IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1765 of 2025

Basant Narayan, aged about 65 years, son of Gobardhan Mahto, resident of Village-Rangmatiya, P.O.-Malini, P.S. & Dist.-Godda, Jharkhand

.... Petitioner

Versus

1. The State of Jharkhand
2. Jainendra Kumar Jha, son of late Nageshwar Jha, resident of Shivpur, P.O.-Godda, P.S.-Godda (T), Dist.-Godda, Jharkhand

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioner : Mr. Rahul Kumar, Advocate
For the State : Mr. Subodh Kr. Dubey, Addl. P.P.
For O.P. No.2 : Mr. J.P. Jha, Sr. Advocate
: Mr. Aishwarya Prakash, Advocate

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By the Court:-

1. Heard the parties.

2. This criminal miscellaneous petition has been filed invoking the jurisdiction of this Court under Section 528 of B.N.S.S., 2023 with the prayer to quash the entire criminal proceeding including the order dated 20.09.2024 passed by the learned Judicial Magistrate 1st Class, Godda in connection with Complaint Case No. 164 of 2023 whereby and where under, the learned Judicial Magistrate 1st Class, Godda has found *prima facie* case for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. The allegation against the petitioner is that the petitioner in capacity of In-charge principal of SBSSPSJ college, Pathargama

engaged the complainant firstly for income tax work and then for EPF work. Admittedly, the payment regarding the income tax work has been made and some of the payment regarding the EPF work as also been done but a sum of Rs.15.90 lakhs remain due and payable to the petitioner.

4. 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, Godda has found *prima facie* case for the offences as already indicated above and passed summoning order.

5. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Delhi Race Club (1940) Limited & Ors. vs. State of Uttar Pradesh & Anr.** reported in **(2024) 10 SCC 690** wherein, the ingredients of the offence punishable under Sections 406 and 420 of the Indian Penal Code have been discussed in paragraph nos. 35 and 36 of that judgment and it is further submitted that in paragraph no. 55 of the said judgment, it has been held that the offences punishable under Sections 406 and 420 of the Indian Penal Code are independent and distinct and two offences cannot co-exist simultaneously in the same set of facts; as they are antithetical to each other.

6. Learned counsel for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Anukul Singh vs. State of Uttar Pradesh & Anr.** reported in **2025 SCC**

OnLine SC 2060 and submits that in that judgment, the Hon'ble Supreme Court of India deprecated the complainant to convert the civil dispute into criminal proceeding. Learned counsel for the petitioner next relied upon the judgment of this Court in the case of **Atul Lohia & Anr. vs. The State of Jharkhand & Anr.** reported in **2025:JHHC:35569** and submits that therein, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **V.Y. Jose vs. State of Gujarat** reported in **(2009) 3 SCC 78**, wherein, the Hon'ble Supreme Court of India reiterated the settled principle of law that a contractual dispute or breach of contract *per se* should not lead to initiation of a criminal proceeding. It is next submitted by the learned counsel for the petitioner that in that case, this Court in that case also relied 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 reiterated the settled principle of law that the *sine qua non* to

constitute the offence of cheating is playing deception since the beginning of the transaction between the parties.

7. It is further submitted by the learned counsel for the petitioner that in the absence of any allegation against the petitioner of playing deception since the beginning of the transaction between the parties, the offence punishable under Section 420 of the Indian Penal Code is not made out, against the petitioner. It is then submitted by the learned counsel for the petitioner that in that case, this Court further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Binod Kumar & Others vs. State of Bihar & Another** reported in **(2014) 10 SCC 663** paragraph-18 of which reads as under:-

> *"18. In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust." (Emphasis supplied)*

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that to make out a case of criminal breach of trust, it is not sufficient to show that money has been retained

by the accused persons but it must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

8. Learned counsel for the petitioner next relied upon the judgment of this Court in the case of **Pankaj Kumar & Ors. vs. State of Jharkhand & Anr.** reported in **2023 SCC OnLine Jhar 1576** wherein, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Satish Chandra Ratanlal Shah vs. State of Gujarat & Another** reported in **(2019) 9 SCC 148** paragraph-11 of which reads as under:-

> *"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment."*

and submits that therein, the Hon'ble Supreme Court of India has reiterated the settled principle of law that a mere breach of a promise, agreement or contract does not, *ipso facto*, constitute the offence of the criminal breach of trust contained in Section 405 of the Indian Penal Code without there being a clear case of entrustment.

9. It is also submitted by the learned counsel for the petitioner that the allegations against the petitioner are all false and the complainant has failed to give description of expenditure of Rs.16,84,787/- taken as advance by him and he has concocted this story to file this complaint case and such concocted story is nothing but a bundle of lies. It is then submitted by the learned counsel for the petitioner that the principal of SBSSPSJ college, Pathargama lodged Pathargama P.S. Case No. 50 of 2023 against the complainant for having committed the offences punishable under Section 406 and 420 of the Indian Penal Code. It is next submitted by the learned counsel for the petitioner that the dispute is a civil dispute and a cloak of criminal case has been given to a purely civil dispute to wreak vengeance. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

10. The learned Addl. P.P. and the learned Senior Advocate appearing for the opposite party no.2 on the other hand vehemently oppose the prayer and submit that the materials available in the record if considered to be true in their entirety then each of the offences in respect of which *prima facie* case has been made out by the learned Judicial Magistrate 1st Class, Godda is in fact, being made out against the petitioner. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.

11. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that in order to constitute the offence punishable under Section 420 of the Indian Penal Code, the accused must play deception since the beginning of the transaction between the parties.

12. Now coming to the facts of the case, there is absolutely no allegation against the petitioner of playing deception since the beginning of the transaction between the parties therefore, this Court is of the considered view 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.

13. 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 :-

> *(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 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**.

14. Now coming to the facts of the case, it is at best a case of mere breach of contract of not paying the amount due and payable to the complainant but there is no allegation of entrustment of any

property upon the petitioner by the complainant rather it is the admitted case of the complainant that he received some advance money; which according to the petitioner, the complainant has failed to satisfactorily explain the utilisation of such a money, received as advance, to the petitioner; whereas it is the case of the petitioner that the college, because of the failure on the part of the complainant to explain the utilisation of such money entrusted to the complainant and the complainant having dishonestly misappropriated the entrusted money, has instituted Pathargama P.S. Case No. 50 of 2023.

15. Under such circumstances, in the absence of any allegation of entrustment of any money to the petitioner or any allegation against the petitioner of dishonestly misappropriating any entrusted property etc., this Court is of the considered view that even if the entire allegations made against the petitioner are considered to be true in their entirety, still, the offence punishable under Section 406 of the Indian Penal Code is not made out.

16. In view of the discussions made above, this Court is of the considered view that since none of the offences in respect of which the learned Judicial Magistrate 1st Class, Godda has found *prima facie* case against the petitioner is made out, even if the entire allegations made against the petitioner are considered to be true in their entirety, therefore, continuation of the criminal proceeding against the petitioner will amount to abuse of process of law and this is a fit case where the entire criminal proceeding

including the order dated 20.09.2024 passed by the learned Judicial Magistrate 1st Class, Godda in connection with Complaint Case No. 164 of 2023 be quashed and set aside *qua* the petitioner.

17. Accordingly, the entire criminal proceeding including the order dated 20.09.2024 passed by the learned Judicial Magistrate 1st Class, Godda in connection with Complaint Case No. 164 of 2023 is quashed and set aside *qua* the petitioner.

18. In the result, this criminal miscellaneous petition is allowed to the aforesaid extent only.

19. The interim relief granted earlier vide order dated 29.07.2025 is vacated.

20. Registry is directed to intimate the court concerned forthwith.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 23rd March, 2026
AFR/Gunjan/-

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