1IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 1925 of 2025

Sudesh Rakesh Tirkey, son of late Justin Tirkey, aged about 61 years, r/o Anu Premus Smriti Bhawan, Village-Jorar, Hesal, P.O.-Namkum, P.S.-Namkum, Dist.-Ranchi- 834010
U.I.D. No. 3937 9191 1407

.... Petitioner

Versus

1. The State of Jharkhand
2. Gomti Devi, wife of Sri Awadh Bihari Mahto, r/o Makchund Toli, Pragati Path, Chutia, P.O.-Chutia, P.S.-Chutia, Dist.-Ranchi-834001

…. Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

…..

For the Petitioners : Mr. Rahul Kumar Das, Advocate
For the State : Mr. Rajesh Kumar, Addl. P.P.
For O.P. No.2 : Mr. Vikash Kumar, Advocate

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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 order dated 08.02.2024 passed by the learned Judicial Magistrate 1st Class, Ranchi by which the learned Judicial Magistrate 1st Class, Ranchi has taken cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code in connection with Namkum P.S. Case No. 520 of 2023, corresponding to G.R. No. 455 of 2024 as also to quash the order dated 22.05.2025 whereby the learned Judicial Magistrate 1st Class, Ranchi has rejected the petition dated 10.03.2025 filed under

Section 262 of the B.N.S.S., 2023 for discharging him from the allegation.

3. The allegation against the petitioner is that the petitioner entered into a development agreement with the complainant; who is the owner of the land. The petitioner constructed apartment but he did not make the common facilities complete and the workmanship and material of the apartment in respect of lifts provided in the said apartment was of poor quality and the petitioner threatened the prospective purchasers who came to the complainant to purchase the flats that unless such prospective purchasers purchased the flats from the petitioner, they will face dire consequences.

4. On the basis of the complaint filed by the complainant bearing Complaint Case No. 11968 of 2023 which upon being referred to police under Section 156 (3) of Cr.P.C., police registered Namkum P.S. Case No. 520 of 2023 involving the offences punishable under Sections 406 and 420 of the Indian Penal Code. Police took up investigation of the case and after completion of investigation police submitted charge sheet against the petitioner for having committed the said offences punishable under Sections 406 and 420 of the Indian Penal Code basing upon which vide order dated 08.02.2024, the learned Judicial Magistrate 1st Class, Ranchi took cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code. Subsequently, a petition was filed for discharge under Section 262 of B.N.S.S., corresponding to Section

239 of Cr.P.C. but the same was rejected by the learned Judicial Magistrate 1st Class, Ranchi vide order dated 22.05.2025.

5. It is submitted by the learned counsel for the petitioner by relying upon the judgment of the Hon'ble Supreme Court of India in the case of **G. Saminathan & Anr. vs. The State, Represented by the Sub-Inspector of Police & Anr.** reported in **2026 INSC 772** that in paragraph no.09 thereof, the Hon'ble Supreme Court of India in the facts of that case where accused, in terms of joint development agreement has already invoked the arbitration clause and the arbitral award has already been passed by the learned Arbitrator determining the liabilities of both the parties in terms of their contractual obligation and the award has been challenged under Section 34 of the Arbitration Act by the complainant, while the parties of the case were pursuing their civil remedies, it was held that it will be in complete disregard of the criminal justice system to permit the continuation of criminal prosecution against the accused of that case for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

6. Learned counsel for the petitioner next relied upon the judgment of this Court in the case of **M/s. Budh Vihar Construction Pvt. Ltd. through its Managing Director, Anil Kumar Akela & Anr.** reported in **[2026 (2) JCR 68 (Jhr)]** wherein, this Court relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Sarabjit Kaur vs. 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 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 and merely, the allegation of failure to keep up promise will not be enough to initiate criminal proceedings.

7. It is next submitted by the learned counsel for the petitioner that in that case, this Court also 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-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 it was held 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 will not amount to cheating.

8. It is further submitted by the learned counsel for the petitioner that in that case, this Court also 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-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 it has categorically been held by the Hon'ble Supreme Court of India 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 person but it must also be shown that the accused person dishonestly disposed of the same in some way or dishonestly retained the same.

9. It is next submitted by the learned counsel for the petitioner that in that case, this Court also relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Satish Chandra Ratanlal Shah vs. State of Gujarat & Anr.** reported in **(2019) 9 SCC 148**, paragraph no. 11 of which reads as under:-

> *"11. Having observed the background principles applicable herein, we need to consider the individual charges against the appellant. Turning to Section 405 read with Section 406 IPC, we observe that the dispute arises out of a loan transaction between the parties. It falls from the record that Respondent 2 knew the appellant and the attendant circumstances before lending the loan. Further it is an admitted fact that in order to recover the aforesaid amount, Respondent 2 had instituted a summary civil suit which is still pending adjudication. The law clearly recognises a difference between simple payment/investment of money and entrustment of money or property. A mere breach of a promise, agreement or contract does not, ipso facto, constitute the offence of the criminal breach of trust contained in Section 405 IPC without there being a clear case of entrustment."*
> *(Emphasis supplied)"*

wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that a mere retention of the property would not amount to dishonest misappropriation of the property.

10. Learned counsel for the petitioner next submits that in this case the undisputed fact remains that the complainant for the selfsame allegation filed Complaint Case No. 2638 of 2009 and which ended up in a compromise and after 11 years of such compromise, again a legal notice was issued for the first time on 10.08.2023 demanding Rs.10,00,000/- more and as the same was not paid, for the purpose of wreaking vengeance, this case has been foisted. It is then submitted by the learned counsel for the petitioner that the complainant also approached the Jharkhand Real Estate Regulatory Authority and Construction Engineer of JRERA reported that the fire fighting was fitted in all the blocks, there is facility of borewell water at the project site, the lifts are in running condition as per the development agreement but there is requirement of repairing of the outside of the building because in the absence of maintenance of the building, the concrete of the building and the walls have cracked at places. It was also mentioned therein that construction order of the building was of the year 2002 in which year the construction started and the same was handed over in the year 2010. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.

11. Learned Addl. P.P. and the learned counsel for the opposite party no.2 on the other hand vehemently opposes the prayer of the petitioner made in this criminal miscellaneous petition and submits that the allegations against the petitioner are sufficient to

constitute both the offences punishable under Sections 406 and 420 of the Indian Penal Code. 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, this Court finds that the undisputed fact remains that there is no allegation against the petitioner of having played deception since the beginning of the transaction between the parties. After the development agreement entered into between the petitioner and the complainant, the petitioner has made substantial construction and handed over the possession of the flats to which the complainant was entitled as per the development agreement. There was some complaint regarding some deficiency in completion of the construction but certainly, the same is not sufficient to show that the petitioner played deception since the beginning of the transaction between the parties. In the absence of this essential ingredient, in view of the settled principle of law 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), 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 420 of the Indian Penal Code is not made out.

13. So far as the offence punishable under Section 406 of the Indian Penal Code is concerned, the essential ingredient to constitute the said offence are:-

(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 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**.

14. Now coming to the facts of the case, there is absolutely no allegation of any entrustment of any property to the petitioner rather land was given to the petitioner to make the construction. There is no allegation of any dishonest misappropriation of any entrusted property and in the absence of the same, 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, they are not sufficient enough to constitute the offence punishable under Section 406 of the Indian Penal Code. Therefore, the learned Judicial Magistrate 1st Class, Ranchi has committed a grave illegality by taking cognizance of the offence punishable under Section 406 and 420 of the Indian Penal Code vide order dated 08.02.2024 when such offence is not made out on the basis of the materials placed before it.

15. Accordingly, the order dated 08.02.2024 passed by the learned Judicial Magistrate 1st Class, Ranchi in connection with Namkum

P.S. Case No. 520 of 2023, corresponding to G.R. No. 455 of 2024 is quashed and set aside.

16. So far as the order dated 22.05.2025 is concerned, the learned Judicial Magistrate 1st Class, Ranchi has rejected the said prayer on the ground that the offence punishable under Sections 406 and 420 of the Indian Penal Code is made out against the petitioner but as has been discussed in the foregoing paragraphs of this Judgment, even if the entire allegation made against the petitioner are considered to be true in its entirety, still 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 petitioner. Therefore, this Court has no hesitation in holding that the learned Judicial Magistrate 1st Class, Ranchi has committed a grave illegality in rejecting the prayer under Section 262 of B.N.S.S., corresponding to Section 239 of Cr.P.C. filed by the petitioner.

17. Accordingly, the order dated 22.05.2025 passed by the learned Judicial Magistrate 1st Class, Ranchi in connection with Namkum P.S. Case No. 520 of 2023, corresponding to G.R. No. 455 of 2024 is also quashed and set aside.

18. 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 3rd August, 2026
AFR/Gunjan/-

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