

**The Court of JM 1<sup>st</sup> Class, Ramgarh****Present: Smriti Tripathi****Judicial Magistrate****09<sup>th</sup> February, 2023****District: Ramgarh****Split G.R. Case No. 4014/13A****CNR No. JHRG030006172013****Mandu(WB) PS Case No. 423/2013**

Informant	State (Through Valmiki Singh, S.I.)
Represented By	Smt. Manju Kachchap, Id. APP
Accused	1. Sanju Sao s/o Raghunath Sao, male, aged about 40 years, r/o Atna, PS Mandu, District Ramgarh [A1] 2. Dipak Sao s/o late Jairam Sao, male, aged about 42 years, r/o Chainpur, PS Mandu, District Ramgarh [A2] 3. Dinesh Mahto s/o Parmeshwar Mehta, male, aged about 47 years, r/o Arakanta, PS Mandu, District Ramgarh [A3] 4. Chhedi Mahto @ Prabhudayal Mahto s/o late Gudan Mahto, male, aged about 51 years [A4] 5. Md. Rijwan Khan s/o late Mahmud Khan, male, aged about 56 years, r/o Bhadwa, PS Mandu, District Ramgarh [A5]
Represented By	Sri Abhishek Kumar, Id. Advocate

Date(s) of Offence	10.11.2013
Date of FIR	11.11.2013
Date of Chargesheet	13.07.2015
Date of framing of charge	30.11.2018
Date of Commencement of evidence	04.01.2019
Date when Judgment is reserved	08.02.2023
Date of Judgment	09.02.2023
Date of Sentencing Order, if any	N/A

Rank of the Accused	Name of the Accused	Date of Arrest/Surrender	Date of Release on Bail	Offences charged with	Whether acquitted or convicted	Sentence Imposed	Period of detention undergone during trial for purpose of s. 428, CrPC
A1	Sanju Sao	07.04.2015	07.04.2015	s. 406 & 420, IPC	Acquitted	None	N/A
A2	Dipak Sao	07.04.2015	07.04.2015	s. 406 & 420, IPC	Acquitted	None	N/A
A3	Dinesh Mahto	28.04.2015	28.04.2015	s. 406 & 420, IPC	Acquitted	None	N/A
A4	Chhedi	15.04.2015	15.04.2015	s. 406 &	Acquitted	None	N/A

	Mahto @ Prabhudayal Mahto			420, IPC			
A5	Md. Rijwan Khan	07.04.2015	07.04.2015	s. 406 & 420, IPC	Acquitted	None	N/A

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1. The afore-named accused persons (Hereinafter referred to as "**A1 to A5**") are facing trial for charges framed u/s. 406, 420 of The Indian Penal Code, 1860 (Hereinafter referred to as the "**IPC**").
2. The compendious case of the prosecution, as sourced from the self-statement of S.I. Balmiki Singh, I/C of West Bokaro OP (hereinafter referred to as the "**informant**") is, that on 20.11.2013, while he was on night patrolling duty with other police personnel, then at about 6:30 PM, he received secret information that a dumper truck loaded with coal was going towards Govind Hard Coke Factory at Sirka for illegal sale of the coal which had to be unloaded at NR Siding. For verification of this piece of information, he, alongwith other police personnel namely Rajesh Kumar, Satish Kumar Singh, Yogendra Kumar Singh and Mahendra Das went to Govind Hard Coke Factory at Sirka. There, he saw a dumper truck suddenly speeding up towards the hard coke factory and the patrolling party chased it. The driver of the said vehicle succeeded in running away taking advantage of darkness, leaving the vehicle behind. Upon the seeing the police party, local villagers came at the place of the alleged incident and in presence of independent witnesses namely Sunil Kumar and Jainath Thakur, the said Dumper truck bearing registration no. JH02H-3430 loaded with coal was seized and accordingly, seizure list was prepared. On searching the seized vehicle, no document relating to the said vehicle or coal could be found. Thereafter, he reached Kedla Open Cast Project where he checked the register and found the entry that the said dumper loaded with 18 tons of coal left for N.R. Siding at about 17:24 hours. They then went to NR Siding where at the main gate the CCL Employees maintain entries of the vehicles entering and exiting. There, they found that entry for the said dumper was at 19:40 hours on 10.11.2013. in another register entry was made that the said dumper reached there at about 19:50 hours after unloading coal. The informant states that such wrong entry clearly indicates that CCL employees are involved in the said crime of illegal sale of coal. The informant further claimed that the owner and driver of dumber bearing registration no. JH02H-3430, owner of Hard Coke factory and CCL employees Chhotelal Mahto, CCL security guard namely Khurshid Alam, Bhola Sao and staff of Unloading Point Parmeshwar Bhuiyan were part of a conspiracy under which, the alleged coal was being sold to factory for wrongful personal gain which amounts to a

cognizable offence u/s. 409 and 420 of IPC. Hence, this case.

3. After investigation, the Investigating Officer submitted **charge-sheet** bearing no. 69/2015 on 13.07.2015 against A1 to A5 for the offence u/s. 406 and 420 of IPC and thereafter, **cognizance** was taken under the same sections by the Id. predecessor court on 24.07.2015 and A1-A5 were summoned.
4. After supplying of police paper to A1-A5, on 30.11.2018 **charges were framed** u/s. 406 and 420 of IPC against A1 to A5 and the content of the charges was read over and explained to them in simple Hindi to which they pleaded not guilty and claimed to be tried, and the record was advanced for **prosecution evidence** during which the prosecution adduced three witnesses.
5. After closing the **prosecution evidence** on 30.01.2023, material available against A1-A5 was put to them and the **statement** of A1 to A5 was recorded u/s. 313 of CrPC on 08.02.2023 in which they denied the material available against them and claimed to be innocent.
6. Thereafter, the defence was provided with an opportunity to adduce evidence on its behalf, if any but the Id. counsel for the defence submitted that he does not want to adduce any evidence. Upon his prayer, the **defence evidence** was closed and the matter was posted for arguments.
7. The prosecution submitted that the guilt of A1 to A5 is well established in this case and fact has also been supported by the witnesses in their deposition, prayer was made to convict A1 to A5.
8. The defence on the other hand argued that a false case has been lodged and no offence as alleged is made out from the deposition of the witnesses. It was also submitted that the prosecution has failed to prove the guilt of A1 to A5 beyond reasonable doubt, and they thus, deserve to be acquitted from all charges.
9. Now, the Court will consider as to whether the prosecution has been able to substantiate the charges u/s. 406, 420 of IPC levelled against A1 to A5 beyond reasonable doubt or not. On the bedrock of the charges framed, the prosecution case will be examined on the following touchstones for the sake of a more structured analysis:

*9.1 Whether A1-A5 were entrusted with around 18 tons of steam coal which they dishonestly misappropriated thereby committing criminal breach of trust?*

*9.2 Whether A1-A5 committed cheating thereby dishonestly inducing CCL to deliver around 18 tons of steam coal, which is a valuable security, to them?*

10. Before the court dwells to consider the points of determination as stated above, it would be apt to enlist the evidences brought in this case by all sides for the sake of brevity and proper reference, reference to only the relevant portions of which is made at relevant parts of this judgment, although they have all been perused by this court in detail. They are:

**List of Prosecution/Defence Witnesses**

A. Prosecution:

Rank	Name	Nature of Evidence
PW1	Rajesh Kumar	Official Witness (Patrolling Party Member)
PW2	Satish Kumar Singh	Official Witness (Patrolling Party Member)
PW3	Mahendra Das	Hostile Witness

B. Defence:

Rank	Name	Nature of Evidence
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**List of Prosecution/Defence/Material Exhibits**

A. Prosecution:

Sr. No.	Exhibit Number	Description
- Nil-		

B. Defence:

Sr. No.	Exhibit Number	Description
- Nil-		

B. Material Objects:

Sr. No.	Exhibit Number	Description
- Nil-		

**FINDINGS**

11. Whether A1-A5 were entrusted with around 18 tons of steam coal which they dishonestly misappropriated thereby committing criminal breach of trust?; Whether A1-A5 committed cheating thereby dishonestly inducing CCL to deliver around 18 tons of steam coal, which is a valuable security, to them?

11.1 PW01 deposed in his examination-in-chief that on 10.11.2023 while he was posted at West Bokaro OP as a police constable, he and S.I. Walmiki Singh alongwith other police personnel proceeded for night patrolling. At about 6:30 hours during patrolling, his senior received information that a dumper truck loaded with coal was going towards Govind Hard Coke Factory at Sirka to sell it

illegally and will be unloaded at N.R. Siding. For verifying this, he, alongwith other police personnel namely Rajesh Kumar, Satish Kumar Singh, Yogendra Kumar Singh and Mahendra Das went to Govind Hard Coke Factory at Sirka where he saw that a dumper truck going towards the hard coke factory suddenly started speeding and on being chased by the police, the driver of said vehicle succeeded in running away by taking advantage of the darkness, leaving the vehicle behind. On seeing the police party, local villagers came to the place of the alleged incident and in presence of two independent witnesses namely Sunil Kumar and Jainath Thakur, the vehicle alongwith about 18 tons of coal were seized and accordingly, the seizure list was prepared. Thereafter, he, alongwith his team went to OCP where coal was loaded and after checking they went to NR siding where his senior (officer-in-charge) found that vehicle entry was made and then they returned to the police station. They found that the said coal was to be unloaded at NR siding but it was instead unloaded at Govind Hard Coke Factory and a false entry was made in the register. In his cross-examination, he deposed that they proceeded towards place of the alleged incident on a police vehicle namely, a Bolero whose number he doesn't remember. He also expressed his inability to recall the surroundings of the place of the alleged incident. He further deposed that the loaded vehicle was not weighed and that it was not verified/checked whether the seized coal was soft or steam coal. He also deposed that he has neither seen the driver nor any person who was engaged in loading the said coal.

11.2 PW02 corroborated the deposition of PW01 broadly and additionally deposed that upon inspection, he learnt from the siding's guard Khurshid and dispatcher Chhotelal Mahto that the alleged vehicle did not come there. In his cross-examination, he deposed that he did not inspect the report and it rather was verified by ASI Birendra Kujur. He also deposed that neither did he arrest anyone nor weigh the coal.

11.3 PW03 deposed that he did go with the patrolling party for patrolling that day and the secret information of which PW01 and 02 have deposed was received acting upon which, 17-18 tons of steam coal was seized. But he denied having any knowledge about as to where this coal was supposed to be unloaded and where it actually was unloaded. He denied having any further knowledge about later developments in this case and on the request of the Id. Id. Assistant Public Prosecutor was declared hostile n the point of s. 420, IPC. He denied giving any further statement to the Investigating Officer. In his cross examination, he deposed that no person was caught at the place of the alleged incident and no

coal was loaded in front of him. he also denied having any knowledge about where the seized coal was supposed to be transported.

11.4 Apart from these two witnesses, the prosecution has not produced any other evidence. No independent witness has been produced. No paperwork regarding the purchase/transportation or false entry, as alleged has been produced. Nothing has been brought before the court which could point out towards the involvement of any of A1-A5 in the alleged crime. The witnesses produced also have not claimed to identify A1-A5.

11.5 Thus, overall, the prosecution has failed to shift its burden of proof.

12. Having gone through the material available on record, this court is of the considered opinion that the prosecution has failed to substantiate the charge u/s. 406, 420 of IPC. Hence, A1 to A5 are hereby all **acquitted** of all the charges in this case. A1 to A5 as well as their respective bailors stand discharged from the liabilities of their respective bail bonds.

(Dictated and corrected)

Pronounced by me in open court.

Sd/-

Sd/-

**(Smriti Tripathi)**  
**JO CODE: JH02021**  
JM 1<sup>st</sup> Class, Ramgarh  
Ramgarh, dated the 9<sup>th</sup> February, 2023

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