IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr.M.P. No. 3721 of 2025

Saikat Roy @ Saikat Ray, aged about 41 years, son of late Sushil Kumar Roy, r/o Village+P.O. -Barabhera, P.S.-Konnagar, Near Ashok Bas Gola Googly Dist.-Hoogly (W.B.), at present residing at Village-Sukanta Prithi Near Ashoker Banser Gola Shopping Mall and Ganesh Bhandar Jhilpar, Naity Road, P.O. & P.S.-Nagagram Barabhera Konnagar Dist.-Hoogly (W.B.)

.... Petitioner

Versus

1. The State of Jharkhand
2. Mrs. Chandra Prabha, wife of Sri Rajnish Kumar, resident of Flat No. B3F1C Mooncity Rajeev Path, Dimna Road Mango, P.O. & P.S.-Mango, Purbi Singhbhum, Dist.-Jamshedpur at present Flat No.1A, Dinkar Rashmi Rathi Apartment Near Chandni Chowk Kanke Road, P.O. & P.S.-Gonda, Dist.-Ranchi

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

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For the Petitioner: Mr. Gautam Kumar, Advocate
: Mr. Vinod Kr. Sahu, Advocate
: Mr. Ashutosh Kr. Sinha, Advocate
: Mr. Manoj Kumar, Advocate

For the State : Mr. P.K. Chatterjee, Spl. P.P.

For O.P. No.2 : None

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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 14.02.2023 passed by the learned Judicial Magistrate 1st Class-XXI, Ranchi, in connection with Complaint Case No. 10424 of 2022, whereby and where under, learned Judicial Magistrate 1st Class-XXI, Ranchi has found *prima facie* case for the offence punishable under Section 406 of the Indian Penal Code.

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

4. The brief fact of the case is that the petitioner and his wife namely Mitti Ghosh took a loan of Rs.25,00,000/- from the complainant to invest in the business but did not return the money as promised.

5. On the basis of the complaint, statement of the complainant on solemn affirmation and the statement of the inquiry witness, learned Judicial Magistrate 1st Class-XXI, Ranchi found *prima facie* case for the offence punishable under Section 406 of the Indian Penal Code and order for issue of summons.

6. Learned counsel for the petitioner relied upon the judgment of this Court in the case of **Mukesh Sao @ Mukesh Shaw & Anr. vs. The State of Jharkhand & Anr.** dated 27.01.2026 passed in Cr.M.P. No. 115 of 2024 and submits that in that case, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Satish Chandra Ratan Lal Shah vs. State of Gujarat & Anr.** reported in **(2019) 9 SCC 148**, paragraph no. 13 of which reads as under:-

> *13. Now coming to the charge under Section 415 punishable under Section 420 IPC. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] .) In the case before us, admittedly the appellant was trapped in economic crisis and therefore, he had approached Respondent 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred." (Emphasis supplied)*

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that the mere inability of the accused person to return the loan amount

cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is made out.

7. It is next submitted by the learned counsel for the petitioner that taking loan by a person cannot be termed as property entrusted as the word 'entrusted' has been used in Section 405 of the Indian Penal Code, the punishment of which has been provided for in Section 406 of the Indian Penal Code and in the absence of any entrusted property, the offence punishable under Section 406 of the Indian Penal Code is not made out. It is next submitted by the learned counsel for the petitioner that even if the entire allegation made against the petitioner are considered to be true in its entirety, still, the offence punishable under Section 406 of the Indian Penal Code is not made out. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

8. Learned Spl. P.P. on the other hand vehemently opposes the prayer of the petitioner and submits that the materials in the record are sufficient enough to constitute the offence punishable under Section 406 of the Indian Penal Code. Hence, it is submitted that criminal proceeding ought not be quashed at this nascent stage.

9. 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 Hon'ble Supreme Court of India in the case of **Anil Mahajan vs. Bhor Industries Ltd. & Anr.** reported in **(2005) 10 SCC 228**, held that mere failure to honour a financial commitment, even if deliberate does not itself constitute the offence of cheating or criminal breach of trust unless there is evidence of fraudulent or dishonest intention from the very inception of the transaction.

10. So far as the loan is concerned, the loan amount cannot be treated as property entrusted by the lender to the borrower because when a loan is disbursed, the ownership of the loan is transferred to the debtor and the debtor is free to use that property the way he likes without any approval of the creditor whereas Section 405 of the Indian Penal Code requires the property or dominion over the property to be entrusted to someone under a fiduciary obligation to hold, manage or apply in a specific way for the owner, therefore, this Court has no hesitation in holding that loan amount given by the complainant to the petitioner cannot be treated as the property entrusted in terms of the word 'entrusted' used in Section 405 of the Indian Penal Code.

11. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the essential ingredients to constitute the same are as follows:-

(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 legal contract.

as has been reiterated by the Hon'ble Supreme Court of India in the case of **Ram Narayan Popli vs. C.B.I.** reported in **(2003) 3 SCC 641**.

12. Now coming to the facts of the case, as already indicated above, there is no entrustment of any property involved in this case. So, in the absence of this essential ingredient of entrustment, this Court has no hesitation in holding that even if the entire allegation made against the petitioner are considered to be true in its entirety, still, the offence punishable under Section 406 of the Indian Penal Code is not made out.

13. In view of the discussions made above, this Court is of the considered view that 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 14.02.2023 passed by the learned Judicial Magistrate 1st Class-XXI, Ranchi, in connection with Complaint Case No. 10424 of 2022 be quashed and set aside *qua* the petitioner.

14. Accordingly, the entire criminal proceeding including the order dated 14.02.2023 passed by the learned Judicial Magistrate 1st Class-XXI, Ranchi, in

connection with Complaint Case No. 10424 of 2022 is quashed and set aside *qua* the petitioner.

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
AFR/Gunjan/-

Uploaded on 20/11/2026