

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Petition No.10847 OF 2016

Between:

Manthena Ramesh

... Petitioner

And

State of Telangana,
Rep. by the Station House Officer,
P.S.Bhongir Rural and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 17.08.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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|--|--------|
| 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 Whether Their Ladyship/Lordship Wish to see their fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ CRL.P. No.10847 of 2016

% Dated 17.08.2023

Manthena Ramesh

... Petitioner

And

\$ State of Telangana,
Rep. by the Station House Officer,
P.S.Bhongir Rural and another

... Respondents

! Counsel for the Petitioner: Sri N.Avaneesh

^ Counsel for the Respondents: Public Prosecutor for R1
Sri T.Surya Satish for R2

>HEAD NOTE:

? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.10847 OF 2016****ORDER:**

1. The petitioner is questioning continuance of criminal proceedings against him in C.C.No.657 of 2016 on the file of Additional Judicial First Class Magistrate at Bhongir. The said case is being prosecuted by the State for the offence under Sections 406, 417, 420 & 506 of IPC on the basis of the charge sheet filed by the police after investigating the complaint of the 2nd respondent.

2. The 2nd respondent filed complaint against this petitioner alleging that Sri Vinayak Filling Station situated on the High Way from Hyderabad to Warangal in Anantharam Village was for sale. He approached the petitioner who was present in the Bunk and stated that he was the owner and offered it to sale for an amount of Rs.50.00 lakhs. However, the sale consideration was finalized at Rs.42,44,000/- . Having made enquiries, the 2nd respondent came to know that that the petrol bunk was standing in the name of Vidyasagar, resident of Warangal and sanctioned under SC quota. When confronted, petitioner informed that he had paid for all the expenses for sanction of petrol bunk till its establishment. On 17.02.2008, an amount of Rs.5.00 lakhs was paid as advance and the remaining amounts were

also paid. Complainant also ran the petrol bunk till the year 2013. Thereafter, the 2nd respondent insisted that Petitioner gets the sale deed-cum-GPA executed in his name by Vidyasagar in whose name petrol bunk stands. However Vidyasagar informed that he is the owner of the bunk and due to differences between him and the petitioner, he stopped signing DDs and other papers pertaining to petrol bunk. Further, the petitioner did not inform about the sale of petrol bunk to him. Though there were persistent demands by the 2nd respondent, petitioner failed to return the amount of Rs 42.44 lakhs.

3. Learned counsel appearing for the petitioner would submit that even according to the 2nd respondent, he knew about the petrol bunk standing in the name of Vidyasagar and paid the amount during the year 2008. He ran petrol bunk till the year 2013 for a period of five years. Offence of either cheating or criminal misappropriation does not arise since the 2nd respondent knew all the facts and handed over money to the petitioner. He relied on the judgment of the Hon'ble Supreme Court in the case of **Sarabjit Kaur v. The State of Punjab & another**¹. The Hon'ble Supreme Court held that breach of contract does not give rise to criminal prosecution for cheating unless

¹ 2023 LiveLaw (SC) 157

fraudulent or dishonest intention is shown at the beginning of the prosecution. Merely on the allegation of failure to keep up the promise will not be enough to initiate criminal proceedings.

4. Learned counsel appearing for the 2nd respondent would submit that the petitioner has taken money for selling the petrol bunk which was owned by someone else. All the grounds raised by petitioner are factual issues which can only be decided by the trial Court, as such, proceedings cannot be quashed.

5. The 2nd respondent admits that he knew about the petrol bunk standing in the name of one Vidyasagar even prior to giving an amount of Rs.42,44,000/- to the petitioner. From the year 2008 to 2013 the 2nd respondent was running the petrol bunk.

6. In the complaint, the 2nd respondent stated that when he asked Vidyasagar about the sale transaction in the year 2013, he said that he did not know about the sale transaction. The said statement appears to be highly improbable. Even before handing over the amount to the petitioner, complainant had enquired and came to know about the petrol bunk standing in the name of Vidyasagar. After confronting the petitioner regarding ownership, amount was handed over to petitioner. Having run the petrol bunk for a period of five years

stating that when he had enquired with Vidyasagar, he stated that he did not have knowledge about the sale, apparently made up for the purpose of filing criminal complaint against the petitioner.

7. To attract an offence of cheating, there should be misrepresentation for the purpose of inducing a person to part with the property. The complainant knew regarding the petrol bunk standing in the name of Vidyasagar, as such, it cannot be said that there was any misrepresentation on behalf of the petitioner. No prudent person would part with more than Rs.42.00 lakhs having knowledge that the petrol bunk was in the name of another person unless convinced. Moreover the 2nd respondent ran the petrol bunk for five years. The amount was given towards sale consideration, as such, the question of entrustment or subsequent misappropriation does not arise. From the facts, it is apparent that on account of differences between the 2nd respondent and the petitioner, the 2nd respondent has preferred a false criminal complaint. The transaction is purely civil in nature.

8. None of the ingredients of either cheating punishable under Section 420 of IPC or criminal misappropriation punishable under Section 406 of IPC are made out against the petitioner. There is nothing in the complaint to infer that the petitioner had at any point

of time threatened the 2nd respondent, to attract an offence under Section 506 of IPC. For the said reasons, criminal petition deserves to be allowed.

9. In the result, the proceedings against the petitioner in C.C.No.657 of 2016 on the file of Additional Judicial First Class Magistrate at Bhongir, are hereby quashed.

10. Accordingly, Criminal Petition is allowed. Consequently, miscellaneous applications, if any, shall stand dismissed.

Date: 17.08.2023

Note: L.R.copy to be marked

kvs

K.SURENDER, J

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION No.10847 OF 2016

Dt. 17.08.2023

kvs