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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.2802 of 2025
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1. Nimisha Sinha, aged about 38 years, wife of Vikas Prakash Sinha, Resident of- Vinay Vihar Colony, Dhaya, Dhanbad, P.O.- I.S.M., P.S.- Dhanbad, Sadar, District- Dhanbad

2. Binay Kumar Sinha, aged about 62, Son of Rajendra Prasad, Resident of- Shri Ram Vatika, Sita 501, P.O. & P.S.- C.M.R.I., Dhanbad … Petitioners

Versus

1. The State of Jharkhand

2. The State Bank of India, through Keneth Martin William, fathers name not known to the petitioner, at present working as Branch Manager, Branch- Baseria, P.O. & P.S.- Gondudih, District- Dhanbad

… Opposite Parties

For the Petitioners : Mr. Pratik Sen, Advocate
Ms. Sweta Kumari, Advocate
For the State : Mr. Baibhaw Gahlaut, AC to Sr. AAG
For the O.P. No.2 : Mr. Rajesh Kumar, Advocate

P R E S E N T

HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

By the Court:- **I.A. No.12760 of 2026**

Heard the parties.

Learned counsel for the petitioners submits that this interlocutory application has been filed for early hearing of this Cr.M.P.

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

(Anil Kumar Choudhary, J.)

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Cr.M.P. No.2802 of 2025

This Criminal Miscellaneous Petition has been filed invoking the jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the prayer to quash the First Information Report as well as the entire criminal proceeding in connection with Kenduwadih P.S. Case No.59 of 2013 corresponding to G.R. Case No.1373 of 2013 registered for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code and also the order dated 26.06.2025 passed by the learned A.C.J.M., Dhanbad in connection with the said case whereby and where under cognizance has been taken for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code *inter alia* against the petitioners.

2. The allegation against the petitioners is that the petitioners availed a Cash Credit Facility from the State Bank of India but later on the said Cash Credit Facility became irregular as the hypothecated stocks of the shop of the petitioners along with the co-accused persons were found missing from the place where the hypothecated property were supposed to be there alleging that the petitioners have sold the hypothecated property which were entrusted to them and committed criminal breach of trust and cheating.

3. On the basis of the written report submitted by the Branch Manager of the State Bank of India, police registered Kenduwadih P.S. Case No.59 of 2013 and took up the investigation of the case and after investigation of the case, police submitted charge-sheet. Cognizance of

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the offence was also taken and the next date for the case is fixed to 25.11.2026 for appearance of the accused persons of the case.

4. Learned counsel for the petitioners relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta** reported in **(1996) 5 SCC 591** and submits that in para-27 of the said judgment, it has been held by the Hon'ble Supreme Court of India that when some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In the facts of that case as floating charge was made on the ground by way of security to cover up credit facility. Hence, for disposing of the goods covering the security against credit facility the offence of criminal breach of trust is not committed.

5. Learned counsel for the petitioners next relies upon the judgment of 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.** Xxxxx 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*

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> *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 cannot amount to cheating.

6. Learned counsel for the petitioners submits that in this case at the time of taking the loan, there is no allegation of any deception played by the petitioners, hence, the offence of cheating is not made out against the petitioners.

7. Learned counsel for the petitioners further relies upon the judgment of the Hon'ble Supreme Court of India in the case of **Arshad Neyaz Khan vs. State of Jharkhand & Another** reported in **2025 SCC OnLine SC 2058** wherein the Hon'ble Supreme Court of India has reiterated the settled principle of law as has been observed by it in the case of **Delhi Race Club (1940) Limited & Others vs. State of Uttar Pradesh & Another** reported in **(2024) 10 SCC 690** wherein it has been observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception.

8. Learned counsel for the petitioners next relies 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:-

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> *"**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 the Hon'ble Supreme Court of India has 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 person but it must also be shown that the accused person dishonestly disposed of the same in some way or dishonestly retained the same.

9. It is next submitted that in view of the settled principle of law even if the entire allegations made against the petitioners are considered to be true in their entirety still none of the offences in respect of which criminal proceeding is going on against them, is made against them. Hence, it is submitted that the prayer, as prayed for by the petitioners in the instant Cr.M.P., be allowed.

10. Learned counsel appearing for the State and the learned counsel appearing for the opposite party No.2 on the other hand vehemently oppose the prayer of the petitioners made in the instant Cr.M.P. and submit that if the allegations made against the petitioners are

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considered to be true in their entirety then all the offences in respect of which charge-sheet has been submitted against them, is in fact, made out against them, hence, at this nascent stage the entire criminal prosecution ought not be quashed as prayed for by the petitioners.

11. Having heard the rival submissions made at the Bar and after carefully going through the materials available in the record, in view of the settled principle of law settled by the Hon'ble Supreme Court of India in the case of **Central Bureau of Investigation, SPE, SIU(X), New Delhi vs. Duncans Agro Industries Ltd., Calcutta (supra)**, this Court has no hesitation in holding that the hypothecated property to the Bank is not the property entrusted by the Bank to the borrower of the Bank. In the absence of any essential ingredient of the property being entrusted to the accused persons by victim, in the considered opinion of this Court, even if the entire allegations made against the petitioners are considered to be true still the offence punishable under Section 406 of the Indian Penal Code is not made out against the petitioners.

12. So far as the offence punishable under Section 420 of the Indian Penal Code is concerned, as has been reiterated by the Hon'ble Supreme Court of India in the case of **Binod Kumar & Others vs. State of Bihar & Another (supra)** that in order to constitute the offence of cheating, the accused must play deception since the beginning of the transaction between the parties.

13. Now, coming to the facts of the case; the undisputed fact remains that the Cash Credit Facility was granted to the establishment of the petitioners long before institution of the case. There is no allegation that

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the petitioners played any fraud at the time of availing the loan amount upon the informant. Under such circumstances, in the absence of the essential ingredient that the accused must play deception since the very inception of the transaction between the parties, this Court is of the considered view that even if the entire allegations made against the petitioners are considered to be true still the offence punishable under Section 420 of the Indian Penal Code is not made out against the petitioners even with the aid of Section 34 of the Indian Penal Code.

14. Under such circumstances, this Court is of the considered view that as none of the offences in respect of which cognizance has been taken by the learned Magistrate, is in fact, being made out against the petitioners, hence, continuation of this criminal proceeding against the petitioners will amount to abuse of process of law.

15. Accordingly, the First Information Report as well as the entire criminal proceeding in connection with Kenduwadih P.S. Case No.59 of 2013 corresponding to G.R. Case No.1373 of 2013 and also the order dated 26.06.2025 passed by the learned A.C.J.M., Dhanbad in connection with the said case, are quashed and set aside *qua* the petitioners named above.

16. In the result, this Cr.M.P. stands allowed to the aforesaid extent.

17. In view of disposal of the instant Cr.M.P., I.A. No.14158 of 2026 stands disposed of being infructuous.

(Anil Kumar Choudhary, J.)

High Court of Jharkhand, Ranchi
Dated the 18th of November, 2026
AFR/ Animesh
Uploaded on- 19/11/2026