IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1612 of 2024
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1. Manish Shrivastava @ Manish Srivastava, aged about 50 yrs. S/o Madan Prasad Shrivastava,
2. Priya Shrivastava @ Priya Srivastava, aged about 48 yrs. W/o Manish Shrivastava,

Both R/o D 3/3, First Floor, Ardde City, Sector 52, Gurgaon, P.O., P.S., Sector-52, Dist. Gurgaon (Haryana).

… Petitioners

Versus

1. The State of Jharkhand
2. Prakash Ranjan Srivastava, S/o Madan Mohan Srivastava, R/o Shantikunj, Shanti Bhawan Complex, P.O. Dhanbad, P.S. Bankmore, Dist. Dhanbad. ⋯ Opposite Parties

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For the Petitioners : Mr. Shailesh Kr. Singh, Advocate
For the State : Mr. Shiv Shankar Kumar, 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:- Heard the parties.

2. Though notices have validly been served upon opposite Party No. 2 yet no one turns 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 482 of the Cr.P.C. with the prayer to quash the entire criminal proceeding arising out of C.P. Case No. 8721 of 2023 as well as order dated 18.12.2023 whereby and

whereunder the learned Judicial Magistrate-1st Class, Dhanbad has found sufficient materials to proceed against the petitioners for having committed the offences punishable under Sections 406/34 of the Indian Penal Code.

4. Learned counsel for the petitioners submits that the charge has not yet been framed in this case.

5. The allegation against the petitioners is that the petitioners took Rs. 41,00,000/- from the complainant but did not repay the same. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned Judicial Magistrate-1st Class, Dhanbad found sufficient materials to proceed against the petitioners and the co-accused person namely Kanchan Srivastava for having committed an offence punishable under section 406/34 of India Penal Code.

6. It is submitted by the learned counsel for the petitioners that the allegation against the petitioners is false and the case of the complainant is a case of absurdity. It is next submitted by the learned counsel for the petitioners that though in paragraph-5 of the complaint, the complainant claims to have paid Rs.82,00,000/- to the petitioner Nos. 1 and 2 by bank transaction and cash of Rs.20,00,000/- but the same has not been corroborated in the statement on solemn affirmation of the complainant and it is simply unbelievable that without preparing any document or proof of any receipt, such huge amount of money would have been paid to the petitioners. It is next submitted

that even assuming for the sake of the argument that the allegation against the petitioners is true; still lending of money to the petitioners will not amount to entrustment as the word 'entrusted' has been used in Section 405 of the Indian Penal Code. It is further submitted that the petitioner No.1 is an Ex-Army Officer and the petitioner No.2 is working as a Principal in a school at Delhi and this case has been instituted only for the purpose of wrecking vengeance.

7. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Arshad Neyaz Khan Vs. State of Jharkhand and Ors.** reported in **2025 INSC 1151** wherein the Hon'ble Supreme Court of India has reiterated the trite law that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to the accused persons and in that case as the complainant failed to establish the ingredients essential to constitute the offence and as the complainant failed to place any material on record to show as to how the complainant entrusted the property to the accused persons. Furthermore, the complainant also omitted to aver as to how the property entrusted to the accused persons was dishonestly misappropriated or converted to his own use, thereby committing a breach of trust. The Hon'ble Supreme Court of India quashed the complainant case and the F.I.R.

8. Learned counsel for the petitioners next relies upon the judgment of this Court in the case of **Maya Rani vs. The State of**

Jharkhand & Another reported in **2025:JHHC:19884** wherein this Court relied upon the judgment of 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**, para-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)*

wherein Hon'ble Supreme Court of India held that the amount paid towards consideration cannot be said to have been entrusted with the accused persons by the complainant.

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

10. Learned Addl. P.P. on the other hand, vehemently opposes the prayer of the petitioners made in the instant Cr.M.P. and submits that the allegations in the record are sufficient to constitute the offence punishable in respect of which sufficient materials have been found by the learned Judicial Magistrate-1st Class, Dhanbad to proceed against the petitioners. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

11. Having heard the submissions made in 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 **Satish Chandra Ratan Lal Shah vs. State of Gujarat & Anr.** reported in **(2019) 9 SCC 148**, paragraph-13 of which reads as under:-

> *"**13**. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred."*

wherein the Hon'ble Supreme Court of India has observed that mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction.

12. Now coming to the facts of the case, the complainant has omitted to aver as to how the property entrusted to the petitioners was dishonestly misappropriated or converted for his own use thereby committing breach of trust.

13. Under such circumstances, this Court is of the considered view that even if the entire allegation made against the petitioners in the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses are considered true in their entirety

still the essential ingredients to constitute the offence punishable under Section 406 of India Penal Code, i.e., dishonest misappropriation of the entrusted property or conversion of the same to the own use of the petitioners etcetera, the offence punishable under Section 406 Indian Penal Code is not made out even with the aid of Section 34 of the Indian Penal Code. Therefore, this Court is of the considered view that the continuation of this criminal proceeding against the petitioners will amount to abuse of process of law and this is a fit case where the entire criminal proceedings arising out of C.P. Case No. 8721 of 2023 as well as order dated 18.12.2023 passed by the learned Judicial Magistrate-1st Class, Dhanbad, as prayed for by the petitioners, be quashed and set aside.

14. Accordingly, the entire criminal proceedings arising out of C.P. Case No. 8721 of 2023 as well as order dated 18.12.2023 passed by the learned Judicial Magistrate-1st Class, Dhanbad, is quashed and set aside against the petitioners, named above.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 13th of January, 2026
AFR/ Vedanti
Uploaded on 19/01/2026