IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 3693 of 2022

1. Vijay Kumar Sinha, Son of Gupteshwar Prasad, Aged about 56 years, Resident of: House No. 60, Saraswati Nagar, Chas, P.O. & P.S.- Chas, District- Bokaro.
2. Lal Sanjay Nath Shahdeo, Son of Late Fanindra Nath Shahdeo, Aged about 34 years, Resident of: Albis Bagan, Ojha Market Road, P.O. &. P.S.- Sukhdeo Nagar, District- Ranchi. ..... Petitioners

Versus

1. The State of Jharkhand
2. Vijay Kumar Singh, Son of Late Parsuram Singh, Resident of: Quarter No. ST-663/664, Dhurwa, P.O. & P.S.- Dhurwa, District- Ranchi. ….. Opposite Parties

For the Petitioner : Mr. Girish Mohan Singh, Adv.
For the State : Mr. Satish Prasad, Addl. PP
For the O.P. No. 2 : Mr. Vijay Bahadur Singh , Adv.

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 CrPC with the prayer for quashing and setting aside entire criminal proceeding of Dhurwa P.S. Case No. 290 of 2017, corresponding to G.R. No. 6634 of 2017 including the order dated 10.02.2020, passed by learned Chief Judicial Magistrate, Ranchi, in connection with the aforesaid case, whereby and where under learned Chief Judicial Magistrate, Ranchi has taken cognizance of the offence punishable under Section 406, 420, 467, 471, 34 of the I.P.C. on the basis of the charge sheet submitted by the police against the petitioners and presently the case is pending before the learned Chief Judicial Magistrate, Ranchi.

3. The allegation against the petitioners is that the petitioners being the Directors of M/s Tapaswani Infrastructure and Developer's

Private Limited, represented by the co-accused Mani Shankar Prasad and petitioner no. 2 entered into three separate agreements with the informant, Pankaj and the third one being Pankaj Prasoon and altogether took Rs. 60,60,000/- as advance for selling the land but did not sell the land. On the basis of the written report submitted by the informant, the police registered Dhurwa P.S. Case No. 290 of 2017 and took up the investigation of the case and after completion of the investigation, police submitted charge sheet and basing upon the same, the cognizance of the offence has been taken.

4. Learned counsel for the petitioners relying 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,** para 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)*

submits that in that case, it has been reiterated by the Hon'ble Supreme Court of India that in order to constitute the offence of cheating, the accused must play deception since the very inception and if the intention to cheat has developed later on, the same cannot amount to cheating.

5. Learned counsel for the petitioners next relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Binod Kumar and Others v. State of Bihar and Another** reported in **(2014) 10 SCC 663,** para 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)*

submits that therein 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. It must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same.

6. Learned counsel for the petitioners next relying upon the judgment of the Hon'ble Supreme Court of India in the case of **Vesa Holdings Private Limited and Another vs. State of Kerala and Others** reported in **(2015) 8 SCC 293,** submits that therein also the Hon'ble Supreme Court of India has reiterated the settled principle of law as in the case of **Uma Shankar Gopalika vs. State of Bihar & Another (supra).**

7. In this respect, learned counsel for the petitioners next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. The State of Punjab & Another** reported in **(2023) 5 SCC 360** paragraph-13 of which reads as under:-

> *"13. A breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have*

to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court."(Emphasis supplied)

Wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction between the parties.

8. Learned counsel for the petitioners also relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Vijay Kumar Ghai and Ors. State of West Bengal and Others** reported in **(2022) 7 SCC 124** and submits that therein, the Hon'ble Supreme Court of India in paragraph 47 has reiterated the settled principle of law that in order to attract the ingredients of Section 406 and Section 420 of IPC, it is imperative on the part of the complainant to *prima facie* establish that there was intention on the part of the petitioner and / or others to cheat and / or to defraud the complainant, right from the inception.

9. It is next submitted by learned Counsel for the petitioners drawing attention of the court to the undisputed agreements entered into between M/s Tapaswani Infrastructure and Developer's Pvt. Ltd. and the informant and others; that therein it has categorically been mentioned that the property to be sold, stands recorded in the name of Mostt. Kheman Quer and M/s Tapaswani Infrastructure and Developer's Pvt. Ltd. has entered into an agreement for sale with Mostt. Kheman Quer and since Mostt. Kheman Quer did not execute the sale deed in terms of the agreement for sale entered into with M/s Tapaswani Infrastructure and Developer's Pvt. Ltd., so the co-accused Mani Shankar Prasad has lodged Sukhdeonagar P.S. case no. 282 of 2018 against the legal heirs of Mostt. Kheman Quer namely Sheo Narayan Sahu. It is next submitted that the dispute between the parties is at best civil dispute and no offence punishable in law is

made out against the petitioners, hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

10. Learned Addl. PP and learned counsel for the Opp. Party no. 2 on the other hand vehemently oppose the prayer of the petitioners and submits that the petitioners had the intention to cheat since the beginning, so allegation in the record is sufficient to constitute the offence in respect of which cognizance has been taken. Hence, it is submitted that at this nascent stage, it is not desirable to quash the entire criminal proceeding. It is lastly 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 materials available in the record, it is pertinent to mention here that it is a settled principle of law that the advance payment made in respect of an agreement for sale will not amount entrustment of property as the word 'entrusted' used in Section 405 of the IPC, the punishment for which has been provided in Section 406 of IPC as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam and Others vs. State of Rajasthan and 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 Sale 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)*

12. Now coming to the facts of the case, there is absolutely no allegation against the petitioners that the petitioners played deceptions since the beginning of the transaction between the petitioners and the informant and two others. It is undisputed that the alleged victims were very much aware that M/s Tapaswani Infrastructure and Developer's Private Limited was

not the owner of the property rather, it was Mostt. Kheman Quer who was the owner of the property.

13. Under such circumstances, this Court has no hesitation in holding that in the absence of any allegation that the petitioners played a deception since very inception, the failure on the part of the petitioners to perform their part of contract under the agreement, in the facts of this case, will not amount to any of the offence punishable either under Section 406 of IPC or under Section 420 of IPC even with the aid of Section 34 of the IPC. Hence, continuation of this criminal proceeding against the petitioners will amount to abuse of process of law. Therefore, in the considered opinion of this Court, this is a fit case where the entire criminal proceeding of Dhurwa P.S. Case No. 290 of 2017, corresponding to G.R. No. 6634 of 2017 including the order dated 10.02.2020, passed by learned Chief Judicial Magistrate, Ranchi, in connection with the aforesaid case, be quashed and set aside *qua* the petitioners only.

14. Accordingly, the entire criminal proceeding of Dhurwa P.S. Case No. 290 of 2017, corresponding to G.R. No. 6634 of 2017 including the order dated 10.02.2020, passed by learned Chief Judicial Magistrate, Ranchi, in connection with the aforesaid case, is quashed and set aside *qua* the petitioners only.

15. In the result, this Criminal Miscellaneous Petition is allowed to the aforesaid extent only.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated, the 19th November, 2026
Smita /AFR
Uploaded on 25.11.2026