

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**Cr.M.P. No. 592 of 2013**

1. Adhunik Power and Natural Resources Limited through its Authorized Signatory Manu Rastogi, District- Seraikella-Kharsawan
2. Shri Sachin Agarwal, working for gain as Director, M/s Adhunik Power and Natural Resources Limited, District- Seraikella-Kharsawan
3. Shri Arun Kumar, working for gain as General Manager, M/s Adhunik Power and Natural Resources Limited, District- Seraikella-Kharsawan
4. Shri Manik Mishra, working for gain, M/s Adhunik Power and Natural Resources Limited, District- Seraikella-Kharsawan
5. Shri Manu Rastogi, working for gain as AVP (H.R., P & A), M/s Adhunik Power and Natural Resources Limited, District- Seraikella-Kharsawan
6. Shri Sanjay Srivastava @ Sanjay Kr.Srivastava, working for gain as DGM (HR, I & R), M/s Adhunik Power and Natural Resources Limited, District- Seraikella-Kharsawan

... **Petitioners**

**-Versus-**

1. The State of Jharkhand
2. Rajeev Mishra

... **Opposite Parties**

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**CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioners	:	Mr. Indrajit Sinha, Advocate Mr. Kumar Vimal, Advocate Mr. Ajay Kumar Sah, Advocate
For the State	:	Mr. Fahad Allam, A.P.P.
For O.P. No.2	:	Ms. Amrita Sinha, Advocate

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14/05.09.2023      Heard Mr. Indrajit Sinha, learned counsel for the petitioners, Mr. Fahad Allam, learned counsel for the State and Ms. Amrita Sinha, learned counsel for opposite party no.2.

2. This petition has been filed for quashing the entire criminal proceedings including the order dated 28.01.2013, whereby, the petition has been sent under Section 156(3) Cr.P.C. for lodging the FIR in connection with Kandra P.S. Case No.07 of 2013 arising out of P.C. Case No.19 of 2013, corresponding to G.R. No.136 of 2013, pending in the court of the learned Sub Divisional Judicial Magistrate at Seraikella. Initially FIR and order dated 28.01.2013 were under challenge in this petition and subsequently, I.A. No.180 of 2023, which has been filed for amendment in the prayer portion

as during the pendency of the petition, the cognizance has been taken vide order dated 22.09.2021, has been allowed by this Court vide order dated 03.04.2023. Thus, the order taking cognizance dated 22.09.2021 is also under challenge in this petition.

3. The complaint has been filed by opposite party no.2 alleging therein that he is absolute owner of land situated at Khata No.24, Plot No.93/310, Circle Gamharia, District Seraikella-Kharsawan area 0.455 acres. The accused nos. 1 and 3 approached the complainant for purchase of the said land and induced him to part with the said property for valuable consideration of Rs.15 Lakhs with a further assurance that a suitable service/job for complainant will also be provided with monthly salary of Rs.40,000/-. It has been further alleged that subsequently accused nos. 2 to 5 have reduced the sales consideration to Rs.10 Lakhs and asked the complainant to furnish his bio-data which the complainant has complied. It has also been alleged that the later on again accused nos. 2 to 6 approached the complainant and informed that consideration amount will now be reduced to Rs.9 Lakhs, but the complainant will be provided with a job of Senior Executive with a salary of Rs.40,000/- per month. The complainant has accepted the said terms and accordingly the accused persons have also issued a letter of assurance in favour of the complainant. The complainant has further alleged that despite the land was registered and transferred in favour of the company, the accused persons subsequently refuted from their stand and has also misappropriated building materials, chair, almirah and other household articles of the complainant having worth of Rs.1,40,000/-. The complainant has lastly alleged that though the series of correspondences were made between them but till date the accused

persons have failed to comply their promise and the service which was assured to the complainant has also not been provided to him. Upon filing of the complaint on 21.01.2013, the learned Sub Divisional Judicial Magistrate, Seraikella vide its order dated 28.01.2013 sent the complaint petition to the Kandra Police Station under Section 156(3) Cr.P.C. for lodging the FIR. Thereafter, Kandra P.S. Case No.7 of 2013 was registered for the alleged offence under Sections 406, 420, 379 and 120B of the Indian Penal Code.

4. Mr. Indrajit Sinha, learned counsel for the petitioners submits that the petitioner no.1 is the Company and other petitioners are employees of the said Company. He further submits that in the complaint, the allegations are made that in terms of the agreement for sale of land, opposite party no.2 has not been offered job. He submits that however the land in question was transferred in favour of the Company by way of paying the sum of Rs.9 Lakhs in favour of the complainant-opposite party no.2. He also submits that the Company has already provided him the job at Kolkata, however, opposite party no.2 has not accepted the same, thereafter, he has filed the present complaint case. He further submits that in view of the order passed by this Court dated 15.05.2023, the Company has again re-examined the contention of the complainant and offered him job of Senior Officer Grade-04, Department- Fly Ash with Annual CTC of Rs.2,64,000/- at Adhunik Power and Natural Resources Limited, posted at Padampur Plant, which is at Kandra itself. He submits that in spite of the opportunity provided by this Court and offer of appointment provided to opposite party no2, he has not accepted the same and unnecessarily he has filed the complaint case. He further submits that if any case is there i.e. civil in nature and for that

criminal case has been filed.

5. Ms. Amrita Sinha, learned counsel for opposite party no.2 submits that in the complaint itself, the letter of assurance is annexed, wherein, the terms and conditions are disclosed and one of the terms and conditions was to provide employment to the opposite party no.2. She further submits that unnecessarily, opposite party no.2 is being harassed and the land in question has already been transferred in favour of the Company and opposite party no.2 has not been provided employment. She also submits that the case of criminality is made out and this Court may not interfere at this stage. She further submits that when *mens rea* is there, criminal case and civil case both can go simultaneously. She submits that job provided to opposite party no.2 is a low grade employment.

6. Mr. Fahad Allam, learned counsel for the State submits that the learned court has taken cognizance pursuant to the charge-sheet submitted by the police.

7. In view of the above submissions of the learned counsel for the parties, the Court has gone through the contents of the complaint case as well as annexures of the said complaint and also the order taking cognizance and finds that in the complaint itself in paragraph 11, it has been disclosed that accused no.6 offered service to the complainant at Kolkata and the reply was sent by the complainant that he was not desirous to join in service at Kolkata, as per the previous undertaking given by the accused persons and he wants to live within the District- Seraikella-Kharsawan due to his mother's illness. Seeing the nature of dispute, this Court vide order dated 15.05.2023 asked the learned counsel for the petitioners as well as learned counsel for opposite party no.2 to settle the

matter and pursuant to that the Company has now offered job to the complainant in the District- Seraikella-Kharsawan on the post of Senior Officer Grade-04, Department- Fly Ash with Annual CTC of Rs.2,64,000/- at Adhunik Power and Natural Resources Limited, posted at Padampur Plant and in spite of that the opposite party no.2-complainant is not ready to accept the same. Further, the letter of assurance on the record speaks that the Company is agreed to provide one number of permanent job from 1<sup>st</sup> September, 2011 to the 2<sup>nd</sup> party as per the qualification of the candidate. This employment will be based on progress and requirement of the project. Looking into the said terms and conditions, it appears that the appointment was subject to requirement of the project. In the case in hand, initially itself, the Company has provided employment to the complainant at Kolkata, but he has refused to accept the same. On the intervention of this Court, the appointment has been again offered to the complainant by the company, as has been discussed hereinabove, which suggests that opposite party no.2 is unnecessarily dragging this matter and if any case is made out against the petitioners i.e. civil in nature. Mere breach of contract and in every cases, criminality cannot be fastened upon the accused persons. A reference may be made to the judgment passed by the Hon'ble Supreme Court in ***M N G Bharateesh Reddy v. Ramesh Ranganathan and another; (2022 SCC OnLine SC 1061)***. Paragraph 16 of the said judgment reads as under:

*"16. In Hridaya Ranjan Prasad Verma v. State of Bihar, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:*

*"14. On a reading of the section it is manifest that in the definition there are set forth two separate classes*

*of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.*

*15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. **Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.***

*(emphasis supplied)"*

8. In view of the above facts, reasons and analysis, the Court finds that the company has already offered employment and has fulfilled part of the terms and conditions, however, opposite party no.2 is not accepting the same. In that view of the matter, the Court finds that to allow to continue the criminal proceedings will amount to abuse of process of law. Accordingly, the entire criminal proceedings including the order dated 28.01.2013 as well as the order taking cognizance dated 22.09.2021, passed in connection with Kandra P.S. Case No.07 of 2013 arising out of P.C. Case No.19 of 2013, corresponding to G.R. No.136 of 2013, pending in the court of the learned Sub Divisional Judicial Magistrate at Seraikella are quashed.

9. It is open to opposite party no.2 to accept the said offer of appointment.

10. This petition is, therefore, allowed and disposed of.

11. Interim order, if any granted by this Court, stands vacated.

**(Sanjay Kumar Dwivedi, J.)**

*Ajay/ A.F.R.*