

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

Criminal Petition No.7240 OF 2020

Between:

A.V.V.R.Kumar and another

... Petitioners

And

The State of Telangana

Through Public Prosecutor and another. ..Respondents/Complainant

DATE OF JUDGMENT PRONOUNCED :29.12.2023

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.7240 of 2020

% Dated 29.12.2023

A.V.V.R.Kumar and another

... Petitioners

And

\$ The State of Telangana

Through Public Prosecutor and another

Respondents/Complainants

! Counsel for the Petitioners: Sri V.V.Ramana

^ Counsel for the Respondents: Addl. Public Prosecutor

>HEAD NOTE:

? Cases referred

¹ CrI.M.C.No.2345 of 2015 dated 24.10.2019.

² 2009 CrI.L.J. 3462 (SC)

³ 2010 CrI.L.J 2223 (SC)

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION No.7240 of 2020****ORDER:**

1. This Criminal Petition is filed to quash the proceedings against the petitioners/A1 and A2 in C.C.NO.16132 of 2019 on the file of IV Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, which charge sheet was filed for the offences under Sections 406 and 420 r/w 120-b of IPC.

2. The 2nd respondent filed a private complaint before the learned Magistrate on 01.05.2019, alleging that he is acquainted with the petitioners, who are A1 and A2 since the year 2011. In the year 2012, Rs.63.00 lakhs was taken as loan by the petitioners and promised to return the amount with 3% per annum. Though the amount was promised to be repaid within one month, petitioners failed to do so. On persistent demand, two promissory notes were executed on 27.07.2016 for R.31.00 lakhs and Rs.32.00 lakhs. The cheques were also issued without dates with an understanding that they can be deposited at any point of time within six months. Though, cheques were given, petitioners started insisting the 2nd

respondent not to present the cheques. However, when the cheque for Rs.32.00 lakhs was presented, the same was returned for the reason of 'insufficient funds'.

3. Complaint was filed under Section 138 of the Negotiable Instruments Act. However, on the promise that payments would be made, the case was withdrawn by the 2nd respondent. The petitioners failed to make the payment in respect of Rs.32.00 lakhs as promised while withdrawing the case filed under Section 138 of the Negotiable Instruments Act.

4. The 2nd cheque for Rs.31.00 lakhs was also deposited on 25.03.2019, but it was returned with an endorsement 'to contact drawer'. For the said reason of causing wrongful loss of Rs.63.00 lakhs, complaint was filed before the police. However, since the police failed to act on the criminal complaint, private complaint was filed, which was referred to police for the purpose of investigation. Having investigated the case, the Kacheguda police filed charge sheet.

5. Learned counsel appearing for the petitioners would submit that there is an inordinate delay of seven years in

lodging the complaint, which is unexplained. In fact, the petitioners have filed Insolvency Petition in the year 2016 itself, which is to the knowledge of the 2nd respondent and his name was also shown as defendant in the said petition. The cheques which were earlier taken were misused and false complaint was filed. Learned counsel further argued that cheque bounce case was voluntarily withdrawn and having done so, it is not open for the 2nd respondent to file criminal complaint under Section 420 of IPC.

6. On the other hand, learned counsel for the 2nd respondent would submit that the delay in lodging the complaint is of no consequence since Section 468 of IPC cannot be pressed into service. Further, once the basic ingredients of Section 420 of IPC are made out, the Court has to proceed against the accused. In the present case, from the facts, it is apparent that the petitioners entertained fraudulent intention from the inception of the transactions. In the said circumstances, the proceedings against the petitioners cannot be quashed and it is for the trial Court to decide on the facts of the case after adducing evidence. In support of his contention,

he relied on the judgment of Kerala High Court in the case of **Sindhu S.Panicker and others v. A.Balakrishnan and others**¹.

7. Learned counsel for the 2nd respondent further argued that only for the reason of the transactions making out a civil dispute, it will not preclude the complainant from filing criminal complaint when any criminal offence is made out in the transactions.

8. The alleged loan was taken on 07.12.2012 by executing an undertaking that the amount would be returned with interest at 3% per annum. Two receipts dated 30.08.2019 and 09.09.2019 were filed by the petitioners in which the 2nd respondent has acknowledged the receipt of Rs.6.00 lakhs. The said receipt of amount is not disputed by the learned counsel for the 2nd respondent. However, it was argued that the question of paying the amount does not arise unless the money is outstanding and it is clear that the amount was outstanding.

¹ Cri.M.C.No.2345 of 2015 dated 24.10.2019.

9. The amount allegedly was given on 07.12.2012. Though it is stated that an agreement was entered into on the said date, the 2nd respondent has failed to proceed on the basis of the said agreement. The case is one of loan transaction, which was given by the 2nd respondent to the petitioners herein. It is not the case that any misrepresentation was made while taking the alleged loan amount. According to the 2nd respondent a promise was made by the petitioners that the amount would be paid at a later date. The promise to pay at a later date and for whatever reasons, the borrower fails to repay the said amount at a later date, it cannot be said that the borrower had deliberately taken the amount with an intention to defraud the person who has lent the money.

10. Having not taken any action till the year 2016 after giving cheques, complaint under Section 138 of the Negotiable Instruments Act was also filed. The said complaint was withdrawn. However, there are no documents filed to show the reasons for the said withdrawal. Neither documents were executed nor cheques issued at the time of the said withdrawal. It appears that, in the circumstances, it does not

indicate that there was any fraudulent intention on the part of the petitioners in the withdrawal of the complaint. Admittedly, ante-dated cheques were given in the year 2016. One cheque was presented and thereafter criminal complaint under Section 138 of the NI Act was filed. As already stated two cheques i.e., one for Rs.31.00 lakhs and Rs.32.00 lakhs was given in the year 2016. The 2nd cheque was for Rs.32.00 lakhs, which was presented in the year 2019 and thereafter, private complaint was filed. No steps were taken to file cheque bounce case for the dishonour of the second cheque.

11. The Hon'ble Supreme Court in the case of **Harmanpreet Singh Ahluwalia v. State of Punjab**² held that for the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in absence of a culpable intention at the

² 2009 Cr.L.J. 3462 (SC)

time of making initial promise being absent, no offence under Section 420 of IPC can be said to have been made out.

12. In **Md. Ibrahim v. State of Bihar**³, the Hon'ble Supreme Court held that to constitute an offence under Section 420 of IPC, there should not only be cheating but as a consequence of cheating, the accused should have dishonestly induced the person deceived (i) to deliver any property to any person, or (ii) to make, alter or destroy wholly or in part a valuable security.

13. The petitioners have executed an agreement for repayment in the year 2012 and thereafter, issued cheques in the year 2016. The 1st cheque when presented for clearance was returned, for which reason, complaint was filed and later withdrawn. The 2nd cheque was also filed but the 2nd respondent filed criminal complaint for cheating. Only for the reason of the cheques which were given towards repayment were bounced, it cannot be said that the petitioners have entertained fraudulent intention from the inception of the transaction.

³ 2010 Cr.L.J 2223 (SC)

14. In the present case, the conduct of the 2nd respondent in lodging the criminal complaint after nearly seven years when there were transactions in between the parties either by executing promissory notes or issuing cheques or an agreement entered into for repayment, at no point of time, complaint for cheating was filed. In the present facts, it cannot be said that the offence of cheating is made out.

15. In the result, the proceedings against petitioners/A1 and A2 in C.C.NO.16132 of 2019 on the file of IV Additional Chief Metropolitan Magistrate at Nampally, Hyderabad, are hereby quashed.

16. Accordingly, this Criminal Petition is allowed. Miscellaneous applications, if any pending in this criminal petition, shall stand closed.

K.SURENDER, J

Date : 29.12.2023

Note: LR copy to be marked.

B/o.kvs