

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No. 922 of 2023

Sanjeev Modi, aged about 53 years, son of late Meghraj Modi, resident of E-2, Lake Palaace, Lake Avenue, Kanke Road, P.O. & P.S.-Kanke, Dist.-Ranchi (Jharkhand)

.... Petitioner

Versus

1. The State of Jharkhand
2. Usha Modi, wife of Shri Gopal Modi, resident of Belair Apartment, P.O. & P.S.-Hindpiri, Dist.-Ranchi, Jharkhand

.... Opp. Parties

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

.....
For the Petitioner : Mr. A.K. Kashyap, Sr. Advocate
: Mr. Anurag Kashyap, Advocate
: Ms. Supriya Dayal, Advocate
: Ms. Komal S. Narayan, Advocate
For the State : Mr. V.K. Vashistha, Spl. P.P.
For O.P. No.2 : Mr. Indrajit Sinha, Advocate
: Mr. Ajay Kr. Sah, Advocate
: Ms. Rashika Bajaj, Advocate
.....

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 and set aside the entire criminal proceeding including the order dated 10.02.2023 passed by the learned Judicial Magistrate 1st Class-VIII, Ranchi in Protest-cum-Complaint Case No. 4281 of 2022 whereby and where under, the learned Judicial Magistrate 1st Class-VIII, Ranchi has taken cognizance of the offence punishable under Sections 406 and 420 of the Indian Penal Code.

3. The allegation against the petitioner is that the petitioner being the brother-in-law (*devar*) of the complainant entered into an agreement with JHARCRAFT in respect of 6205 sq. feet of property even though in the mutual petition only 4935 sq. feet was allotted to him.
4. On the basis of the Complaint Case No. 268 of 2020 filed by the complainant being referred to police under Section 156 (3) of Cr.P.C., Chutia P.S. Case No. 53 of 2020 was registered and police took up investigation of the case. After completion of investigation, police submitted final form mentioning that the dispute between the parties is a civil dispute and did not send up the petitioner for trial.
5. The complainant filed Protest-cum-Complaint Case which has been registered as Protest-cum-Complaint Case No. 4281 of 2022 and basing upon the protest-cum-complaint case, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses, the learned Judicial Magistrate 1st Class-VIII, Ranchi has found *prima facie* case and issued summons for the offences punishable under Sections 420 and 406 of Indian Penal Code.
6. Learned Senior Advocate appearing for the petitioner relied upon the judgment of this Court in the case of **Basudev Marandi & Ors. vs. The State of Jharkhand & Anr.** dated 16.06.2023 in Cr.M.P. No. 2130 of 2018, paragraph no.9 and 12 of which reads as under:-

9. *Having heard the submissions made at the Bar and after going through the materials in the record, it is pertinent to mention here that it is a settled principle of law that in order to establish the offence punishable under Section 406 of Indian Penal Code the following ingredients is to be established*

(i) Mens rea

(ii) There must be dishonest misappropriation or conversion to one's own use, or use in violation of a legal direction or of any legal contract

(iii) The accused dishonestly used or disposed of the property

12. *So far as the offence punishable under Section 420 of Indian Penal Code is concerned, the essential ingredients of the said offence is as follows:-*

(i) Deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission,

(ii) Fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived and

(iii) Such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property

as has been held in the case of Mohammed Ibrahim & Ors. vs. State of Bihar & Anr. (supra)

And submits that therein, this Court discussed the ingredients to constitute the offence punishable under Sections 406 and 420 of the Indian Penal Code and further submits that neither the ingredients of the offence punishable under Section 406 of the Indian Penal Code nor the ingredients of the offence punishable under Section 420 of the Indian Penal Code is made out against the petitioner, even if the entire allegations made against the petitioner are considered to be true in its entirety.

7. Learned Senior Advocate appearing for the petitioner next relied upon the judgment of the Hon'ble Supreme Court of India in the

case of **Uma Shankar Gopalika vs. State of Bihar & Anr.** reported in (2005) 10 SCC 336, paragraph no. 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 has been reiterated by the Hon'ble Supreme Court of India that unless the accused person has played deception since the beginning of the transaction between the parties and the intention to cheat has developed later on, the same will not amount to cheating.

8. It is next submitted by the learned Senior Advocate appearing for the petitioner that in this case; as there is no allegation against the petitioner of playing deception since the beginning of the transaction between the parties hence, it is submitted 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.

9. Learned Senior Advocate appearing for the petitioner further relied upon the judgment of the Hon'ble Supreme Court of India in the case of **Arsad Neyaz Khan vs. State of Jharkhand & Anr.** reported in 2025 SCC OnLine SC 2058, wherein, in paragraph no.19, the Hon'ble Supreme Court of India has reiterated the

settled principle of law that for establishing the offence of cheating, the complainant was required to show that the accused had a fraudulent or dishonest intention at the time of making a promise or representation of not fulfilling the agreement for sale and in paragraph no. 20 of the said judgment, the trite law has been reiterated by the Hon'ble Supreme Court of India that every act of breach of trust may not result in a penal offence unless there is evidence of a manipulating act of fraudulent misappropriation of property entrusted to him.

10. It is then submitted by the learned Senior Advocate appearing for the petitioner that the dispute between the parties is a property dispute which is purely a civil dispute and a cloak of criminal case has been given to a purely civil dispute for the purpose of wreaking vengeance. It is next submitted by the learned Senior Advocate appearing for the petitioner that there is no dispute rather it is the admitted case of the complainant as is evident from the legal notice issued by her through her Advocate that the petitioner and his family has got 4935 sq. feet of the front part of the building while the back part of building was in the name of his own brother namely Gopal Modi. Hence, it is submitted that the prayer as prayed for by the petitioner in this criminal miscellaneous petition be allowed.
11. Learned Spl. 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 even if the entire allegations made against the petitioner in the protest-cum-complaint case, statement of the complainant on solemn affirmation and the statement of the inquiry witnesses are considered to be true, then both the offences punishable under Sections 420 and 406 of the Indian Penal Code is made out against the petitioner. 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, as already indicated above in the foregoing paragraphs of the judgment and as has been reiterated by this Court in the case of **Basudev Marandi & Ors. vs. The State of Jharkhand & Anr.** (supra), the essential ingredients to constitute the offence punishable under Section 406 of the Indian Penal Code is that there has to be entrustment of the property to the accused person and consequently there must be dishonest misappropriation or conversion to one's own use of the entrusted property.
13. Now coming to the facts of the case, there is no allegation against the petitioner of any property being entrusted to the petitioner as the word 'entrusted' has been used in Section 405 of the Indian Penal Code, the punishment for which has been provided for in Section 406 of the Indian Penal Code nor there is any allegation of any dishonest misappropriation of any property.

14. In the absence of any essential ingredients to constitute the offence punishable under Section 406 of the Indian Penal Code, 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.
15. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, there is no allegation against the petitioner of deceiving anybody or any person so deceived, being induced by the petitioner to part with any property.
16. In the absence of any essential ingredients to constitute the offence punishable under Section 420 of the Indian Penal Code, 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.
17. As neither the offence punishable under Section 420 of the Indian Penal Code nor the offence punishable under Section 406 of the Indian Penal Code is made out against the petitioner even if the entire allegation made against the petitioner are considered to be true in its entirety, therefore, 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 10.02.2023 passed by the learned Judicial Magistrate 1st

Class-VIII, Ranchi in Protest-cum-Complaint Case No. 4281 of 2022 be quashed and set aside *qua* the petitioner.

18. Accordingly, the entire criminal proceeding including the order dated 10.02.2023 passed by the learned Judicial Magistrate 1st Class-VIII, Ranchi in Protest-cum-Complaint Case No. 4281 of 2022 is quashed and set aside *qua* the petitioner.
19. In the result, this criminal miscellaneous petition is allowed.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 8th July, 2026
AFR/Gunjan/-

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