

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

\*\*\*\*\*

**Criminal Petition No. 6744 OF 2018**

Between:

Therala Shankar @ Shankaraiah & Others                      ... Petitioners/A1 & A2

And

1. The State of Telangana  
Rep. by its Public Prosecutor,  
High Court of Judicature at Hyderabad,  
For the State of Telangana and the  
State of Andhra Pradesh.

2. Mohammad Abdul Rehaman Yousuf                      Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED:                      29.08.2023

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

---

*K .SURENDER, J*

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

+ CRL.P. No. 6744 OF 2018

% Dated 29.08.2023

# Therala Shankar @ Shankaraiah & Others ...Petitioner/A1 & A2

And

\$ The State of Telangana  
Rep by its Public Prosecutor,  
High Court of Judicature at Hyderabad,  
For the State of Telangana and the  
State of Andhra Pradesh.

2. Mohammad Abdul Rehaman Yousuf ...Respondents/Complainant

**! Counsel for the Petitioners:** Sri D.Bhaskar Reddy

**^ Counsel for the Respondents:** Sri Public Prosecutor

&

Veeram Reddigari Prabhakar

**>HEAD NOTE:**

**? Cases referred**

<sup>1</sup> (2016) 1 Supreme Court Cases 348

<sup>2</sup> (2005) 10 Supreme Court Cases 336

<sup>3</sup> (2007) 13 Supreme Court Cases 107

<sup>4</sup> (2011) 7 Supreme Court Cases 59

<sup>5</sup> 2023 SCC Online SC 90

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL PETITION No.6744 OF 2018****ORDER:**

1. The petitioners are father and son, who are charge sheeted for the offence under Section 420 of IPC and Section 29 of the Telangana Pawn Brokers Act, 2002 (for brevity 'the Act').

2. The 2<sup>nd</sup> respondent filed a complaint stating that a loan of Rs.7.00 lakhs was taken from the 1<sup>st</sup> petitioner and the said loan was repaid. Again Rs.35.00 lakhs loan was taken, for which Rs.3/- per month interest was charged. The 2<sup>nd</sup> respondent registered the land in the name of the 2<sup>nd</sup> petitioner. The said registration was done on the assurance given by the petitioners that the land would be re-conveyed after repayment of loan. However, though the 2<sup>nd</sup> respondent offered money to re-register the land in his name, petitioners refused. The assurance of re-conveying the land in the name of the 2<sup>nd</sup> respondent was made in writing before the village elders.

3. On the basis of the said complaint, Cherial police took up investigation.

4. Learned counsel appearing for the petitioners would submit that none of the ingredients of either Section 420 of IPC or Section 29 of the Act are made out. The allegation is that the petitioners failed to re-convey the registered land. Having registered the land, since the cost of land has gone up, the 2<sup>nd</sup> respondent has resorted to filing of false complaint without any basis. He relied on the judgment of Hon'ble Supreme Court in the case of **International Advanced Research Centre for Powder Metallurgy and New Materials (ARCI) and others v. Nimra Cerglass Technics Private Limited and another**<sup>1</sup>. The Hon'ble Supreme Court held that essential ingredients to attract an offence under Section 420 of IPC are; i) cheating; ii) dishonest inducement to deliver property; iii) *mens rea* of the accused at the time of making the inducement. The Hon'ble Supreme Court further held that if the agreement between the parties appears to be civil in nature, criminal liability should not be imposed in such cases.

---

<sup>1</sup> (2016) 1 Supreme Court Cases 348

5. He also relied on the judgment of Hon'ble Supreme Court in the case of **Uma Shankar Gopalika v. State of Bihar and another**<sup>2</sup>. In the said judgment, the Hon'ble Supreme Court quashed the FIR. In the said case, the allegations in the complaint were that the accused persons received insurance claim of Rs.4,20,000/- and failed to pay Rs.2,60,000/- to the complainant as promised. The Hon'ble Supreme Court held that there is a breach of contract and accordingly, quashed the proceedings.

7. In **B.Suresh Yadav v. Sharifa Bee**<sup>3</sup> and **Joseph Salvaraj A v. State of Gujarat and others**<sup>4</sup> and also the judgment of Hon'ble Supreme Court in the case of **Usha Chakraborty and another v. State of West Bengal and another**<sup>5</sup>, the Hon'ble Supreme Court held that when the disputes are civil in nature, the criminal proceedings cannot be permitted to continue. Accordingly, the proceedings were quashed.

---

<sup>2</sup> (2005) 10 Supreme Court Cases 336

<sup>3</sup> (2007) 13 Supreme Court Cases 107

<sup>4</sup> (2011) 7 Supreme Court Cases 59

<sup>5</sup> 2023 SCC OnLine SC 90

8. On the other hand, learned counsel appearing for the respondents would submit that taking advantage of the situation of the 2<sup>nd</sup> respondent, a false promise was made that the registration of land has to be done if loan had to be given and once the amount of loan was repaid, the land would be re-conveyed to the 2<sup>nd</sup> respondent. Accordingly, the document was also executed in front of the elders. In the said circumstances, since the case is at the initial stage of investigation, the proceedings have to continue.

9. Admittedly, the land was transferred by the *defacto* complainant/respondent. However, the grievance is that the land was not re-conveyed though the 2<sup>nd</sup> respondent offered to repay the loan amount.

10. To attract an offence of cheating, deception must have been played by the accused. The allegation is that the petitioners promised to give loan only when the registration of land would be done and once the amount of loan was repaid, the land would be re-registered. In the said transaction an 'arrangement agreement' was also executed in between the petitioners and the respondent.

11. To attract an offence of cheating, it is necessary that the intention to cheat was from the inception of the transaction. A document was executed by the petitioners stating that the land would be re-conveyed once the loan is repaid. In normal sale transactions, such document will not be executed. Whether the accused entertained the idea of cheating the defacto complainant at the time of giving loan and asked the land to be registered so that he would refuse to re-register at a later date are all questions of fact that can be decided during investigation. *Prima facie* it appears that the petitioners have made false promise and got the land registered in their name. There was no necessity to execute another document undertaking to re-register the land after payment of loan. Apparently, the *modus operandi* adopted by the petitioners led to wrongful loss to the 2<sup>nd</sup> respondent. Believing the version that the land would be re-conveyed, once the loan amount is repaid, it appears that the complainant had registered the land in the name of the petitioners. There are other complaints against the petitioners for adopting similar *modus operandi*.

12. The Hon'ble Supreme Court in the case of **Skoda Auto Volkswagen India Private Limited v. The State of Uttar Pradesh** in Special Leave Petition (Criminal) No.4931 of 2020 dated 26.11.2020, held that the Courts should not thwart investigation and should be exercised very sparingly and with circumspection and that too in the rarest of rare cases in quashing criminal prosecution.

13. Since there appears to be prima facie case of cheating, this Court is not inclined to quash the proceedings at the stage of investigation.

14. Accordingly, the Criminal Petition is dismissed. Consequently, miscellaneous applications, if any, shall stand dismissed.

---

**K.SURENDER, J**

Date: 29.08.2023

Note: LR copy to be marked.

B/o.kvs



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

**CRIMINAL PETITION No.6744 OF 2018**

**Dt. 29.08.2023**

kvs