

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
Cr.M.P. No.1400 of 2026**

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Anupam Pandey Aged about - 45 years, Son of Shri Dinanath Pandey, Resident of M-82, GF-11, Awanu Gor Nagar, Noida-U, Post Office and Police Station- Gautam Budh Nagar, District- Gautam Budh Nagar, State- Uttar Pradesh.

... Petitioner

*Versus*

The State of Jharkhand

...

Opposite Party

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For the Petitioners : Mr. Anup Kr. Agarwal, Advocate

For the State : Mr. Pankaj Kumar, P.P.

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**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 B.N.S.S., 2023 with the prayer to quash and set aside the entire criminal proceeding including the F.I.R. being Godda (Town) P.S. Case No. 118 of 2024, the charge sheet No. 349 of 2025 dated 31.12.2025 and the cognizance order dated 22.01.2026 passed by the learned Chief Judicial Magistrate, Godda in connection with Godda (Town) P.S. Case No. 118 of 2024 corresponding to G.R. Case No. 99 of 2026 whereby and where under the learned Chief Judicial Magistrate, Godda has taken cognizance against the petitioner of the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. The allegation against the petitioner is that the petitioner though he is not a contractor, deceived the informant by posing himself as a contractor and induced the informant so deceived to part with Rs.53,14,318/- by transferring the said amount of money to the account of the petitioner and other huge amounts of money to the accounts of other persons as instructed by the petitioner and further deceived the informant that upon investing of such amount, the informant will get 20 percent of the invested amount as profit but returned only Rs.7,60,000/- and cheated the informant of Rs.74,51,483/-.

4. On the basis of the written report submitted by the informant, police registered Godda (Town) P.S. Case No. 118 of 2024 and took up investigation of the case and after completion of the investigation, police found the allegations against the petitioner to be true in their entirety and submitted charge sheet against the petitioner. The learned Chief Judicial Magistrate, Godda found *prima facie* case for the offences punishable under Section 406 and 420 of the Indian Penal Code in respect of which the charge sheet was submitted by the police vide the order dated 22.01.2026 in G.R. Case No. 99 of 2026 arising out of Godda (Town) P.S. Case No. 118 of 2024.

5. Learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Rikhab Birani & Another vs. State of Uttar Pradesh & Another** reported in **2025 INSC 512** and submits that in the facts of that case, the Hon'ble Supreme Court of India relied upon its own judgment in the case of **Sarabjit**

**Kaur v. State of Punjab and Another** reported in (2023) 5 SCC 360 wherein, it was observed that 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.

6. Learned counsel for the petitioner submits that since there is no fraudulent or dishonest intention shown right at the beginning of the transaction by the petitioner, hence, neither of the offences in respect of which the cognizance has been taken by the learned Chief Judicial Magistrate, Godda, is in fact, made out against the petitioner. Hence, it is submitted that the prayer as prayed for in this Criminal Miscellaneous Petition be allowed.

7. Learned Public Prosecutor appearing for the State on the other hand vehemently opposes the prayer of the petitioner made in this Criminal Miscellaneous Petition and submits that there is direct and specific allegation against the petitioner of playing deception since the very beginning of the transaction between the parties as though the petitioner is not a contractor but he claimed himself to be a contractor and thus by deceiving the informant, induced the informant so deceived to part with huge amounts of money; which the petitioner did in a planned manner. It is next submitted that since the learned Chief Judicial Magistrate, Godda has taken cognizance of the offences based on a Police Report, hence, the learned Chief Judicial Magistrate, Godda is prohibited from either adding or subtracting any of the offences mentioned in the charge sheet at the stage of taking

cognizance. It is further submitted that since the petitioner is not co-operating with the case and he is still absconding, even though he is knowing pretty well that the cognizance has already been taken against him but so far, the petitioner succeeded in avoiding appearance before the learned trial court; thus because of the non-co-operating attitude of the petitioner, the learned trial court could not consider the matter of framing of charge. Hence, it is submitted that this Criminal Miscellaneous Petition, being without any merit, be dismissed.

8. 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 there is direct and specific allegation against the petitioner of playing deception since the beginning of the transaction between the parties by impersonating himself as a contractor though, in fact, the petitioner is not a contractor and the petitioner by so deceiving the informant, has induced the informant so deceived to part with huge amounts of money.

9. In view of the direct and specific allegation against the petitioner of playing deception since the beginning of the transaction between the parties, this Court is of the considered view that the ratio of the case of **Rikhab Birani & Another vs. State of Uttar Pradesh & Another** (supra) is not attracted to the facts of this case.

10. It is a settled principle of law as has been held by the Hon'ble Supreme Court of India in the case of **State of Gujarat vs. Girish**

**Radhakrishnan Varde** reported in (2014) 3 SCC 659, para-15 of which reads as under:-

*“15. The question, therefore, emerges as to whether the complainant/informant/prosecution would be precluded from seeking a remedy if the investigating authorities have failed in their duty by not including all the sections of IPC on which offence can be held to have been made out in spite of the facts disclosed in the FIR. The answer obviously has to be in the negative as the prosecution cannot be allowed to suffer prejudice by ignoring exclusion of the sections which constitute the offence if the investigating authorities for any reason whatsoever have failed to include all the offences into the charge-sheet based on the FIR on which investigation had been conducted. But then a further question arises as to whether this lacunae can be allowed to be filled in by the Magistrate before whom the matter comes up for taking cognizance after submission of the charge-sheet and as already stated, the Magistrate in a case which is based on a police report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge under Sections 216, 218 or under Section 228 CrPC as the case may be which means that after submission of the charge-sheet it will be open for the prosecution to contend before the appropriate trial court at the stage of framing of charge to establish that on the given state of facts the appropriate sections which according to the prosecution should be framed can be allowed to be framed. Simultaneously, the accused also has the liberty at this stage to submit whether the charge under a particular provision should be framed or not and this is the appropriate forum in a case based on police report to determine whether the charge can be framed and a particular section can be added or removed depending upon the material collected during investigation as also the facts disclosed in the FIR and the charge-sheet.”*

that the Magistrate in a case which is based on a Police Report cannot add or subtract sections at the time of taking cognizance as the same would be permissible by the trial court only at the time of framing of charge.

11. The undisputed fact remains that the police after investigation of the case, has found the allegations against the petitioner to be true. The undisputed fact also remains that the petitioner has taken huge amounts of money from the informant but he has not returned the same to the informant. There is a direct and specific allegation against the petitioner of playing deception since the beginning of the transaction between the parties.

12. Under such circumstances, this Court is of the considered view that this is not a fit case where the prayer of the petitioner made in this Criminal Miscellaneous Petition is to be acceded to at this nascent stage in exercise of its power under Section 528 of the B.N.S.S., 2023.

13. Accordingly, this Criminal Miscellaneous Petition, being without any merit, is dismissed.

**(Anil Kumar Choudhary, J.)**

High Court of Jharkhand, Ranchi  
Dated the 11<sup>th</sup> of May, 2026  
AFR/ Saroj

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