the case of **Sheila Sebastian vs. R. Jawaharaj and Another** reported in **(2018) 7 SCC 581** and submits that in para-25 of which the Hon'ble Supreme Court of India has observed that a charge of forgery cannot be imposed on a person who is not the maker of the same.

16. Learned senior counsel for the petitioners then relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Rahul vs. State of Uttar Pradesh and Another** reported in **2026 INSC 825** and submits that the self-imposed restrain in exercise of the power under Section 482 Cr.P.C. do not require the court to shut its eyes to a proceeding that is a manifest abuse as observed in para-18 of that judgement.

17. Learned senior counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Bhikhubhai Govindbhai Patel and Another vs. State of Gujarat and**

Another reported in **2026 SCC OnLine SC 915** and submits that in that case, the Hon'ble Supreme Court of India relied upon its own judgment passed in the case of **Mohd. Ibrahim vs. State of Bihar** reported in **(2009) 8 SCC 751**, wherein the Hon'ble Supreme Court of India dealt with the ingredients of the offences punishable under Section 406/420 of the Indian Penal Code.

18. Learned senior counsel for the petitioners further relies upon the judgement of the Hon'ble Supreme Court of India in the case of **Parminder Kaur vs. State of Uttar Pradesh and Another** reported in **(2010) 1 SCC 322**, wherein it has been held in para-40 that if the victim fails to show how the accused could be benefitted in manipulating a document, mere change in document did not and could not result in any illegal gains to the accused or illegal loss to anybody, such changes were innocuous and did not give rise to any offences.

19. Learned senior counsel for the petitioners then relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Ashok Chaturvedi and Others vs. Shitul H. Chanchani and Another** reported in **(1998) 7 SCC 698** in para-05 of which, it has been observed that merely because an accused has a right to plead at the time of framing of charges as provided in Section 245 of the Criminal Procedure Code, he is not debarred from approaching the court even at an earliest point of time when the Magistrate takes cognizance of the offence.

20. Learned senior counsel for the petitioner next relies upon the judgement of the Hon'ble Supreme Court of India in the case of **M.C.**

Ravikumar vs. D.S. Velmurugan and Others reported in **2025 SCC OnLine SC 1498**, wherein the Hon'ble Supreme Court of India has relied upon its own judgment in the case of **Bhisham Lal Verma vs. State of U.P**. reported in **2023 SCC OnLine SC 1399**, wherein the Hon'ble Supreme Court of India has observed in para-11 that permitting the filing of successive petitions under Section 482 of Cr.P.C. would enable the accused to effectively stall the proceedings against him to suit his own interest and convenience, by filing one petition after another under Section 482 of Cr.P.C., irrespective of when the cause therefor arose and such abuse of process cannot be permitted. It is lastly submitted that the prayer as prayed for by the petitioners in this Cr.M.P., be allowed.

21. Learned Spl.P.P. appearing for the State and the learned senior 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 since the order passed by the learned Additional Sessions Judge-XVI, Dhanbad in Criminal Revision No.46 of 2024 has attained finality, the same is binding upon the learned Judicial Magistrate-1st Class, Dhanbad and there is no way the learned Judicial Magistrate-1st Class, Dhanbad could have gone beyond it. It is next submitted that the undisputed facts remains that the FIR has contents which is sufficient to constitute each of the offences in respect of which the FIR has been lodged and the same has in no uncertain manner has held by the co-ordinate bench in W.P.(Cr). No.279 of 2021 and the Special Leave Petition against the said order has been dismissed by the Hon'ble Supreme Court of India. It is further

submitted that the undisputed fact remains that the police during the investigation of the case found the allegations made against the petitioners in the First Information Report to be true and at the stage of taking cognizance based on a police report, the learned Magistrate cannot add or subtract any section in respect of which the charge sheet has been submitted, in a police case. It is then submitted that as the undisputed facts remains that the allegations made in the FIR are sufficient to constitute each of the offences in respect of which the FIR has been registered and the same was found to be true during the investigation of the case, so, at this stage, there is no scope for this Court to conduct a mini trial taking into consideration the defence of the petitioners and quash the entire criminal proceeding, more so when the case is already fixed for consideration of the discharge petition of the petitioners before the trial Court.

22. It is also submitted that the undisputed facts remains that a false document has been created in shape of the tax invoice dated 10.08.2021, moreover, the impugned cognizance order dated 22.09.2025 passed in Dhansar P.S. Case No.159 of 2021 goes to show that there was also a second tax invoice dated 08.08.2021, both the tax invoices show different dispatch location, one shows that the dispatch location was Haldia Dock in which the materials were unloaded by MV Explorer Oceania whereas the other shows that it was the Paradip Port and certainly, the informant has been put to injury as the informant unsuspectingly believed the said document to be true and basing upon such forged document, the

informant was taken for a ride by the petitioners and being made to believe that material which was supplied, was imported coking coal, and after being so deceived, the informant has paid the money, so both the offences of forgery for the purpose of cheating as well as the offence of cheating is made out against the petitioners.

23. It is next submitted that whether or not, the offence punishable under Section 406 is also made out or not can be considered by the trial Court at the time of considering the framing of charge; in view of the restriction upon the trial court not to add or subtract any section at the time of taking cognizance of the offence, basing upon a police report and to conduct such exercise only at the time of framing of charge. It is lastly submitted that this Cr.M.P., being without any merit, be dismissed.

24. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, this Court is of the considered view that in view of the judgment passed by the co-ordinate bench of this Court in W.P.(Cr). No.279 of 2021 and the Special Leave Petition (Crl.) No.148 of 2022 filed against which has been dismissed by the Hon'ble Supreme Court of India and as thereby the judgment passed by the co-ordinate bench of this Court in W.P.(Cr). No.279 of 2021 has attained finality, it is not open for this Court to say that the allegations made in the FIR are insufficient to constitute the offences, in respect of which the FIR has been registered. The undisputed fact remains that all the allegations made against the petitioners in the First Information Report have been found to be true by the police during the

investigation of the case and after finding the allegations to be true, police has submitted the charge sheet.

25. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish Radhakrishnan Varde** reported in **(2014) 3 SCC 659**, paragraph-15 of which reads as under:-

> *"15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet." (Emphasis supplied)*

That the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance; as the same would be permissible for the trial court only at the time of framing of charge.

26. Additionally, the undisputed facts remains that the order of learned Additional Sessions Judge-XVI, Dhanbad in Criminal Revision No.46 of 2024 has also attained finality as the Cr.M.P. No.2737 of 2025 filed against the same before this Court has been dismissed as withdrawn. Certainly, the order of learned Additional Sessions Judge-XVI, Dhanbad in Criminal Revision No.46 of 2024 is binding upon the learned Judicial Magistrate-1st Class, Dhanbad who has passed the impugned order.

27. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Uttar Pradesh & Anr. vs. Akhil Sharda & Ors.** reported in **2022 LiveLaw SC 594** that no mini trial can be conducted by the high court in exercise of power under Section 482 Cr.P.C which corresponds to Section 528 of the BNSS, 2023, the relevant portion of which reads as under :-

> *"Having gone through the impugned judgment and order passed by the High court has set aside the criminal proceedings in exercise of powers under Section 482 CrPC, it appears that the High Court has virtually conducted a mini trial, which as such is not permissible at this stage and while deciding the application under Section 482CrPC. As observed and held by this court in a catena of decisions, no mini trial can be conducted by the High Court in exercise of power under Section 482CrPC, jurisdiction and at the stage of deciding the application under Section 482CrPC, the High Court cannot get into appreciation of evidence of the particular case being considering. (Emphasis supplied)*

28. Under such circumstances, this Court is of the considered view that as the allegations made in the FIR are sufficient to constitute the offences in respect of which the FIR has been registered and the said allegations were found to be true by the police during the investigation of the case, hence, this Court is of the considered view that this is not a fit case where the prayer made by the petitioner is to be acceded to in exercise of the power under Section 528 of the BNSS, 2023.

29. Accordingly, this Cr.M.P., being without any merit, is dismissed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 10th of September, 2026
AFR/ Abhiraj

Uploaded on 16/09/2026