IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2032 of 2023

Yogendra Kumar Agarwal (Proprietor of DBA Investment Pvt. Ltd.), Aged about 70 years, S/O- Late D.B. Agarwal, R/O- Kanti Karkhana, Joraphathak Road, P.O. + P.S.- Dhansar, District- Dhanbad … Petitioner

Versus

1. The State of Jharkhand
2. Subhimal Banerjee, S/O- Late Golak Bihari Banerjee,
3. Shantimay Banerjee, S/o- Late Tarapada Banerjee,
4. Smt. Nupur Banerjee, W/O- Robin Banerjee,

Sl. No. 2 to 4 are R/O- Usha Bhawan, S.B. Gorai More, P.O. + P.S.- Asansol, District- Burdwan (West Bengal)

5. Shivkali Banerjee, S/O- Late Tarapada Banerjee, R/O- 5th Floor, Asoka Apartment, 111 Southern Avenue Lake Teress, P.O. + P.S.- Baligunj, District- Kolkata (West Bengal) … Opposite Parties

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For the Petitioner	: Mr. Pratiush Lala Advocate
For the State	: Mr. Prabir Kr. Chatterjee, Spl.P.P.
For the O.P. Nos.2 to 4	: None
For the O.P. No.5	: Mr. Niranjan Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- Heard the parties.

2. At the outset, learned counsel for the petitioner draws the attention of this Court towards the Supplementary Affidavit dated 16.02.2026 and submits that there is the proof of paper publication in 'Banga Express', Asansol, Burdwan (West Bengal) by way of substituted service of notice upon the opposite party Nos.2 to 4 which

has been filed therewith. Hence, the service of notice upon the opposite party Nos.2 to 4 be treated as sufficient.

3. Considering the aforesaid submissions of the learned counsel for the petitioner and the materials available in the record, the service of notice upon the opposite party Nos.2 to 4 is sufficient.

4. Though notice has validly been served upon the opposite party Nos.2 to 4 yet no one turns up on behalf of the opposite party Nos.2 to 4 in spite of repeated calls.

5. 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 29.04.2023 passed by the learned Sessions Judge, Dhanbad in connection with Criminal Revision No.97 of 2022 whereby and where under the learned Sessions Judge, Dhanbad has dismissed the Criminal Revision and upheld the order dated 20.05.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.1720 of 2019 whereby and where under the learned trial court has taken cognizance of the offences only against the co-accused Paresh Banerjee but did not pass any summoning order against the opposite party Nos.2 to 5.

6. The brief fact of the case is that the complainant entered into an agreement for development of his land belonging to the opposite party Nos.2 to 5 and the co-accused Paresh Banerjee. A cheque of Rs.11,00,000/- was given by the petitioner to the co-accused Paresh Banerjee but the ownership of the land was not transferred by the

opposite party Nos.2 to 4 and there was a meeting at Dhanbad wherein the co-accused Paresh Banerjee and the opposite party No.2 agreed to refund the advance amount and a sum of Rs.25,000/- cash was given and promised to pay the remaining amount by the end of 2016 and in the month of December, 2017, a meeting was also organized between the complainant and the opposite party Nos.2 to 5 and the co-accused persons and on that day itself a sum of Rs.25,000/- cash was given to the complainant and remaining amount was to be paid in March, 2018 but no amount was paid.

7. 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 proposed accused person Paresh Banerjee for having committed the offences punishable under Sections 406 and 420 of the Indian Penal Code and went on to hold that no case is made out against the opposite party Nos.2 to 5.

8. The petitioner, being aggrieved by the said order dated 20.05.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.1720 of 2019, filed Criminal Revision No.97 of 2022 in the court of learned Sessions Judge, Dhanbad. The learned Sessions Judge, Dhanbad considered that the property in question is situated at Asansol in the State of West Bengal. The development agreement between the parties was executed at Kolkata and a sum of Rs.11,00,000/- was paid by way of cheque to the co-accused Paresh Kumar Banerjee at Kolkata. There is no material to

suggest that any amount was paid to any of the opposite party Nos.2 to 5 and the amount was only paid to the co-accused Paresh Kumar Banerjee. There is no specific allegation of inducement against the petitioner. No resolution of the company was placed on record to show that the petitioner has been authorized by the company to file, sign and verify the complaint case or revision petition on behalf of the company. No cause of action has arisen within the jurisdiction of Dhanbad Judgeship and this is a dispute of civil nature and no criminal offence is made out against the opposite party Nos.2 to 5. There was no allegation against any of the opposite party Nos.2 to 5 that they had any intention to cheat since the beginning of the transaction between the parties. The learned Sessions Judge, Dhanbad also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Ravindranath Bajpe vs. Mangalore Special Economic Zone Ltd. & Others** passed in Criminal Appeal Nos.1047-1048/2021 and went on to hold that in the complaint and in the evidence of the inquiry witnesses, the complainant failed to establish any specific role played by the opposite party Nos.2 to 5, hence, the learned Sessions Judge, Dhanbad did not find any illegality in the order impugned before it and dismissed the said Criminal Revision.

9. Learned counsel for the petitioner relies upon the judgment of this Court in the case of **Nandlal Prasad Mehta & Another vs. The State of Jharkhand & Another** reported in **2025:JHHC:13950** passed in **Cr.M.P. No.4692 of 2022** and submits that therein this Court in paragraphs-9 and 10 of the said judgment, discussed the ingredients of

the offences punishable under Sections 406 and 420 of the Indian Penal Code and by that parameter, both the offences punishable under Sections 406 and 420 of the Indian Penal Code is made out against the opposite party Nos.2 to 5. Hence, it is submitted that the order dated 20.05.2022 passed by the learned Judicial Magistrate-1st Class, Dhanbad in connection with C.P. Case No.1720 of 2019 and the order dated 29.04.2023 passed by the learned Sessions Judge, Dhanbad in connection with Criminal Revision No.97 of 2022 be set aside and the learned Magistrate be directed to pass summoning order against each of the opposite party Nos.2 to 5.

10. Learned Spl. P. P. appearing for the State and the learned counsel for the opposite party No.5 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 allegation that the opposite party Nos.2 to 5 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 allegation against the opposite party Nos.2 to 5 of entrustment of any property or any allegation of dishonest misappropriation of any entrusted property, the offence punishable under Section 406 of the Indian Penal Code is also not made out. Therefore, it is submitted that this Cr.M.P., being without any merit, be dismissed.

11. 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 that in

order to constitute the offence of cheating, the accused must play deception since the beginning of the transaction between the parties and if the intention to cheat has developed later on the same will not amount to cheating as has been reiterated 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)*

12. Now, coming to the facts of the case; there is absolutely no allegation against the opposite party Nos.2 to 5 of having played deception since the beginning of the transaction between the parties 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 to 5 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.

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 entrustment

(ii) and there must be 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**.

14. Now, coming to the facts of the case; there is absolutely no allegation against the opposite party Nos.2 to 5 of entrustment of any property or misappropriation of any entrusted property rather the entrustment of property of Rs.11,00,000/- is specifically against the co-accused Paresh Banerjee. In the absence of these essential ingredients, this Court is of the considered view that even if the entire allegations made against the opposite party Nos.2 to 5 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.

15. In view of the discussions made above as neither the offence punishable under Section 406 of the Indian Penal Code nor the offence punishable under Section 420 of the Indian Penal Code is made out against the opposite party Nos.2 to 5 even if the entire allegations made against them are considered to be true in their entirety, therefore, this Court is of the considered view that neither the learned Sessions Judge, Dhanbad vide order dated 29.04.2023 passed in Criminal Revision No.97 of 2022 nor the learned Judicial Magistrate-1st Class, Dhanbad vide order dated 20.05.2022 passed in C.P. Case No.1720 of 2019 has committed any illegality. Hence, there is no 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 16th of September, 2026
AFR/ Animesh
Uploaded on- 21/09/2026