

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

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**Criminal Appeal No.118 OF 2021**

Between:

P.Ramesh Kumar and others

... Appellants

And

The State of Telangana  
through Public Prosecutor

...Respondent

DATE OF JUDGMENT PRONOUNCED :30.01.2024

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 |

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*K.SURENDER, J*

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

**+ CRL.A. No.118 of 2021**

% Dated 30.01.2024

# P.Ramesh Kumar and others

... Appellants

And

\$ The State of Telangana  
through Public Prosecutor.

...Respondents

**! Counsel for the Appellants:** Sri P.Vamshidhar Reddy

**^ Counsel for the Respondent:** Addl. Public Prosecutor

**>HEAD NOTE:**

? Cases referred

**THE HONOURABLE SRI JUSTICE K.SURENDER****CRIMINAL APPEAL No.118 OF 2021****JUDGMENT:**

1. This Criminal Appeal is filed by the appellants/A2 to A5 aggrieved by the judgment in SC/ST SC No.56 of 2016, dated 08.03.2021 passed by the Special Sessions Judge for trial of offences under SC/ST Act-cum-VII Additional District & Sessions Judge, Ranga Reddy District and sentenced to undergo rigorous imprisonment for a period of three years for the offence under Section 406 r/w 34 of IPC, three years for the offence under Section 420 r/w 34 of IPC, two years for the offence under Section 506 r/w 34 of IPC and also sentenced to undergo rigorous imprisonment for a period of three years for the offence under Section 3(1)(x) of Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. The case of the defacto complainant/P.W.1 is that he retired as Additional General Manager, BHEL. The appellants are his neighbours. The deceased A1 was having a company by name M/s.Rushni Distilleries. In the year 2008, A5

approached him and asked to provide finance. However, P.W.1 informed that he did not have money, but had a plot at Nallagandla. Advertisement was given by A5 in the newspaper for selling the plot. A5 informed that she has one purchaser, who is intending to purchase the said plot at Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs). After receiving the said amount, it was handed over to A1 to A5. The deceased A1 promised to give 20% dividend in his company and also 3% interest per month and thereafter promised that the amount would be returned in one year.

3. It is further the case that the deceased A1 and A5 again requested P.W.1 to provide more finance, for which reason P.W.1 sold his flat situated at S.R.Nagar for Rs.42.00 lakhs and again handed over the amount to A1. A1 transferred 15000 shares of the company in the name of P.W.1 equivalent to Rs.50.00 lakhs. P.W.1 demanded to pay remaining Rs.67.00 lakhs, but the money was not returned. P.Ws.1, 2 and 3 went to the house of A1 and demanded to pay. A4 abused in the name of caste saying “Mala Madiga Lanjakodukulara Enduku

Vacharu Maa intiki meeku budhi ledu get out from our house” and asked P.W.1 to get out. A2 and A5 also repeated the same words. Prior to the said incident from 2008 to 2014, P.W.1 was going to the house of A1 demanding the outstanding amount as it was necessary for performing his daughter’s marriage. However, it was not returned. On 05.01.2014 when all the accused beat and sent them out, P.W.1 went to the police station and lodged complaint. On 31.01.2014, he went to the CID, Hyderabad and lodged complaint since Chandanagar police did not register any complaint, which was filed on 05.01.2014. On the basis of the complaint lodged, the CID police filed charge sheet for the offence of cheating, criminal intimidation and also under the provisions of SC and ST Act.

4. Learned Sessions Judge examined witnesses P.Ws.1 to 7 and marked Exs.P1 to P17. On behalf of the appellants, D.W.1 was examined and Exs.D1 to D8 were marked. Learned Sessions Judge, having considered the evidence on record convicted the appellants as narrated above.

5. Learned counsel appearing for the appellants would submit that the alleged incident had taken place on 05.01.2014, whereas the complaint was filed on 31.01.2014. In fact, on 31.01.2014, both P.W.1 and the appellants went to police station, Chandanagar and gave complaints. The complaints of P.W.1 were closed as lack of evidence, which are marked as Exs.D3 and D4. However, the complaint filed by the appellants herein resulted in filing of charge sheet against P.W.1, which were marked as Exs.D5 and D6. In fact, the complaint filed before the Chandanagar Police does not mention about any incident that had taken place on 05.01.2014 which formed basis for conviction in the trial Court.

6. Learned counsel further argued that no explanation was given for the delay in lodging the complaint for the alleged incident that had taken place on 05.01.2014. Two complaints with very same allegations under Exs.D3 and D4 were closed for lack of evidence. As such, on the very same allegations carrying on prosecution in the present case is illegal. If the

complaints under Exs.D3 and D4 were closed for lack of evidence, private complaint ought to have been filed or a protest application by P.W.1. However, P.W.1 choose to file separate complaint, which cannot be permitted.

7. On the other hand, learned Public Prosecutor submitted that huge amounts were taken by A1, is not in dispute. Further, the amounts were not returned is also not in dispute. The incident alleged by P.W.1 is admittedly on account of the pending disputes in between the parties. Accordingly, learned Sessions Judge had not committed any error in recording conviction.

8. Admittedly, there are transactions in between the victim-PW1 and the deceased Accused No.1. In complaint dated 31.01.2014, it is stated that A5 requested on behalf of A1 to invest money in their Company and if invested 20% dividend and 3% interest would be given. Accordingly, plot at Nallagandla of PW1 was sold and money was given to A1 and A5. The said transaction was in the month of February, 2008. In all Rs.1,60,00,000/- was given to A1 believing his promise

that he would give 20% dividend and 3% interest each year and also he was lured on the ground that the company would make huge profits. It is further admitted that A1 transferred 15,000 shares of M/s.Rusini Distilleries which is equivalent to Rs.50 lakhs under Exs.P2 to P5. Though, PW1 was insisting to return the amount from the year 2009 itself, they did not return. In the year 2010 it is alleged that A1 and others abused PW1 in the name of caste. On 05.01.2014 PW1 and others went to the house of A1 asking him to repay the amount which was outstanding from the year 2008 to 2014, however, all the accused abused and necked him out from their house on the said date. On the very same day, PW1 went to Chandanagar Police and lodged a complaint. Since there was no action taken from their end, Ex.P1 complaint was lodged in CID Police Station on 31.01.2014.

9. The offence under Sections 406 and 420 of the Indian Penal Code arise under different conditions. An offence of criminal misappropriation punishable under Sections 406 to 409 categorizing different persons, would attract when the

amount is entrusted by a person. The act of entrustment would be voluntary. In cases of cheating, a person having knowledge about falsity of the statements made by him, makes false representations and induces a person. Consequent to the entrustment, a person delivering property would be an offence under Section 420 of the Indian Penal Code. For the very same transaction a person cannot be convicted under both sections of 420 and 406 of the Indian Penal Code. It is either misappropriation of the entrusted amount or causing wrongful loss by practicing act of deception. If the act of entrustment of amount or property is a consequence of inducement, it would fall within the requirement of Section 420 of IPC for “delivering property consequent to inducement” and punishable under Section 420 of IPC for causing wrongful loss. Causing ‘wrongful loss’ also include converting to one’s own use, the property entrusted.

10. In the present case, the transactions appear to be for the reason of promising 20% dividend and 3% interest along with profits in the company. It is not in dispute that the Company

was running and shares worth Rs.50 lakhs was already transferred in favour of PW1. In the said circumstances, it cannot be said that the appellants entertained the intention to cheat from the inception of the transaction. It is not the case that the amounts were not utilized for the purpose of running the business of A1 company and were diverted. Further it is an admitted fact that having run into losses, several cases were registered against A1 and others. PW1 had also deposed against the appellants for the very same transactions which transactions are subject matter of CC Nos.365/2014 and 249/2014 registered by the CID in the year 2012 and charge sheet filed in the year 2013. In the said cases PW1 was a witness for the transaction in question. Further, A1 and others were also prosecuted vide CC.Nos.365/2014 and 249/2014 in which cases PW1 has spoken about on the very same transactions.

11. P.W.1 having agreed for dividend and share in the company, which is investment in the company, cannot after the company running into losses claim that he was cheated

and the investment amount was misappropriated. In the present set of facts, neither the ingredients of Section 406 or 420 of IPC are made out.

12. In respect of the incident that happened on 05.01.2014, a complaint was lodged with Chandanagar Police Station, however, no such proof is provided. Again on 06.02.2014 another complaint under Ex.D3 was filed by PW1. In the said complaint dated 06.02.2014, it is alleged that the deceased A1 and appellants herein abused him in the name of caste regarding the very same transaction. A complaint was also filed by the wife of A1 against PW1 regarding the very same incident that happened on 06.02.2014. The Police after investigation filed Final Report as lack of evidence which is Ex.D4 having investigated the complaint filed by PW1 vide Ex.D3. However, the complaint dated 30.01.2014 filed by the wife of A1 which was registered on 06.02.2014 resulted in filing of a charge sheet against PW1 for the offences under Sections 448, 354, 323 and 506 of the Indian Penal Code.

13. Admittedly, disputes arose between PW1 and the appellants over a period of time. But, it is not disputed that money was handed over by PW1 for the purpose of investment in the Company of A1 and also accepted Rs.50 lakh worth shares which were transferred in his name. In the said circumstances, it cannot be said that there was any element of cheating involved. Further, the transactions were subject matters of two different charge sheets in which PW1 was a witness and has given statement regarding the very same transactions.

14. It appears that on account of long pending disputes between PW1 and appellants, complaints were filed in order to force payments by the appellants. Over a period of time, complaints were successively lodged alleging that the appellants were abusing in the name of caste. In the background of the transactions and the constant disputes, it appears that a complaint was deliberately made falsely. For the said reason, benefit of doubt is extended to the appellants.

15. Accordingly, Criminal Appeal is allowed and the conviction and sentence imposed against the appellants in SC/ST SC No.56 of 2016 of 2016 dated 08.03.2021 is hereby set aside. Since the appellants are on bail, their bail bonds shall stand cancelled.

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**K.SURENDER, J**

Date: 30.01.2024

Note: LR copy to be marked.

B/o.kvs

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

**CRIMINAL APPEAL No.118 OF 2021**

**Dt. 30.01.2024**

kvs

