

(2024) 12 JH CK 0081

Jharkhand High Court

Case No: Cr.M.P. No.3213 Of 2024

Ranjan Khalkho

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Dec. 18, 2024

Acts Referred:

- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 528
- Indian Penal Code, 1860 - Section 34, 405, 406, 415, 420, 467, 468, 471

Hon'ble Judges: Anil Kumar Choudhary, J

Bench: Single Bench

Advocate: Suraj Kishore Prasad, Priya Shrestha, Chandrajit Mukherjee

Final Decision: Allowed

Judgement

Anil Kumar Choudhary, J

1. Heard the parties.Â Â Â

2. This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bhartiya Nagarik Suraksha

Sanhita, 2023 with a prayer to quash the entire criminal proceedings including the First Information Report in connection with Argora P.S. Case

No.260 of 2022 registered for the offences punishable under Sections 406, 420, 467, 468, 471/34 of the Indian Penal Code; and the said case in now

pending in the court of learned Judicial Magistrate-1st Class-XIII at Ranchi.

3. The allegation against the petitioner is that the petitioner along with the co-accused persons showed one land to be sold to the informant and took

Rs.32,00,000/- as advance out of the total consideration amount of Rs.54,00,000/- but later on it was found that the land does not belong to the

petitioner and on the basis of the written report filed by the informant, police registered Argora P.S. Case No.260 of 2022 and the learned counsel for

the petitioner submits that investigation of the case is going on at present and charge-sheet has not yet been submitted.

4. Learned counsel for the petitioner draws attention of this Court to the agreement enclosed with the written report, the copy of the certified copy of

which has been kept at page Nos.22 to 27 and submits that in running page No.25, it has categorically been mentioned in the said agreement itself that

the land in respect of which the said agreement for sale was made, was in the name of Mihir Samad on the date of such agreement and the informant,

has entered into an agreement with petitioner knowing the fact that the petitioner is not the owner of the land but the petitioner has only entered into

an agreement with Mihir Samad- the owner of the land.

5. Learned counsel for the petitioner next submits that there is no allegation of impersonation against the petitioner nor is there any allegation of

dishonest misappropriation of any money by the petitioner. It is next submitted that since the informant admittedly was aware that the land was in the

name of Mihir Samad at the time of entering into the said agreement for sale; so, the allegation made in the First Information Report that the land does

not stand recorded in the name of the petitioner; cannot be termed as a forgery.

6. Learned counsel for the petitioner relies upon the judgment of this Court in the case of Sudhir Prasad Verma & Others vs. State of Jharkhand

reported in 2024 SCC OnLine Jhar 2357 wherein this Court reiterated that it is a settled principle of law that every breach of contract would not give

rise to an offence of cheating unless there was any deception played at the very inception. If the intention to cheat develops later on, the same cannot

amount to cheating as has been held by the Hon^{ble} Supreme court of India in the case of Uma Shankar Gopalika vs. State of Bihar 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) and in that case, this Court also reiterated the settled principle of law 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 persons; it must also be shown that the accused persons dishonestly disposed of the same in some way or dishonestly retained the same; as has been observed by 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)”

7. In this respect, the learned counsel for the petitioner also relies upon another judgment of this Court in the case of Shiv Prasad Kerketta vs. State of Jharkhand passed in Cr.M.P. No.1337 of 2023 dated 13.05.2024 wherein this Court also reiterated the settled principle of law regarding the ingredients of the offence punishable under Section 420 of the Indian Penal Code as has been observed by the Hon^{ble} Supreme Court of India in the case of A.M. Mohan vs. The State Represented by SHO & Another reported in 2024 INSC 233, paragraph-13 of which reads as under:-

13. It could thus be seen that for attracting the provision of Section 420 of IPC, the FIR/complaint must show that the ingredients of Section 415 of IPC are made out and the person cheated must have been dishonestly induced to deliver the property to any person; or to make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. In other words, for attracting the provisions of Section 420 of IPC, it must be shown that the FIR/complaint discloses:

- (i) the deception of any person;
- (ii) fraudulently or dishonestly inducing that person to deliver any property to any person; and
- (iii) dishonest intention of the accused at the time of making the inducement.

8. Learned counsel for the petitioner further submits that the petitioner has deposited Rs.12,00,000/- (in shape of two demand drafts of Rs.6,00,000/- each) drawn in favour of the informant of the case in the trial court in terms of the order dated 06.10.2023 passed in A.B.A. No.7772 of 2023, the receipt of which is acknowledged by the learned counsel for the informant.

9. It is next submitted that even if the allegations made against the petitioner are considered to be true in their entirety, still none of the offences for which the F.I.R. has been registered, is made out against the petitioner. Hence, it is submitted that the prayer of the petitioner as prayed for in the instant Cr.M.P., be quashed and set aside.

10. Learned Spl.P.P. appearing for the State and the learned counsel for the informant on the other hand vehemently oppose the prayer of the petitioner and submit that the allegation made in the F.I.R. is sufficient to constitute all the offences for which the F.I.R. has been registered. It is next submitted that at this nascent stage, the prayer for quashing the entire criminal proceeding including the First Information Report in connection with Argora P.S. Case No.260 of 2022 for the offence punishable under Sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code ought not be allowed.

11. 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 no allegation in the F.I.R. of any false document having been created by anybody.

12. Perusal of the record reveals that in running page-25 which is the part of the agreement entered into between the informant and the petitioner, it

has been categorically mentioned therein that the land is in the name of Mihir Samad so contending in the written report by the informant that the

informant was not aware that the land was not in the name of petitioner at the time of entering into the agreement with him; is needless to mention,

prima facie appears to be a false statement. There is no allegation of dishonest misappropriation of any money by the petitioner. There is also no

allegation against the petitioner of playing deception since the beginning of the transaction between the parties.

13. Under such circumstances, this Court is of the considered view that even if the entire allegations made against the petitioner in the F.I.R. are

considered to be true in their entirety, still none of the offences punishable under Sections 406, 420, 467, 468, 471, 34 of the Indian Penal Code is made

out against the petitioner. Hence, continuation of this criminal proceeding against the petitioner will amount to abuse of process of law. Therefore, this

is a fit case where the entire criminal proceeding including the First Information Report in connection with Argora P.S. Case No.260 of 2022

registered for the offences punishable under Sections 406, 420, 467, 468, 471/34 of the Indian Penal Code, be quashed and set aside.

14. Accordingly, the entire criminal proceeding including the First Information Report in connection with Argora P.S. Case No.260 of 2022, is quashed

and set aside qua the petitioner only.

15. In the result, this Cr.M.P. stands allowed.