APHC010596692015

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3604]
(Special Original Jurisdiction)

TUESDAY, THE 21st DAY OF JULY 2026

PRESENT

THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM

CRIMINAL REVISION CASE NO: 152/2015

Between:

1. CHEKURI ASHOK VARMA, S/O.(LATE) SATYANARAYANA, 25 YEARS, PRIVATE EMPLOYEE, D.NO.9-306, RAMANAYYAPETA, KAKINADA,E.G.DIST.

...PETITIONER

AND

1. KOSIREDDI VEERABHADRARAO, S/O. NARAYANARAO, 36 YRS, REAL ESTATE BUSINESS, D.NO.10-469/3, RAMANAYYAPETA, KAKINADA,E.G.DIST.
2. PILLI APPARAO, S/O.(LATE NAGARAJU, 36 YEARS, PRIVATE EMPLOYEE, D.NO. 2-128, SARPAVARAM, KAKINADA RURAL MANDAL, E.G.DIST.
3. PILLI VEERABABU, S/O.LATE NAGARAJU, 25 YRS, ELECTRICAL CONTRACTOR, D.NO.2 -128, SARPAVARAM, KAKINADA, RURAL MANDAL, BAST GODAVARI DIST.
4. PILLI NAGARATNAM, W/O.(LATE)NAGARAJU, 60 YRS, PRIVATE EMPLOYEE, R/O.MNO. 1-128, SARPAVARAM, KAKINADA RURAL MANDAL, E.G.DIST.
5. PITHANI KASI JAGANNADHARAO, S/O. VENKATA RATNAM 50 YEARS, BUSINESS, D.NO.9-309, RAMANAYYAPETA, KAKINADA, E.G.DIST

6 STATE OF A P, REP BY PUBLIC PROSECUTOR, HIGH COURT,
. HYDERABAD.

...RESPONDENT(S):

Revision filed under Section 397/401 of CrPC praying that in the circumstances stated in the affidavit filed in support of the Criminal RevisionCase, the High Court may be pleased to aggrieved by the order dt.18-1172014. made in C.C. SR.No.4835 of 2014 made by the Special Mobile Judicial Magistrate of First Class, Kakinada in dismissing the complaint, the petitioner herein begs to present this memorandum of Crl.R.c.

Counsel for the Petitioner:

1 I V N
. RAJU

Counsel for the Respondent(S):

1 PUBLIC PROSECUTOR
. (AP)

2 SRINIVASA RAO PAPPU
.

The Court made the following:

HON'BLE SMT. JUSTICE SUNITHA GANDHAM

CRIMINAL REVISION CASE NO: 152/2015

ORDER:

1. As seen from the record, accused No.1 induced the complainant and his brother to purchase land to an extent of 100 square yards in S.No.179 situated near Subhanikethan School and thereafter, accused No.1 got executed registered sale deeds through accused Nos.2 & 3/original owners, in favour of the complainant and his brother in the presence of accused Nos.4 & 5. After four days of registration, complainant came to know that one Sri Durga Prasad of Jagannadhapuram Village is the legitimate owner of the said land and when the complainant approached accused Nos.1 to 3, they admitted the same and agreed to repay the sale consideration of Rs.5,10,000/-, received by accused Nos.2 & 3, but they failed to repay the said amount. Subsequently, on 12.03.2014, complainant and his brother gave two complaints to the SHO of Sarpavaram Police Station, East Godavari District and thereupon, police conducted formal enquiry and then, accused Nos.1 to 3 admitted their guilt and promised to repay the said amount of Rs.5,10,000/- and finally, on 21.03.2014, accused No.1 executed the undertaking letter agreeing to repay sale consideration of Rs.2,60,000/- and accused Nos.2 & 3 executed separate undertaking letters agreeing to repay the sale consideration of Rs.2,50,000/-, but they failed to pay the said amount and as such, complainant filed the complaint under Section 190 and 200 of Cr.P.C in C.C.S.R.No.4835 of 2014. After considering the material including statements of the complainant and his witnesses, the trial Court dismissed the complainant *vide* order dated 18.11.2014. Feeling aggrieved by the said order, the revision petitioner preferred this instant revision.

2. Heard the learned counsel for the revision petitioner and learned Assistant Public Prosecutor.

3. Learned counsel for the revision petitioner submitted that the matter may be disposed of on merits.

4. The simple question involved in this revision case is that ‘whether or not the dispute between the parties is of civil nature’.

5. It is the admitted case of the complainant that, accused Nos. 1 to 3 agreed to repay the amount received by them towards sale consideration and executed undertaking affidavits before the police and even after repeated demands, they failed to repay the said amount of Rs.5,10,000/-. Record clearly reveals that he had no grievance for registering the sale deeds and not attributed any allegations to that affect. And, there is no information with regard to the said sale deeds, whether they are cancelled or still in subsistence. So, main allegation of the complainant is in respect of violation of undertaking affidavit and recovery of money. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and *mens rea*. The mere inability of the accused to return the undertaking amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction as *mens rea* is the crux of the offence.

6. A bear perusal of Section 420 of Indian Penal Code (hereinafter referred to as ‘I.P.C’) would clearly lead to the conclusion that fraud or dishonest intention on the part of the accused must be at the inception but not at the subsequent stage. Further, Section 415 of the IPC defines cheating. As per Section 415 of the IPC, cheating can be by deceiving any person, fraudulently or dishonestly inducing the person to do things or by inducing a person intentionally to do or omit to do things. In order to constitute the offence under the said section, the essential ingredients of the offence of cheating are as follows:

> "(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission; (ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and
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> (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.
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> 19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived
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> (i) to deliver any property to any person, or
>
> (ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security)."

7. In a number of Judgments, the Hon'ble Apex Court has pointed out a clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Section 420 of IPC. Even if all the facts in the complaint and material placed before this Court taken on their face value, no such dishonest representation or inducement could be found or inferred. The ingredients to allege the offence are neither stated nor can be inferred. A request was made to the police to recover an amount which was agreed by accused Nos.1 to 3 and thereafter, accused Nos.1 to 3 have executed undertaking letters agreeing to repay the amount of Rs.5,10,000/- to the complainant. The only recourse open to the complaint is to file a suit, seeking recovery of the said amount. Initiation of the criminal process for oblique purposes is bad in law and amounts to abuse of process of law. Absolutely, there are no grounds to interfere in the order passed by the learned trial Court.

8. For the foregoing reasons and in the given facts and circumstances, this Court, without any doubt, came to conclusion that the order passed by the learned Judicial Magistrate of First Class, Kakinada, in C.C.S.R.No.4835 of 2014 dated 18.11.2014 is absolutely sustainable in facts and law and as such, no interference is required.

9. In the result, this Criminal Revision Case is dismissed by confirming the order dated 18.11.2014 in C.C.S.R.No.4835 of 2014 passed by the learned Judicial Magistrate of First Class, Kakinada.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

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SUNITHA GANDHAM, J

21.07.2026
Vns