

**(2020) 01 JH CK 0194**

**In the Jharkhand High Court**

**Case No :** Criminal Miscellaneous Petitions No. 2284 Of 2017

Umang Kejriwal And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

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**Date of Decision :** 15-01-2020

**Acts Referred:**

Indian Penal Code, 1860 — Section 406, 418, 420  
Code Of Criminal Procedure, 1973 — Section 482

**Citation :** (2020) 01 JH CK 0194

**Hon'ble Judges :** Anubha Rawat Choudhary, J

**Bench :** Single Bench

**Advocate :** Bibhash Sinha, Vipul Divya, Kaushik Sarkhel

**Final Decision :** Dismissed

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## **Judgement**

1. Heard Mr. Bibhash Sinha, learned counsel appearing on behalf of the petitioner.
2. Heard Mr. Kaushik Sarkhel, learned counsel appearing on behalf of the opposite party no. 2.
3. Heard Mrs. Vipul Divya, learned counsel appearing on behalf of the State.
4. This petition has been filed for quashing the entire criminal proceeding initiated against the petitioners in connection with C/1 Case No. 3172 of 2015 including the order taking cognizance dated 08.05.2017 passed by the learned Chief Judicial Magistrate, Jamshedpur, in C/1 3172 of 2015, whereby cognizance for offence under Section 418 of the Indian Penal Code is taken against the petitioners.
5. The order taking cognizance is dated 08.05.2017 and from perusal of the same it appears that cognizance has been taken against the company namely M/s. Electrosteel Ltd. as well as the present petitioners.

## Argument of the petitioners

6. Learned counsel for the petitioners while referring to the complaint petition as well as the examination of the enquiry witnesses submits that no

criminal case is made out against any of the petitioners. Learned counsel while referring to the complaint petition submits that it is specific case of the

complainant that representative of the accused company had visited the office of the complainant company and induced the complainant to transport

Iron Ore-Pellets from Kandra, Tata Nagar Works, Orissa Manganese and Materials Ltd. to the works of the accused persons, at the rate of 600 per

M.T. for which work order dated 09.10.2014 was also issued. He submits that the work order is on record and terms and conditions of the work order

also has arbitration clause. Learned counsel further submits that as per the complaint petition several bills were issued to the accused company which

were paid, but certain bills which were mentioned in the complaint petition were not paid without any rhyme and reason and it is alleged that the same

were deliberately withheld by the accused persons (petitioners and the accused company) with an oblique motive with dishonest intention to sustain

wrongful loss to the complainant company. It is also alleged in the complaint petition that the representative of the complainant company had

repeatedly met the present petitioners but the petitioners flatly refused to pay the aforesaid amount and the accused no. 4 (present petitioner No. 2)

had threatened the representative of the complainant not to raise this issue any more otherwise the directors of the complainant company will face dire

consequences.

7. The learned counsel submits that the complaint was filed under Sections 406/420/504 of the Indian Penal Code and the learned court below had

taken cognizance under Section 418 of the Indian Penal Code.

8. The learned counsel for the petitioners submits that from perusal of the entire complaint petition and evidence of enquiry witnesses it appears that

the entire case arises out of civil dispute between the two companies and the basic ingredients of offence under Section 418 of the Indian Penal Code

is totally missing. He further submits that admittedly none of the petitioners had approached the complainant company at the stage of issuance of work

order, rather it is mentioned in the complaint petition itself that some representative of the accused company had visited.

9. Learned counsel further submits that the entire dispute between the complainant company and the accused company arises out of commercial

transaction and it is purely civil dispute between the complainant company and the accused company. He has relied upon a judgment passed by the

Honâ??ble Supreme Court reported in (2008) 5 SCC 662 (S.K. Alagh vs. State of Uttar Pradesh and Others) as well as (2019) 2 SCC 401 (Vinod

Natesan vs. State of Kerala and Others) to submit that when the dispute is essentially a civil dispute, the same does not disclose any commission of

offence.

10. Without prejudice to the aforesaid submission it is submitted that so far as the petitioners are concerned they have been made accused only

because of the reason that the petitioner no. 1 happens to be the Director of the accused company, petitioner no. 2 happens to be the Vice President

of the accused company, petitioner no. 3 happens to be the Chief Operating Officer of the accused company. Learned counsel further submits that

the present petitioners have been made accused vicariously for the alleged offence by the accused company, and there is no overt act alleged against

the present petitioners in connection with the alleged offence under Section 418 of the Indian Penal Code.

11. Learned counsel for the petitioners has relied upon the judgment passed by the Honâ??ble Supreme Court reported in (2002) 1 SCC 241 (S.W.

Palanitkar and Others vs. State of Bihar and Others) and has referred to paragraph 21 of the judgment to submit that the facts of the present case are

almost similar to that of the case which was before the Honâ??ble Supreme Court. Learned counsel submits that in the similar circumstance, the

Honâ??ble Supreme Court has been pleased to quash the entire criminal proceedings against all the accused except the company and the persons

who had visited the complainant company at the time of entering into the agreement. Admittedly, in the instant case, none of the petitioners had visited

the complainant company for the purposes of entering into the agreement. He has also referred to paragraph 8, 11 and 28 of the said judgment.

**Argument of the Opposite Parties**

12. Learned counsel appearing on behalf of the opposite party no. 2 does not dispute the fact that as per the complaint petition and the evidences of

the enquiry witnesses led before the learned court below it is not alleged that

any of the petitioners had approached the complainant company at the time of entering into the contract. Further it is not in dispute that out of the work order some bills were already paid as has been mentioned in the complaint petition itself. Learned counsel for the opposite party has submitted that the representative of the complainant company had approached the petitioners for the purposes of payment of the pending bills but in spite of repeated approach the petitioners did not pay the pending three bills and they had flatly refused to pay the same. Learned counsel further submits that the present case is only at the stage of cognizance and it is certainly open to the petitioners to take these points at appropriate stage before the learned court below.

13. Upon this counsel for the petitioner submits that ex-facie no criminal case is made out against the petitioner. Accordingly, no useful purpose will be served by asking the petitioners to face trial and the present criminal proceeding against the petitioners is an abuse of the process of law calling for interference under Section 482 of the Code of Criminal Procedure.

#### Findings of the Court

14. After hearing counsel for the parties and after considering the facts and circumstances of this case this court finds that admittedly in the present case the complainant company has filed the case against the accused company and the co-accused petitioners are the Directors/Vice President Commercial/ Corporate Chief Operating Officer of the accused company. Admittedly none of the present petitioners had approached the complainant company for the purposes of entering into the contract. The entire dispute arises out of work undertaken pursuant to the work order. Admittedly some of the bills were paid but certain bills were not paid. This court also finds that essentially the dispute is a civil dispute between the complainant company and the accused company arising out of the contract between the two companies as some of the bills remained unpaid and it is alleged that the petitioners refused to pay the pending bills. There is no element of any dishonest intention attributable to any of the petitioners at the stage of entering into the contract as the petitioners were not alleged to have approached the complainant company to enter into any contract with the accused company.

15. Section 418 of the Indian Penal Code reads as follows:-

418. Cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect- Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.â??

16. Upon perusal of the complaint petition and the evidences of the enquiry witnesses led before the learned court below, this court finds that no criminal case is made out against the petitioners much less any offence u/s 418 of IPC as the basic element for constituting an offence under Section 418 as against the petitioners is missing as admittedly the petitioners were nowhere in picture at the time of alleged inducement for entering into contract between the accused company and complainant company and the dispute between the companies cropped up later. This court further finds that the dispute involved in the present case is apparently a civil dispute arising out of contract between the accused company and complainant company. In such circumstances continuation of criminal proceedings as against the petitioners would be an abuse of process of law.

17. Therefore the entire criminal proceeding as against the petitioners in connection with C/1 Case No. 3172 of 2015 is fit to be set aside in exercise of powers under Section 482 of the Cr. P.C. Accordingly, the entire criminal proceeding arising out of C/1 Case No. 3172 of 2015 including the order taking cognizance dated 08.05.2017 passed by the learned Chief Judicial Magistrate, Jamshedpur, against the present petitioners is hereby quashed and set aside.

18. Pending I.A., if any, stands dismissed as not pressed.

19. Let this order be communicated to the court concerned through FAX.