

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

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**Criminal Petition No.1689 OF 2018**

Between:

Rafeeq Akbani and another.

..Petitioners/Accused

And

The State of Telangana  
Rep. by its Public Prosecutor  
and another

...Respondents/ Complainants

**Criminal Petition No.1690 OF 2018**

Between:

Anwar Akbani

...Petitioner/Accused

And

The State of Telangana  
Rep. by its Public Prosecutor  
and another

...Respondents/Complainant

DATE OF JUDGMENT PRONOUNCEMENT: 06.11.2023

Submitted for approval.

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

- 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

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**K.SURENDER, J**

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

**+ CRL.P. No. 1689 of 2018**

% Dated 06.11.2023

# Rafeeq Akbani and another ... Petitioners/Accused

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\$ The State of Telangana  
Rep. by its Public Prosecutor  
and another ...Respondents/ Complainant

**+ CRL.P. No. 1690 of 2018**

# Anwar Akbani ...Petitioner/Accused

And

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Rep. by its Public Prosecutor  
and another ...Respondents/Complainant

**! Counsel for the Petitioner:** Sri P.Shashi Kiran

**^ Counsel for the Respondents:** Additional Public Prosecutor for R1  
Sri Pramod Kumar Kedia for R2

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> (2005) 10 Supreme Court Cases 336

<sup>2</sup> (2005) 10 Supreme Court Cases 228

<sup>3</sup> 2002 (1) ALD (CrI.) 889 (A.P)

<sup>4</sup> 2000 (1) ALD (CrI.) 895 (A.P)

<sup>5</sup> (2023) 8 Supreme Court Cases 734

<sup>6</sup> 2009 (2) ALD (CrI.) 358(SC)

<sup>7</sup> SLP (CrI.) NO.6364 of 2019

<sup>8</sup> 2014 (1) ALD (CrI.) 233 (AP)

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION NOS.1689 AND 1690 OF 2018****COMMON ORDER:**

1. Criminal Petition No.1690 of 2018 is filed by A1 and Criminal Petition No.1689 of 2018 is filed by A2 and A3 for quashing the proceedings against them in Crime No.109 of 2017 pending investigation before the CCS, Hyderabad.

2. The defacto complainant approached the Commissioner of Police, CCS and filed written complaint on 21.07.2017 which was registered for the offence under Sections 420 and 406 r/w 34 of IPC. It is alleged in the complaint that the petitioners approached the defacto complainant for purchase of refined edible oils. Petitioners promised to pay cost of the supplied material within 15 days from the date of supply and also assured interest at the rate of 24% per annum if the payment goes beyond the promised date. Believing the representation and assurance given by the petitioners, from 20.12.2014 to 06.02.2015 against 9 invoices, oil was supplied. Prior to the said transactions initially amounts were paid within time from the date of purchase and thereafter

started making payments belatedly and callously. Thereafter, the petitioners denied to payment of major amounts. On verification of the accounts, the total outstanding was Rs.1,00,24,069/-. For not paying the said amount, the defacto complainant suffered mental stress.

3. Thereafter, the 2<sup>nd</sup> respondent persuaded the petitioners for issuance of cheques. The cheques which were issued by the petitioners when presented for clearance were returned unpaid by the bank with an endorsement 'insufficient funds'. Intimation was given of the said dishonour and complaints were also filed under Section 138 of the Negotiable Instruments Act.

4. The conduct of the petitioners in delaying payment and issuing cheques which were dishonoured amounts to an offence of cheating and criminal breach of trust, as such, complaint was filed. The said complaint was registered and being investigated into by the police.

5. Learned counsel appearing for the petitioners would submit that the petitioners have in fact made payments even according to the defacto complainant, however, the cheques

which were issued towards payment were returned unpaid, for which reason, the present complaint was filed. To attract an offence of cheating, the intention to cheat should be from the inception of the transactions and subsequent failure to pay the amount during business transactions would not amount to criminal offence of either cheating or criminal misappropriation. He relied on the judgment of the Hon'ble Supreme Court in the case of **Uma Shankar Gopalika v. State of Bihar and another**<sup>1</sup>, wherein the Hon'ble Supreme Court held that there has to be an allegation in the complaint that the intention to cheat was from the inception and also the fact should be made out that the accused intended to cheat, failing which, proceedings would be quashed. In **Anil Mahajan v. Bhor Industries Limited and another**<sup>2</sup>, similar view was taken by the Hon'ble Supreme Court. Learned counsel also relied on the judgments reported in the case of **Reginald Abraham and others v. State of A.P**<sup>3</sup> and **HICEL Pharma Limited and others v. State of Andhra Pradesh**

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<sup>1</sup> (2005) 10 Supreme Court Cases 336

<sup>2</sup> (2005) 10 Supreme Court Cases 228

<sup>3</sup> 2002 (1) ALD (CrL.) 889 (A.P)

**and others**<sup>4</sup> on similar grounds, the proceedings were quashed.

6. On the other hand, learned counsel appearing for the 2<sup>nd</sup> respondent/defacto complainant would submit that quashing of FIRs can only be in the rarest of rare cases. If the Court finds that *prima facie* the allegations leveled in the complaint make out the offence as alleged, High Court should restrain from quashing the proceedings. In the present case, the police should be given free hand to investigate into the case and the petitioners would be at liberty to question the charge sheet filed after investigation either by approaching the trial Court by filing a discharge application or approaching this Court under Section 482 of Cr.P.C. He relied on the judgment of Hon'ble Supreme Court in the case of **Iqbal alias Bala and others v. State of Uttar Pradesh**<sup>5</sup>, **Syed Askari Hadi Ali Augustine Imam and another v. State (Delhi Admn.) and another**<sup>6</sup>, **Priti Saraf and another v. State of NCT of Delhi**

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<sup>4</sup> 2000 (1) ALD (CrL.) 895 (A.P)

<sup>5</sup> (2023) 8 Supreme Court Cases 734

<sup>6</sup> 2009 (2) ALD (CrL.) 358(SC)

**& another**<sup>7</sup> and the judgment reported in the case of **D.Achyutha Reddy v. State of Andhra Pradesh and another**<sup>8</sup>.

7. Learned counsel for the 2<sup>nd</sup> respondent further argued that taking recourse to civil proceedings will not come in the way of criminal complaint and consequent investigation. The complaint has to be investigated and accordingly petition has to be dismissed.

8. The transactions during business can give rise to both civil and criminal proceedings on the basis of the peculiar facts of each case. It cannot be said as a rule that every criminal complaint that is lodged has to be investigated. Criminal proceedings can be quashed in cases where the business transactions make out a case predominantly civil in nature. This Court cannot permit civil transactions be given cloak of criminal offence and parties approaching the police, filing criminal complaint to exert pressure to settle civil disputes.

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<sup>7</sup> SLP (CrI.) NO.6364 of 2019

<sup>8</sup> 2014 (1) ALD (CrI.) 233 (AP)

9. As seen from the compliant, the transaction between the petitioners and the 2<sup>nd</sup> respondent was a continuous process over a period of time and payments were made by the petitioners when the goods were supplied by the 2<sup>nd</sup> respondent. Though an averment is made in the compliant that subsequently the petitioners have entertained an intention to cheat the complainant and accordingly did not pay for the goods supplied, the same cannot be made basis to infer that the petitioners have cheated the *defacto* complainant. As held by the Hon'ble Supreme Court, the test to determine the intention of cheating can also be from the fact that such intention should have been entertained right from the inception of the transaction. When the payments were regularly being made initially and subsequently for some of the invoices payment was deferred and cheques were issued, the ingredients of Section 420 of IPC are not made out. It cannot be said that there is an act of deception played by the petitioners. Breach of promise or contract in the present circumstances cannot be held to be an offence of

cheating or criminal misappropriation punishable under Section 406 of IPC.

10. In the present transactions, cheques were issued and cases were also instituted under Section 138 of the Negotiable Instruments Act. It cannot be said that the petitioners are liable for the offence of cheating for the reasons discussed above. Accordingly, the petitioners succeed in the present applications.

11. In the result, the proceedings against petitioners/A1 to A3 in Crime No.109 of 2017 pending investigation before the CCS, Hyderabad, are hereby quashed.

12. Both the Criminal Petitions are allowed. Consequently, miscellaneous applications, if any, shall stand closed.

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**K.SURENDER, J**

Date: 06.11.2023

Note: LR copy to be marked.

B/o.kvs

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

**CRIMINAL PETITION NOS.1689 AND 1690 OF 2018**

**Dt. 06.11.2023**

kvs