IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.1779 of 2020

Kailash Mandal, aged about 60 years, S/o- Manu Mandal, R/o- Bario More (Sakardih), P.S.- Govindpur, P.O.- Govindpur, District- Dhanbad, Jharkhand … Petitioner

Versus

1. The State of Jharkhand
2. Dilip Dutta, S/o- Late Sanathan Dutta, R/o- Jharna Paran, P.O. & P.S.- Dhanbad, District- Dhanbad.
3. Jitendra Roy @ Bablu Roy, S/o- Not Known, R//o- Jharnapara, Indralaya Bhawaan, Hirapur, P.O. & P.S.- Dhanbad, District- Dhanbad … Opposite Parties

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For the Petitioner : Mr. Suraj Singh Advocate
For the State : Mr. Praful Jojo, Addl.P.P.
For the O.P. No.2 : Mr. Shadab Ansari, Advocate
For the O.P. No.3 : Mr. Saibal Kr. Laik, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, 1973 with the prayer to quash the order dated 05.12.2019 passed by the learned Judicial Magistrate-1st Class, Dhanbad by which the learned Judicial Magistrate dismissed the Complaint Case No.1528 of 2018; and also to quash the order dated 19.02.2020 passed by the learned Sessions Judge, Dhanbad in Criminal Revision No.01 of 2020 by which the learned Sessions Judge dismissed the Criminal Revision.

3. The brief fact of the case is that the petitioner filed Complaint Case No.1528 of 2018 alleging therein that in October, 2012, the opposite party Nos.2 and 3 inducted the complainant-petitioner as a partner. In three instalments, the complainant-petitioner invested Rs.2,35,000/-, Rs.2,70,900/- and Rs.1,70,000/-respectively on three different dates in the said the partnership business. The partnership was in respect of construction work in East Tundi Block. Later on, the complainant-petitioner came to know that the work was allotted to a person other than the opposite party Nos.2 and 3. After some days, the opposite party Nos.2 and 3 returned Rs.2,32,000/-but did not return the remaining amount.

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, Dhanbad did not find sufficient materials to summon either of the accused persons of the case being the opposite party Nos.2 and 3 of this Cr.M.P. and dismissed the same.

5. Being aggrieved by the same, the petitioner filed Criminal Revision No.01 of 2020 in the court of Sessions Judge, Dhanbad and vide the impugned judgment dated 19.02.2020, the learned Sessions Judge, Dhanbad considered that the complainant could not produce any document of having invested Rs.6,76,000/- in the partnership business. There was absence of any fraudulent representation by the accused persons of the case being the opposite party Nos.2 and 3 of the instant Cr.M.P. and without finding sufficient materials to make out the offence punishable under Sections 420 or 406 or 506 or 323 read with

Section 34 of the Indian Penal Code, dismissed the said criminal revision.

6. Learned counsel for the petitioner submits that the learned Sessions Judge, Dhanbad failed to consider that the learned Judicial Magistrate-1st Class, Dhanbad without applying his judicial mind, refused to issue summons to the opposite party Nos.2 and 3 of the instant Cr.M.P. It is next submitted that the oral and documentary evidence that have been put forth by the complainant-petitioner, were sufficient to constitute the offences for which complaint has been filed. Hence, it is submitted that the prayer, as prayed for in the instant Cr.M.P., be allowed.

7. Learned Addl. P. P. appearing for the State and the learned counsel for the opposite party Nos.2 and 3 on the other hand vehemently oppose the prayer of the petitioner made in the instant Cr.M.P. and submit that in the absence of any material to suggest that the opposite party Nos.2 and 3 played 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 and in the absence of any entrustment of any property, the offence punishable under Section 406 of the Indian Penal Code is not made out against the opposite party Nos.2 and 3. It is further submitted that in the absence of any allegation of any threatening to raise alarm in the mind of the complainant-petitioner, the offence punishable under Section 506 of the Indian Penal Code is not made out against the opposite party Nos.2 and 3. It is lastly submitted that in the absence of any bodily pain, disease or

infirmity having been caused to the complainant-petitioner or anyone else, the offence punishable under Section 323 of the Indian Penal Code is not made out even with the aid of Section 34 of the Indian Penal Code. Hence, it is submitted that this Cr.M.P., being without any merit, be dismissed.

8. 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 **Uma Shankar Gopalika vs. State of Bihar & Another** reported in **(2005) 10 SCC 336** paragraph-6 of which reads as under:-

> *"**6.** Xxxxx 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 person must play deception since the beginning of the transaction between the parties and if the intention to cheat has developed later on, the same cannot amount to cheating.

9. Now, coming to the facts of the case; the complainant-petitioner invested some money in a partnership business. There is no allegation against the opposite party Nos.2 and 3 of having played deception since the beginning of the transaction between the parties. In the absence of the same, this Court has no hesitation in holding that even if the entire

allegations made against the opposite party Nos.2 and 3 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 them.

10. 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 that there must be entrustment of some property with the accused persons and there must be dishonest misappropriation or conversion to one's own use or use in violation of a legal direction or obtaining legal possession; 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**. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Velji Raghavji Patel vs. State of Maharashtra** reported in **1964 SCC OnLine SC 185**, wherein in para-07, it has been reiterated by the Hon'ble Supreme Court of India that every partner has dominion over property by reason of the fact that he is a partner. This is a kind of dominion which every owner of property has over his property, but it is not dominion of this kind which satisfies the requirements of Section 405 of the Indian Penal Code; in order to establish "entrustment of dominion" over property to an accused, the mere existence of that person's dominion over the property is not enough. It must be further shown that his dominion was the result of entrustment. Thus, investment in a partnership business cannot be termed as property 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. Therefore, this Court is of the considered view that even if the entire allegations made against the opposite party Nos.2 and 3 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 them.

11. So far as the offence punishable under Section 506 of the Indian Penal Code is concerned, the same appears to be an ornamental allegation but the same falls short of the ingredients of the offence punishable under Section 506 of the Indian Penal Code as has been held by the Hon'ble Supreme Court of India in the case of **Vikram Johar vs. State of Uttar Pradesh & Another** reported in **(2019) 14 SCC 207** paragraph- 25 of which read as under:-

> *"**25**. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande [Fiona Shrikhande v. State of Maharashtra, (2013) 14 SCC 44 : (2014) 1 SCC (Cri) 715] has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For proving an offence under Section 506 IPC, what are the ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edn. with regard to proof of offence states the following:*
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> > *"… The prosecution must prove:*
> > *(i) That the accused threatened some person.*
> > *(ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;*
> > *(iii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."*
> > *(emphasis supplied)*
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> *A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above."*

12. Now, coming to the facts of the case; in the absence of the essential ingredients to constitute the offence punishable under Section 506 of the Indian Penal Code, this Court is of the considered view that even if the entire allegations made against the opposite party Nos.2 and 3 are considered to be true in their entirety, still the offence punishable under Section 506 of the Indian Penal Code is not made out against them.

13. So far as the offence punishable under Section 323 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under:-

> *(i) Accused voluntarily caused bodily pain, disease or infirmity to the victim;*
> *(ii) The accused did so with intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.*

14. Now, coming to the facts of the case; there is absolutely no allegation against the opposite party Nos.2 and 3 of causing bodily pain, disease or infirmity to the complainant-petitioner or any victim and in the absence of the same, this Court has no hesitation in holding that even if the entire allegations made against the opposite party Nos.2 and 3 are considered to be true in their entirety still the offence punishable under Section 323 of the Indian Penal Code is not made out against them even with the aid of Section 34 of the Indian Penal Code.

15. In view of the discussions made above, as none of the offence in respect of which the complaint was filed, is made out against the opposite party Nos.2 and 3, therefore, this Court do not find any

justifiable reason to accede to the prayer of the petitioner made in the instant Cr.M.P.

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

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 07th of October, 2026
AFR/ Animesh
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