IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.3305 of 2024

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1. Ankit Kumar, s/o Late Radhey Shyam Prasad, aged 32 years,
2. Sadhna Devi, w/o Late Radhey Shyam Prasad, aged about 62 years,

Both 1 & 2 r/o Jhumri Telaiya, Rajgarhia Quarter, Near ICR Company, PS Telaiya, PO Jhumri Telaiya, District Koderma

… Petitioners

Versus

1. The State of Jharkhand
2. Mahavir Yadav, s/o Khedan Yadav, r/o Yadutand, Ward No. 28, PO Jhumri Telaiya, PS Telaiya, District Koderma

… Opposite Parties

For the Petitioners : Mr. Yogesh Modi, Advocate
For the State : Mr. Prabhu Dayal Agrawal, Spl.P.P.
For the O.P. No.2 : Mr. Pran Pranay, 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 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the entire criminal prosecution of Complaint Case No. 1786 of 2023 including the order dated 18.01.2024 passed by the learned Judicial Magistrate, Koderma in the said case by which the learned Judicial Magistrate, Koderma found

prima facie case for the offences punishable under Sections 323, 341, 420, 406 of the Indian Penal Code against the petitioners and passed summoning order against them.

3. The allegation against the petitioners is that the petitioners agreed to sale their land for a total consideration amount of Rs.6,30,000/- per *Kattha* to the complainant. The petitioner No.1 took the advance of Rs.6,00,000/- and an agreement was prepared on 22.09.2021. The remaining amount was to be paid at the time of execution of the sale-deed. After taking money, the petitioner No.1 informed the complainant that land is in the name of petitioner No.2. So, one agreement should also be made with petitioner No.2. The complainant also paid Rs.6,00,000/- to petitioner No.2 and got one agreement for sale executed on 08.11.2021. The petitioners have altogether taken Rs.28,00,000/-. When the complainant went to the land after agreement, some persons raised dispute; for settlement of which, the complainant had to pay Rs.2,00,000/-. The complainant constructed boundary-wall around the said land by spending Rs.4,00,000/-. The complainant approached the petitioners to execute the sale-deed but they avoided on one pretext or the other. In the meanwhile, 15-16 unknown persons demolished the boundary-wall constructed by the complainant. The complainant came to know that the petitioner No.1 has entered into an agreement with someone else also. Alleging that the petitioners have cheated the complainant, the complainant filed the complaint case on 09.08.2023 and thereafter, on 27.09.2023, the

petitioners along with 4-5 persons came to the house of the complainant and abused him in filthy language.

4. On the basis of the complaint, the statement on solemn affirmation of the complainant and the statement of the inquiry witnesses, the learned Judicial Magistrate, Koderma found *prima facie* case for the offences as already indicated above.

5. Learned counsel for the petitioners relies upon the judgment of this Court in the case of **Saloni Salvi vs. The State of Jharkhand & Others** reported in **MANU/JH/1158/2025** and submits that therein, this Court 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 No.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)*

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law 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 and if the intention to cheat has developed later on, the same cannot amount to cheating.

6. Learned counsel for the petitioners next submits that in the case of **Saloni Salvi vs. The State of Jharkhand & Others** (supra), this Court 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 No.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 been 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.

7. Learned counsel for the petitioners then submits that in the case of **Saloni Salvi vs. The State of Jharkhand & Others** (supra), this Court also relied upon the judgment of the Hon'ble Supreme Court of India in

the case of **State of Punjab vs. Pritam Chand** reported in **(2009) 16 SCC 769**, paragraph No.6 of which reads as under:-

> *"6. Section 406 IPC deals with punishment for criminal breach of trust. In a case under Section 406 the prosecution is required to prove that the accused was entrusted with property or he had dominion over the property and that the accused misappropriated or converted the property to his own use or used or disposed of the property or wilfully suffered any person to dispose of the property dishonestly or in violation of any direction of law prescribing the mode in which the entrusted property should be dealt with or any legal contract express or implied which he had entered into relating to carrying out of the trust."*

wherein, the Hon'ble Supreme Court of India dealt with the ingredients to constitute the offence punishable under Section 406 of the Indian Penal Code.

8. Learned counsel for the petitioners further submits that in the case of **Saloni Salvi vs. The State of Jharkhand & Others** (supra), this Court next 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** paragraph No.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, it has been held by the Hon'ble Supreme Court of India that the amount paid towards consideration cannot be said to have been entrusted to the accused persons by the complainant and merely because the seller is refusing to register the sale, it does not amount to misappropriation of the advance amount paid.

9. Learned counsel for the petitioners also submits that in the case of **Saloni Salvi vs. The State of Jharkhand & Others** (supra), this Court further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Dalip Kaur & Others vs. Jagnar Singh & Another** reported in **(2009) 14 SCC 696**, paragraph No.10 of which reads as under:-

> *"10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])" (emphasis supplied)*

wherein, the Hon'ble Supreme Court of India has reiterated the settled principle of law that if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the accused persons by non-refunding the amount of advance, the same would not constitute the offence of cheating. In this respect, the learned counsel for the petitioners further relies upon the judgment of this Court in the case of **Shailendra Kumar Jaiswal vs. The State of**

Jharkhand & Another reported in **2026:JHHC:24542** (passed in Cr.M.P. No. 1205 of 2022 dated 13th August, 2026).

10. Learned counsel for the petitioners next submits that the allegations against the petitioners are all false. It is then submitted that the dispute between the parties is a civil dispute and a cloak of criminal case has been given to a purely civil dispute for the purpose of wreaking vengeance and even if the entire allegations made against the petitioners are considered to be true in their entirety, still none of the offences in respect of which the learned Judicial Magistrate, Koderma found *prima facie* case is, in fact, being made out against the petitioners. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

11. Learned Special Public Prosecutor appearing for the State and the learned counsel for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioners made in this Criminal Miscellaneous Petition and submit that if the entire allegations made against the petitioners are considered to be true in their entirety, then all the offences in respect of which the learned Judicial Magistrate, Koderma found *prima facie* case is, in fact, being made out against the petitioners. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

12. 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 the essential ingredients to constitute the

offence punishable under Section 323 of the Indian Penal Code are as under:-

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

13. Now coming to the facts of the case, there is absolutely no allegation against the petitioners of either causing bodily pain or disease or infirmity to the complainant or anyone else. In the absence of the same, this Court is of the considered view that even if the entire allegations made against the petitioners 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 the petitioners.

14. So far as the offence punishable under Section 341 of the Indian Penal Code is concerned, the essential ingredients to constitute the said offence are as under:-

i. Accused obstructed a person;
ii. He did it voluntarily;
iii. He prevented such person from proceeding in certain direction in which he had the right to proceed.

15. Now coming to the facts of the case, there is absolutely no allegation against the petitioners of obstructing any person or preventing any person from proceeding in certain direction in which such person had the right to proceed. In the absence of the same, this

Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true in their entirety, still the offence punishable under Section 341 of the Indian Penal Code is not made out against the petitioners.

16. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, the essential ingredient to constitute the said offence is that "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 cannot amount to cheating" as has been held by the Hon'ble Supreme Court of India in the case of **Uma Shankar Gopalika vs. State of Bihar & Another** (supra).

17. Now coming to the facts of the case, there is absolutely no allegation against the petitioners of playing deception since the beginning of the transaction between the parties and in the absence of the same, this Court is of the considered view that even if the entire allegations made against the petitioners 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 petitioners.

18. 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 as under:-

> (*i) There must be an entrustment and,*
> *(ii) There must be dishonest misappropriation of the entrusted property or conversion of the entrusted property to one's own use, or use in violation of a legal direction or of any legal contract.*

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.**

19. It is also a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **Radheyshyam & Others vs. State of Rajasthan & Another** (supra) that the amount paid towards consideration cannot be said to have been entrusted to the accused person by the complainant as the word 'entrusted' has been used under Section 405 of the Indian Penal Code; for which, the punishment has been provided for in Section 406 of the Indian Penal Code.

20. Now coming to facts of the case, the only allegation against the petitioners is that the complainant paid part of the consideration amount to the petitioners. So, this, by itself in the considered opinion of this Court, is insufficient to constitute an "entrustment of any property" which is a *sine-qua-non* to constitute the offence punishable under Section 406 of the Indian Penal Code. Therefore, this Court is of the considered view that even if the entire allegations made against the petitioners 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 the petitioners.

21. In view of the discussions made above, as none of the offences in respect of which the learned Judicial Magistrate, Koderma found *prima facie* case is made out against the petitioners even if the entire allegations made against the petitioners are considered to be true in their entirety, hence, this Court is of the considered view that the

continuation of the criminal proceeding against the petitioners will amount to abuse of process of law. Therefore, this Court has no hesitation in holding that this is a fit case where the entire criminal prosecution of Complaint Case No. 1786 of 2023 including the order dated 18.01.2024 passed by the learned Judicial Magistrate, Koderma in the said case, be quashed and set aside against the petitioners named above.

22. Accordingly, the entire criminal prosecution of Complaint Case No. 1786 of 2023 including the order dated 18.01.2024 passed by the learned Judicial Magistrate, Koderma in the said case, is quashed and set aside against the petitioners named above.

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

24. In view of disposal of this Criminal Miscellaneous Petition, pending I.A. No.699 of 2026 stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 07th of September, 2026
AFR/ Saroj

Uploaded on 09/09/2026