

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 4568 of 2022

Ram Swaroop Sinha, aged about 51 years, s/o late S.D.P. Sinha, resident of House No. 111, New Layout, Sitaramdera, P.O.-Agrico, P.S.-Sitaramdera, Town-Jamshedpur, Dist.-Singhbhum East. Presently residing at Duplex No. 268, Vijaya Garden, P.S.-Birsanagar, P.O.-Baridih, Town-Jamshedpur, Dist.-East Singhbhum

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Petitioner

Versus

The State of Jharkhand

....

Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners

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: Mr. P.P.N. Roy, Sr. Advocate

: Mr. P.A.N. Roy, Advocate

: Ms. Kavita Kumari, Advocate

For the State

: Mr. Abhay Kr. Tiwari, Addl. P.P.

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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 482 of Cr.P.C. with the prayer to quash the entire criminal proceeding including the order dated 17.03.2017 passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with Sakchi P.S. Case No. 193 of 2016, corresponding to G.R. No. 3701 of 2016, whereby and where under, the learned Chief Judicial Magistrate, Jamshedpur has taken cognizance of the offences punishable under Sections 406 and 420 of the Indian Penal Code.

3. Learned Senior Advocate appearing for the petitioner submits that this case is still at the stage of appearance and charge has not yet been framed and the case is next fixed to 23.05.2026.
4. The allegation against the petitioner is that the petitioner who was having cordial friendship with the complainant-informant took a sum of Rs.3,00,000/- but did not return the money. It is alleged that the petitioner has cheated the complainant-informant.
5. The complainant filed C/1 Case No. 2077 of 2015 in the court of Chief Judicial Magistrate, Jamshedpur which upon being referred to police under Section 156 (3) of Cr.P.C., Sakchi P.S. Case No. 193 of 2016 was registered. Police took up investigation of the case and after completion of investigation, police submitted charge sheet against the petitioner for having committed the offence punishable under Sections 406 and 420 of the Indian Penal Code and basing upon the same, the learned Chief Judicial Magistrate, Jamshedpur vide impugned order dated 17.03.2017 has taken cognizance of the said offences.
6. Learned Senior Advocate relying 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)

submits 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. The mere fact that the accused person did not pay the money to the complainant does not amount to criminal breach of trust.

7. It is next submitted by the learned Senior Advocate appearing for the petitioner that in this case also, in the absence of any allegation to show that the accused person dishonestly disposed of the money or dishonestly retained the money, the offence punishable under Section 406 of the Indian Penal Code is not made out.
8. Learned Senior Advocate appearing for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Anand Kumar Mohatta & Anr. vs. State (NCT of Delhi), Department of Home & Anr.** reported in **(2019) 11 SCC 706** and submits that therein, the Hon'ble Supreme Court of India had the occasion to discuss when the offence of criminal breach of trust is not made out. It is next submitted by the learned Senior Advocate appearing for the petitioner that the allegations against the petitioner

are all false. It is then submitted by the learned Senior Advocate appearing for the petitioner that even if the entire allegations 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. Hence, it is submitted that the prayer as made in this criminal miscellaneous petition be allowed.

9. The learned Addl. P.P. on the other hand vehemently oppose the prayer and submits that the materials available in the record if considered to be true in their entirety then both the offences punishable under Sections 420 and 406 of the Indian Penal Code is made out. Hence, it is submitted that this criminal miscellaneous petition being without any merit be dismissed.
10. Having heard the submissions made at the Bar and after going through the materials available in the record, it is pertinent to mention here that as has been held by 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)

that mere inability of the accused 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.

11. It is also a 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** reported in (2005) 10 SCC 336 paragraph-6 of which reads as under:-

“6. 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)

that in order to constitute the offence of cheating, 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 will not amount to cheating.

12. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner took a loan but did not repay the

money. There is no allegation against the petitioner that the petitioner played deception since the beginning of the transaction between the parties and in the absence of the same, in view of the settled principle of law as has been reiterated 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 allegations 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 in the offence punishable under section 406 of the Indian Penal Code is concerned, there is no allegation against the petitioner of either been entrusted any money or having committed dishonest misappropriation of any entrusted money. In the absence of this essential ingredient, this court has no hesitation in holding that even if the entire allegations made against the petitioner are considered to be true in their entirety, still the offence punishable under section 406 of the Indian Penal Code, is not made out. Therefore, 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 17.03.2017 passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with Sakchi P.S. Case No. 193 of 2016, corresponding to G.R. No. 3701 of 2016 be quashed and set aside *qua* the petitioner.

14. Accordingly, the entire criminal proceeding including the order dated 17.03.2017 passed by the learned Chief Judicial Magistrate, Jamshedpur in connection with Sakchi P.S. Case No. 193 of 2016,

corresponding to G.R. No. 3701 of 2016 is quashed and set aside *qua* the petitioner.

15. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 5th May, 2026
AFR/Gunjan/-

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