

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

Criminal Petition Nos.236, 2650, 2654 OF 2021

Between:

1. Sailesh Kumar Agarwal,
S/o.Late Mahesh Chand Agarwal, Aged about 48 years, Occ:Business
R/o 8-2-269/S/56 Plot No 56 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

2. Dinesh Kumar Agarwal,
S/o.Late Mahesh Chand Agarwal, Aged about 45 years, Occ:Business
R/o 8-2-269/S/56 Plot No 56 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

3. Rupesh Agarwal,
S/o.Late Mahesh Chand Agarwal, Aged about 42 years, Occ:Business
R/o 8-2-269/S/56 Plot No 56 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

4. Rekha Agarwal,
W/o.Sailesh Kumar Agarwal, Occ:Business, Aged about 44 years,
R/o 8-2-269/S/56 Plot No 6 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

5. Seema Agarwal,
W/o.Dinesh Kumar Agarwal, Occ:Business, Aged about 42 years,
R/o 8-2-269/S/56 Plot No 56 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

6. Ashita Agarwal,
W/o.Rupesh Kumar Agarwal, Occ:Business, Aged about 42 years,
R/o 8-2-269/S/56 Plot No 56 Sagar Society Road No 2 Banjara Hills,
Hyderabad.

...Petitioners/Accused Nos.1,3,4 to 7

AND

1. The State of Telangana
Rep by Public Prosecutor Station House Officer Malkajgiri Police
Station, High Court for State of Telangana, Hyderabad.

2. Sri Arun Kumar and Another,
S/o.Om Prakash, Aged about 45 years, Occ:Jewellery Business,
R/o H No 5928/12 and 13 Basheerbagh, Hyderabad.

...Respondent/Respondent

DATE OF ORDER PRONOUNCED: 04.01.2023
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 the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**
+ CRLP. Nos.236, 2650, 2654 OF 2021

% Dated 04.01.2023

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...Respondent/Respondent

! Counsel for the Petitioners: Katika Ravinder Reddy

^ Counsel for the Respondent: Additional Public Prosecutor-
for Respondent No.1.

>HEAD NOTE:
? Cases referred

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.236, 2650, 2654 OF 2021

COMMON ORDER:

All the three Criminal Petitions are arising out of the same C.C.No.8141 of 2020 on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad, as such they are being disposed by way of this Common Order. Crl.P.No.236 of 2021 is preferred by Accused Nos.4 to 7, Crl.P.No.2650 of 2021 is preferred by Accused No.1 and Crl.P.No.2654 of 2021 is preferred by Accused No.3.

2. Heard. Perused the record.

3. The case of the 2nd respondent/complainant is that 700 kgs of silver was provided to accused No.1 for the purpose of meeting his business needs. Accused No.1 promised to return the said 700 kgs of silver along with interest which would include 100 kgs of pure silver. It was agreed that 800 kgs would be given and also to pay an interest @ 10.8% after 01.11.2019. The said silver was given on 28.05.2019. At the time of receiving the silver, the accused No.1 signed on the undertaking and Accused No.2, 3 also have signed on the undertaking on 25.05.2019 as witnesses. Thereafter all the accused who are family members have cheated.

4. On the basis of the said complaint, charge sheet was filed after investigation, for the offence under Sections 420, 409 read with 34 of IPC.

5. Learned counsel for the petitioners would submit that the silver was never given and even according to the undertaking it was agreed that silver would be given. When the 2nd respondent/complainant failed to give such silver, the question of attracting either offence under Section 420 or 409 of IPC does not arise.

6. On the other hand, the learned counsel for the 2nd respondent/complainant would submit that all the accused Nos.1 to 7 are partners in a partnership firm and in fact they have induced the complainant into parting with the said 700 kgs of silver. The said parting of silver was in fact admitted by the petitioners herein in the written statement filed before the Civil Court, which argument was denied by the learned counsel for the petitioners. The learned counsel for the petitioners at this juncture submits that in spite of explanation given under Section 41-A of Cr.P.C regarding the alleged handed over of silver and to check the CC TV footage. In fact none

of the accused approached the 2nd respondent/complainant and the transaction has never taken place.

7. Having perused the record, an undertaking is filed in which accused Nos.1,2,3 signed in the said undertaking in which there is mention that Sailesh Kumar, Accused No.1 received 700 kgs of pure silver from Arun kumar, *de facto* complainant. It further reads that total of 700 kgs of silver would be given back on or before 01.11.2019. Further, there is an undertaking that if accused No.1 does not return the 700 kgs of pure silver, he is liable to pay an interest of 10.8% per annum and also additional 100 kgs would be given. There is an endorsement in the said undertaking that execution took place with free will and without any fear or coercion.

8. The case is registered for the offence of cheating, in the present case it is written in document that they have received 700 kgs. Though the document is disputed and the accused No.1 issued legal notice denying execution of such document and also receiving the 700 kgs of silver. Whether the document was forged or brought into existence for the purpose of the case can only be decided during course of trial. Accused Nos.1 to 3 have signed in the said

document according to investigation, the dispute is regarding the receipt of the said 700 kgs of silver as mentioned in the document.

9. Since Accused Nos.1 to 3 have signed in the undertaking and it is the allegation of the 2nd respondent that 700 kgs of silver was handed over to the accused No.1 and others. Whether the said silver is handed over or not is again a fact that has to be decided during the course of trial.

10. Learned counsel for the respondents would submit that all the accused are part of the same partnership firm. For which reason, their prosecution has to be continued. This Court cannot quash the proceedings against the Accused Nos.1 and 3.

11. Except the oral statement that all the accused were complicit in asking the *de facto* complainant for 700 kgs of silver, however, in accordance with the undertaking document Accused Nos.4 to 7 were not present. For the said reason, I do not find any grounds to continue with the prosecution of accused Nos.4 to 7 who are petitioners in the Criminal Petition No.236 of 2021. There cannot be any vicarious liability of partners or a firm in a prosecution for the offence under Section 420 or 409 of IPC.

12. Since this Court under Section 482 cannot decide about the correctness or otherwise of the facts in this case whether the silver was received or not received, the same can be agitated before the concerned trial Court. However, the petitioners accused Nos.4 to 7 cannot be proceeded with the criminal trial only on the allegation that they were present when the transaction has taken place. The proceedings in C.C.No.8141 of 2020 on the file of XII Additional Chief Metropolitan Magistrate, Hyderabad, against the petitioners- Accused Nos.4 to 7 are hereby quashed. The trial Court shall conclude the trial against Accused Nos.1 to 3 and come to conclusion on the basis of the evidence adduced without being influenced in any manner by the observations made in the present order.

13. Accordingly, the Criminal Petition No.236 of 2021 is allowed and the Criminal Petition Nos.2650, 2654 of 2021 are dismissed.

Miscellaneous applications pending, if any, shall stand closed.

K.SURENDER, J

Date: 04.01.2023
Gms

THE HONOURABLE SRI JUSTICE K.SURENDER

CRIMINAL PETITION Nos.236, 2650, 2654 OF 2021

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