

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.733 of 2025**

Bimlendu Shekhar Jha, aged about 64 years, Son of Late Shiva Shekhar Dwary, resident of Vill- Narayanpur, P.O. & P.S.-Jasidih, Dist.-Deoghar. ... Petitioner

Versus

1. The State of Jharkhand
2. Nand Lal Baliyase, S/o-Sri Damodar Baliyase, R/o Bilasi Town Deoghar, P.O.-T. Bilasi, P.S. Deoghar, District-Deoghar. ... Opposite Parties

For the Petitioner : Mr. Pran Pranay, Advocate.
For the State : Mr. Bhola Nath Ojha, Spl.P.P.
For the O.P. No.2 : Mr. Bajrang Kumar, Advocate.

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:-

I.A. No. 9478 of 2026

Heard the parties.

Learned counsel for the petitioner submits that instant interlocutory application has been filed for early hearing.

Since the hearing of this Cr.M.P. is taken up today, hence, this interlocutory application is disposed of being infructuous.

(Anil Kumar Choudhary, J.)

Cr.M.P. No.733 of 2025

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 the entire criminal proceedings including the order dated 31.12.2023 passed by learned S.D.J.M., Deoghar in connection with

Complaint Case No. 832 of 2021 whereby and whereunder the learned S.D.J.M., Deoghar has found *prima facie* case for the offences punishable under Sections 406 and 420/34 of the I.P.C. against the petitioner.

3. It is submitted by the learned counsel for the petitioner that the petitioner has taken loan from the Deoghar Zila (Shahri Kshetra) Rastriyakrit Bank Karmchari Bachat Evam Sakh Swavlambi Sahkari Samiti Ltd., Deoghar. While working with Bank of India, Deoghar Branch, he availed loan of Rs.9,30,000/- and has repaid Rs. 7,50,000/- of the said loan amount and the rate of interest was 10.5% but a sum of Rs. 4,85,000/- is still due and payable by the petitioner, which the petitioner is not repaying. On the basis of complaint filed by the Secretary of the said Cooperative Society and the statement of the complainant on solemn affirmation as well as the statement of the inquiry witnesses, the learned S.D.J.M., Deoghar found *prima facie* case; as already indicated above. It is submitted by the learned counsel for the petitioner relying upon the judgment of the Hon'ble Supreme Court of India in the case of Umashankar Gopalika versus State of Bihar reported in (2005) 10 SCC 336 para 06 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)"

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.

4. It is next submitted that in the absence of any allegation against the petitioner of playing deception since the very beginning of the transaction between the parties, the offence punishable under Section 420 of the I.P.C. is not made out.

5. Learned counsel for the petitioner next relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Binod Kumar and Others versus State of Bihar and Another** reported in (2014) 10 SCC 663 para 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)

And submits that therein it has been reiterated by the Hon'ble Supreme Court of India that in order 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.

6. It is submitted by the learned counsel for the petitioner that there is no allegation against the petitioner of dishonest misappropriation of the entrusted property and in the absence of the same, the offence punishable under Section 406 of the I.P.C. is not made out.

7. Lastly, learned counsel for the petitioner relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Indian Oil Corporation versus NEPC India Ltd and Others** reported in (2006) 6 SCC 736 and submits that therein the Hon'ble Supreme Court of India has observed in Para-14 that one step that can be taken by the Court to curb unnecessary prosecutions and harassment of innocent party, is to exercise their power under Section 250 of Cr.P.C. more frequently where they discern malice or frivolousness or ulterior motives on the part of the complainant.

8. It is next submitted that the petitioner has cleared all the dues of the loan amount. Hence, no offence is made out against the petitioner. Therefore, it is submitted that the prayer as prayed for in this Cr.M.P. be allowed.

9. The learned Spl.P.P. as well as learned counsel for the opposite party no.2 vehemently oppose the prayer and submits that the averments made in the complaint, the statement on of the complainant on solemn affirmation and the statement of inquiry witnesses are sufficient to

constitute both the offences punishable under Sections 420 and 406 of the I.P.C. Hence it is submitted that no illegality has been committed by the learned S.D.J.M. Deoghar in finding *prima facie* case in respect of the said offences. Therefore, this Cr.M.P. being without any merit, be dismissed.

10. Having heard the submissions made at the Bar and after carefully going through the materials available in the record, it is pertinent to mention here that it is a settled principle of law 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 nos.11 and 13 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.

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."

Wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law that mere inability of the accused person 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 and that a mere breach of promise, agreement or contract does not, *ipso facto*, constitute the offence of criminal breach of trust; as contained in Section 405 of Indian Penal Code without there being the clear case of entrustment.

11. Now coming to the facts of the case, the only allegation against the petitioner is that the petitioner availed a loan, paid some amount and some amount is due and payable, it is claimed by the complainant. It is needless to mention that the person taking loan cannot be said to have been entrusted with the loan amount as the word "entrusted" has been used in section 405 of the Indian Penal Code; because the person taking loan is free to use the amount taken by him as per as his sweet will unlike the case of entrustment, where the person entrusted with the property cannot deal with the entrusted property without the approval of the person entrusting the property. There is no allegation against the petitioner that the petitioner played deception since the beginning of the transaction between the parties, there is no allegation that there is any dishonest misappropriation of any entrusted property. In the absence of

such allegation, 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 neither of the offences punishable under Sections 406 nor the offence punishable under Section 420 of the I.P.C. is made out. Therefore, this Court has no hesitation in holding that the continuation criminal proceedings against the petitioner will amount to abuse of process of law. Therefore, this is a fit case where the entire criminal proceedings including the order dated 31.12.2023 passed by learned S.D.J.M., Deoghar in connection with Complaint Case No. 832 of 2021, be quashed and set aside against the petitioner named above.

12. Accordingly, the entire criminal proceedings including the order dated 31.12.2023 passed by learned S.D.J.M., Deoghar in connection with Complaint Case No. 832 of 2021, is quashed and set aside against the petitioner named above.

13. In the result, this Cr.M.P. is **allowed**.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 28th of July, 2026
AFR/ Amar

Uploaded on -03/08/2026