

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Revision No. 1076 of 2022

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1. Sujata Jha, aged about 67 years W/o Sushil Kumar Jha.
2. Sushil Kumar Jha, aged about 72 years, S/o late Rampad Ojha
3. Rakesh Kumar Jha, aged about 37 years, S/o Sushil Kumar Jha
All R/o Ojha House, Jodhadih More, Oppoiste Bharat Petroleum, PO & PS Chas, District Bokaro, Jharkhand, 827013

... **Petitioners**

Versus

1. The State of Jharkhand
2. Sanjay Kumar, S/o Kapildev Sharma, R/o Jodhadih More, PO & PS Chas, District Bokaro, Jharkhand, 827013.

... **Opp. Parties**

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For the Petitioners : Mr. Baibhaw Gahlaut, Adv.
For the State : Mrs. Vandana Bharti, A.P.P.
For the O.P. No.2 : Mr. Ram Nivas Roy, Adv.

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PRESENT
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

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ORDER

C.A.V. on 11.05.2026

Pronounced on 09.06.2026

1. Instant criminal revision is directed against the order dated 31.05.2022 passed by S.D.J.M., Bokaro in connection with Complaint Case No.195 of 2005 (hereinafter referred as "impugned order"), whereby and whereunder the learned S.D.J.M. has rejected the application for discharge filed by the petitioners.

2. Factual matrix giving rise to this revision is that the complainant (opposite party No.2) has filed the above complaint case stating *inter alia* that he had entered into an agreement with accused Sushil Kumar Jha, Sujata Jha and Rakesh Kumar Jha to purchase a land situated at Mouza Chas. The accused persons approached him for sale of the land for consideration of Rs.4,25,000/-. The complainant agreed to the terms proposed by the accused persons. As such, advance of Rs.25,000/- was given and further on different dates, the complainant has paid a sum of Rs.2,51,000/- to the accused persons and the receipt of the same has been duly issued by the accused persons. It is further alleged that in accordance with terms and conditions of the agreement, the complainant purchased stamp worth Rs.27,750/- for registration of sale deed in his name but the accused persons started delaying practices in registration of sale deed. Thereafter, the complainant came to know that the land and house proposed to be sold to the complainant by the accused persons has been mortgaged to Bank of India for taking loan. The accused persons by not disclosing the material facts in connection with the mortgage of land, have

cheated the complainant and also illegally retained his partial consideration amount which has been misappropriated without execution of sale deed.

3. The learned Trial Court after conducting inquiry into the complaint issued summons against the accused persons (petitioners) for the offences under Sections 406, 420 and 120B of the I.P.C.

4. The petitioners have earlier moved this Court for grant of anticipatory bail and thereafter, Criminal M.P. No.1057 of 2005 for quashing the entire criminal proceedings which was also dismissed vide order dated 11.08.2006. The petitioner No.2 has also moved for regular bail vide B.A. No.1578 of 2007 which was allowed vide order dated 07.03.2007.

5. I have already heard the arguments of learned counsel for the petitioners as well as learned counsel for the opposite party No.2 and the learned A.P.P for State.

6. The prime argument of learned counsel for the petitioners is that no offences under Sections 420 and 406 of the I.P.C. are made out in the factual background of the present case. Admittedly, there was agreement to sale the landed property and the opposite party No.2 has filed a Title

Suit No. 42 of 2005 for specific performance of the contract. Therefore, present criminal proceeding for the offences under Section 406 and 420 of the I.P.C. is totally misconceived as there was no deception on the part of petitioners and it was simple transaction of sale with free consent between the parties. The complainant himself has admitted in para 7 of the complaint petition that he was aware about the loan taken by petitioner No.2 on the said land and complainant also admitted to deposit the remaining loan amount to get release the land from mortgage. Therefore, there was no kind of any misconception between the parties. Similarly, the ingredients of Section 406 of the I.P.C. is also not fulfilled in the factual aspects of the case. There is no entrustment of property, as such, no breach of trust. It is further submitted that that after completion of before charge evidence adduced by complainant, the petition for discharge was filed by the petitioners which has been rejected by the learned Trial Court through impugned order without discussing the materials available on record to proceed further as per mandate of provision of Section 245 of the Cr.P.C. Therefore, impugned order is absolutely illegal and fit to be set aside and the

matter may be remitted back to the concerned Trial Court to pass a fresh order taking into consideration the entire before charge evidence available against the petitioners.

7. On the other hand, learned counsel for the opposite party No.2 assisted with learned A.P.P. for State has opposed the aforesaid contentions raised on behalf of the petitioners and submitted that the learned Trial Court has very wisely and aptly considered overall aspects of the case and passed reasoned order, which requires no interference in this revision. There is no straitjacket formula that if civil remedy is available, no criminal case can be instituted and proceeded, if offences are constituted on the facts of the case. Therefore, this revision is devoid of merits and fit to be dismissed.

8. I have considered the arguments of both side in the light of impugned order passed by learned Trial Court. It appears that inadvertently, the provision of law is mentioned for discharge as Section 277 of the Cr.P.C. in place of Section 245 of the Cr.P.C.

9. Before advertent to decide the issues involved in this revision, it appears necessary to extract the relevant provision of discharge in complaint cases triable by Magistrate :-

Section 244 Cr.P.C.- Evidence for Prosecution.

- (i) When, in any warrant case instituted otherwise than on a police report, the accused appears or is brought before a Magistrate, the Magistrate shall proceed to hear the prosecution and take all such evidence as may be produced in support of the prosecution.
- (ii) The Magistrate may, on the application of the prosecution, issue a summons to any of its witnesses directing him to attend or to produce any document or other thing.

Section 245 Cr.P.C.-When accused shall be discharged.

- (i) If, upon taking all the evidence referred to in Section 244, the Magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him.
- (ii) Nothing in this section shall be deemed to prevent a Magistrate from discharging the accused at any

previous stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

10. A conjoint reading of Sections 244 and 245 of the Cr.P.C., it clearly transpires that the Magistrate has no power to pass an order under Section 245(i) until he has examined all the witnesses under Section 244. The next rider is that if the evidence of witnesses recorded under Section 244, the Magistrate considers for reasons to be recorded that no case against the accused has been made out which if unrebuted would warrant his conviction. Therefore, it is mandatory for the Magistrate to consider the evidence before charge adduced by complainant and record a specific finding as to if the before charge evidence remains unrebuted and taken to be true on its face value, no conviction of the accused would be warranted.

11. In the instant case, it transpires from impugned order that before charge altogether five witnesses have been examined by the complainant. It does not appear from the order that still some witnesses under Section 244 Cr.P.C. has to be examined or not. The learned Trial Court has recorded

no reasons as mandated under Section 245 of the Cr.P.C. and failed to deal with the before charge evidence of the witnesses while dismissing the application of the petitioners for discharge.

12. In view of above discussion, the impugned order passed by learned S.D.J.M. appears to be apparently illegal and beyond the mandate of specific provision under Section 245 of the Cr.P.C. to be followed. Therefore, impugned order is hereby set aside and this revision is allowed. The matter is remitted back to the learned Trial Court to rehear on the point of discharge of the petitioners in the light of above observations and pass a fresh order after giving reasonable opportunity to both parties of hearing.

13. Pending I.A., if any, stands disposed of.

14. Let a copy of this order be sent to the concerned Court for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated: 09/06/2026

Sachin / **NAFR**

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