

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

Criminal Petition No.14168 OF 2016

Between:

Rakshitha Hospital and another

... Petitioners

And

1. K.Badrinath
2. The State of Telangana, rep. by
its Public Prosecutor, High Court
for the State of Telangana, Hyderabad

... Respondents

DATE OF JUDGMENT PRONOUNCED: 20.10.2022

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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

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

+ CRL.P. No. 14168 of 2016

% Dated 20.10.2022

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! Counsel for the Petitioners: Sri T.Pradyumna Kumar Reddy

^ Counsel for the Respondent: Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ (2005) 6 Supreme Court Cases 1

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.14168 OF 2016****O R D E R:**

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed seeking to quash the proceedings against the petitioners in Crime No.315 of 2015 of Chaitanyapuri Police Station, Hyderabad. The petitioners herein are accused Nos.1 & 2 in the said crime. The offences alleged against them are under Sections 420, 406 read with 34 of the Indian Penal Code and Section 156(3) of the Cr.P.C.

2. Heard learned counsel for the petitioners and learned Assistant Public Prosecutor appearing for the State and perused the record.

3. The 1st respondent/*defacto* complainant filed a private complaint stating that he went to the 1st accused hospital as he was suffering from giddiness. The 2nd accused/doctor allegedly informed that the 1st respondent was suffering with severe ill-health and advised him to get admitted in the hospital, otherwise his life would be in danger. Accordingly, the 1st respondent was admitted in the hospital and was forced to undergo several investigations which incurred an expenditure of Rs.80,000/-. The 1st respondent went to another hospital and the doctor having verified the case history informed the complainant that the tests were not necessary and he was asked to unnecessarily consume medicines which only deteriorated the health of the

complainant. The said complaint was referred to police for investigation and the Chaitanyapuri Police accordingly registered the FIR.

4. The learned Senior Counsel Sri Pradyumna Kumar Reddy for petitioners would submit that no case is made out for the offence of cheating, criminal misappropriation under Sections 420 and 406 of the Indian Penal Code. He further submitted that the 2nd petitioner is a doctor of repute and Senior Consultant Neuro-Surgeon, who on the basis of his expertise has advised the petitioner to undergo tests in order to diagnose the problem and having found the reasons for the ill-health of complainant, advised to take medication. He further argued that a complaint was also filed before the District Consumer Disputes Redressal Forum, Ranga Reddy, and the said Forum found that the complainant/1st respondent was not subjected to unnecessary tests and medication by the petitioners herein; and that the complainant was discharged after undergoing proper treatment and accordingly there was no deficiency of service. The said finding of the District forum was not questioned before the State Forum.

5. The learned Senior Counsel also relied upon the Judgment of the Honourable Supreme Court in ***Jacob Mathew v. State of Punjab and another***¹ wherein the Three Judges Bench of the Honourable Supreme Court had framed guidelines in prosecuting the medical professionals.

¹ (2005) 6 Supreme Court Cases 1

6. To attract an offence of cheating punishable under Section 420 of the IPC, there has to be mis-representation pursuant to which a person must have been induced and parted with property. In the present case, the complainant had taken professional help from the doctor and on the basis of his knowledge and expertise the doctor suggested the complainant to undergo tests and also prescribed medication to be taken on regular basis. The medication suggested by the doctor on the basis of the reports and tests conducted cannot be said to be an act of cheating. For the reason of the complainant assuming that the tests were not warranted, cannot be made basis of criminal prosecution. Neither the complainant nor the police investigating the case are experts in the field of medical science to determine whether the steps taken by the 2nd petitioner/doctor were unnecessary. Except stating in the complaint that the course of treatment suggested by the 2nd petitioner was not endorsed by an unnamed doctor, it cannot be said that the treatment given to the complainant amounts to cheating.

7. Further, the question of attracting the offence under Section 406 of the Indian Penal Code does not arise for the reason of there being no entrustment whatsoever. An act to fall within the four corners of Section 406 of the Indian Penal Code, it has to be established that some property which is entrusted to a person has been misappropriated. In the present case, there is no entrustment. As such, the question of misappropriation does not arise.

8. The bench of the District Consumer Forum after a detailed inquiry having examined witnesses has found that the allegation of unnecessary treatment and medication was found to be false. Further, the bench also found that complainant was treated in the hospital and was discharged. More so, there were no acts which are committed by these petitioners amounting to any acts which require to be interfered with by the Forum for granting compensation. The said order and finding of the District Consumer forum were not agitated by filing appeal before the State Forum and had become final.

9. In the aforesaid circumstances, the continuation of the criminal proceedings against the petitioners for the offence under Section 406 and 420 of the Indian Penal Code are clear abuse of the process and are consequently liable to be quashed.

10. Accordingly, the Criminal Petition is allowed quashing the proceedings against the petitioners in Crime No.315 of 2015 of Chaitanyapuri Police Station, Hyderabad.

Miscellaneous applications pending, if any, in this criminal petition, shall stand closed.

K.SURENDER, J

Dt:20.10.2022

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Note: L.R.copy

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION NO. 14168 OF 2016

Dt. 20.10.2022

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