

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26246 and 26369 of 2007

%10.2.2016

M.Srinivasulu Reddy ...Petitioner in
W.P.No.26246/07

Syed Avullullah Saheb
@ Jalaluddin Saheb ...Petitioner in
W.P.No.26369/07

VERSUS

\$ The Station House Officer,
Vijayawada Police Station, Payakapuram,
Vijayawada & others.

...Respondents in both W.Ps.

< **GIST:**

> **HEAD NOTE:**

!Counsel for Petitioner in both W.Ps.: Sri P.Sri Raghuram

^Counsel for Respondent No.1: G.P. for Home

^Counsel for Respondent No.2: Sri V.L.N.G.K.Murthy

? Cases referred

1. (2003) 7 SCC 399
2. (2000) 3 SCC 269
3. (2009) 8 SCC 751
4. 2007 (5) ALD 267 (DB)
5. (2001) 5 SCC 162
6. (2012) 4 ALD 385 (DB)
7. (2016) 1 SCC 348

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26246 and 26369 of 2007

COMMON ORDER:

Since the petitioners in these two writ petitions share the common grievance, this Court deems it appropriate to dispose of these two writ petitions by way of this common order.

2. Accused 1 and 2 in F.I.R.375 of 2007, on the file of the Station House Officer, Vijayawada Rural Police Station, Payakapuram, Vijayawada, Krishna District registered for the alleged offences under Sections 405, 409, 418, 423 and 464 IPC are the petitioners in these writ petitions. According to the petitioners, the petitioner in WP.No.26246 of 2007 purchased an extent of Ac.5-00 cents in Sy.No.852/1 from the petitioner in W.P.26369 of 2007 of Nunna Village, Vijayawada Rural Mandal, Krishna District, by way of a registered sale deed bearing Doc.No.5115/2007 dated 01.03.2007 registered on the file of the Sub-Registrar, Kavali. On the complaint made by the second respondent, the police registered the subject crime. Seeking quashment of the said crime, the present writ petitions came to be filed.

3. Heard Sri P.Sri Raghuram, learned Senior Counsel appearing for the petitioner and the learned Government Pleader for the first respondent and Sri V.L.N.G.K. Murthy, learned counsel appearing for Respondent No.2 apart from perusing the material available before the Court.

4. Contentions/submissions of Sri P.Sri Raghuram, learned Senior Counsel:

- 4.1. The subject property is a patta land as evident from the undisputed and uncontroverted material available on record.
- 4.2. The prosecution launched against the petitioners is highly illegal, arbitrary and unreasonable and a patent abuse of process of law.

- 4.3. The subject property is not a Wakf property nor the same is notified as such under the provisions of the Wakf Act and there are no ingredients of the offences alleged.
- 4.4. For redressal of the grievances of the *de facto* complainant the provisions of the Indian Penal Code cannot be pressed into service in view of the orders passed by this Court in other proceedings and the very continuation of the proceedings against the petitioners is impermissible.

In support of his submissions/contentions the learned Senior Counsel appearing for the petitioners places reliance on the judgments of the Hon'ble Apex Court and this Court in ***KAILASH KUMAR SANWATIA v. STATE OF BIHAR AND ANR.***^[1], ***M/S. MEDCHL CHEMICALS & PHARMA (P) LTD. v. BIOLOGICAL E. LTD. & ORS.***^[2], ***MOHAMMED IBRAHIM AND ORS. v. STATE OF BIHAR AND ANR.***^[3] ***A.P. STATE WAKF BOARD, HYDERABAD v. MAVURU SUNDARAMMA AND ANOTHER***^[4].

5. Contentions/submissions of the learned Government Pleader and the learned counsel for the Wakf Board Sri V.L.N.G.K.Murthy:

- 5.1. In view of existence of the *prima facie* allegations in the First Information Report, the petitioners herein cannot ask for quashment of the FIR under Article 226 of the Constitution of India.
- 5.2. Since the subject property is a Wakf Property and as the first accused sold the same in favour of the second accused, the petitioners are not entitled for any indulgence of this Court under Article 226 of the Constitution of India.
- 5.3. Since the ingredients of sections alleged are very much present in the case of the prosecution, the petitioners are required to face the investigation and enquiry and the question of quashment of the prosecution at the threshold does not arise.
- 5.4. Though the notification published in the year 1962 does

not contain the subject survey number, in view of the addendum issued on 06.01.2011, now it is not open for the petitioners to say that the subject land is not a Wakf Property.

5.5. In view of the earlier orders of this Court in other proceedings wherein the property was declared as a Wakf property, the contentions of the petitioners have to fall on ground.

5.6. Existence of notification is not a *sine quo non* for deciding as to whether the particular property is a Wakf property or not.

6. Sri V.L.N.G.K.Murthy, learned counsel for the Wakf Board places reliance on the judgment of the Hon'ble Apex Court in ***U.P. SHIA CENTRAL BOARD OF WAKF & ORS. V. U.P. SUNNI CENTRAL BOARD OF WAKF & ORS***^[5] and a Division Bench judgment of this Court in ***LANCO HILLS TECHNOLOGY PARK PVT. LTD. HYDERABAD v. MAHABOOB ALAM KHAN AND OTHERS***^[6].

7. In the above background, now the issue that emerges for consideration of this Court is whether the petitioners are entitled for the relief of quashment of the First Information Report in the facts and circumstances of the case?

8. The legislative intent behind enacting the criminal laws is to maintain law and order, peace and tranquillity in the society. Therefore, the prosecutions shall be in the direction of achieving the said goal and in the direction of inspiring confidence and faith of the people in the system and the process of law should never be permitted to achieve the destination by way of short circuit methods. It is a settled and well established proposition of law that the inherent and extraordinary power of this Court under Section 482 of the Code of Criminal Procedure and Article 226 of the Constitution of India is required to be pressed into service very sparingly and with great care, caution and circumspection

and within the principles and parameters laid down in the authoritative pronouncements. In the event of there being any abuse of process of law, there is a sacred obligation and duty on the Courts to arrest the same and to strengthen the confidence of the people in the system guided by rule of law. The issues raised in the present writ petition need to be examined and analyzed in the light of the above principles.

9. The information available before this Court manifestly reveals that the second respondent herein while referring to a press-note lodged a complaint with the Station House Officer-first respondent herein on 22.11.2007, stating that the land situated in Sy.No.852/1 of Nunna village admeasuring Ac.70.46 cents is a notified land which is published in A.P. Gazettee No.26 Part II dated 28.06.1962 as per the report furnished by the Commissioner for Survey of Wakfs to the Government. The said report further states that as the subject land is a Wakf Land, the same cannot be alienated, but it was brought to their notice that the transaction took place between the respondents unauthorisedly. Basing on the said complaint, the Station House Officer, first respondent herein, registered the present F.I.R No.375/2007 dated 29.11.2007 under Sections 405, 409, 418, 423 and 464 of I.P.C. It is the categorical case of the petitioners that the subject property is a patta land and is not a Wakf Property as alleged in the complaint and the notification indicated in the complaint does not show the subject property as a notified Wakf Property, as such, the very complaint which culminated in registration of the First Information Report is a patent abuse of process of law, as such, the F.I.R is liable to be quashed. It is also the case of the petitioners that the ingredients of the alleged offences are conspicuously absent and the only foundation for lodging the complaint is the existence of the notification as on the date of the complaint.

10. In order to demonstrate that the subject property is not a notified Wakf Property the list of Wakf properties in Krishna District published by the said Wakf Board and the letter bearing No.9/prot/Kst/07 dated

07.11.2007 addressed by the Chief Executive Officer, A.P. State Wakf Board, Hyderabad to the Secretary to Government, Minorities Welfare (Wakf) Department, Secretariat, Hyderabad have been placed on record by the petitioners as material papers along with the writ petition. The said list published by the State Wakf Board does not show the subject land as a Wakf Property and the above said letter dated 07.11.2007 refers to the subject land as a patta land.

11. On behalf of the respondents, the learned Government Pleader and Sri VLNGK Murthy, learned counsel for the third respondent have invited the attention of this court to the addendum dated 06.01.2011 issued by the Wakf Board wherein the subject property is shown. It is significant to note that admittedly the said addendum was not in existence as on the date of setting Criminal Law in motion by the respondents. Now before this Court a valiant and herculean effort is made by producing various documents including the decision of this Court in the First Appeal and a Civil Revision Petition. Admittedly, the said proceedings do not relate to any lis between the petitioners and the respondent Wakf Board and in the considered opinion of this Court the same cannot form the basis to sustain the impugned proceedings. At the same time, the said material may be relevant for placing before a competent Civil Court where a title aspect can be gone into. The only foundation for lodging the complaint is the existence of the notification under the Wakf Act as on the date of the complaint and the material on record falsifies the said basis. Therefore, the prosecution against the petitioners is undoubtedly a patent abuse of process of law. This Court also finds force in the case of the petitioners that the ingredients of the sections mentioned in the First Information Report are conspicuously absent. In this context, it may be appropriate to refer to the judgments cited by the learned Senior Counsel and the learned counsel for the third respondent.

12. In the case of **KAILASH KUMAR SANWATIA** (*supra* 1), the

Hon'ble Apex Court at paragraphs 8 to 10, held as follows:

"8. What amounts to criminal breach of trust is provided in Section [405](#) IPC. Section [409](#) is in essence criminal breach of trust by a category of persons. The ingredients of the offence of criminal breach of trust are:-

(1) Entrusting any person with property, or with any dominion over property.

(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or willfully suffering any other person so as to do in violation -

(i) of any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) of any legal contract made touching the discharge of trust.

9. The basic requirement to bring home the accusations under Section [405](#) are the requirements to prove con-jointly (1) entrustment and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.

10. In the instant case even if it was proved as contended by learned counsel for the appellant, that money was entrusted which fact is borne out by the admitted case about missing of money from the cash counter of the bank, one factor which needs to be decided is whether the accused had dishonestly misappropriated or converted to his own use the property entrusted or dishonestly used or disposed of that property. As presented by the prosecution, the money was taken away from the cash counter. It is not the case of prosecution that money which was given to the accused-Gautam Bose and the cash peon to obtain bank drafts was taken away by accused-Gautam Bose or the cash peon Ganaori Sao. Because of an Intervening situation, the disappearance of the cash due to theft by somebody else the bank drafts could not have been prepared and handed over to the appellant. Even if there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, that will not bring in application of Section [405](#) IPC or Section [409](#) IPC, unless misappropriation, or conversion to personal use or disposal,

of property is established. Unfortunately, the courts below have not looked at the issues from these vitally relevant angles. The inevitable conclusion is that accused persons cannot be convicted under Section [409](#) IPC. This, however, will not stand in the way of the appellant getting such relief as available, in law otherwise by pursuing a suitable remedy.”

13. In the case of ***M/S. MEDCHL CHEMICALS & PHARMA P. LTD.*** (*supra* 2), the Hon’ble Apex Court at paragraph Nos.11 and 19, held as follows:

“11. While Section [415](#) is an offence of cheating, Section [418](#) deals with cheating with knowledge that wrongful loss may ensue to a person whose interest the offender is bound to protect and Section [420](#) is cheating and dishonestly inducing delivery of property. In order to attract the provisions of Sections [418](#) and [420](#) the guilty intent, at the time of making the promise is a requirement and an essential ingredient thereto and subsequent failure to fulfil the promise by itself would not attract the provisions of Section [418](#) or [420](#). Mens rea is one of the essential ingredients of the offence of cheating under Section [420](#). As a matter of fact illustration (g) to Section [415](#) makes the position clear enough to indicate that mere failure to deliver in breach of an agreement would not amount to cheating but is liable only to a civil action for breach of contract and it is this concept which obviously has weighed with the Learned Single Judge. But can the factual situation as narrated above in the longish reproduction of the complaint lend support to the observations of the Learned Judge, the answer is pivotal one but before so doing one other aspect as regards the powers under Section [482](#) Cr.P.C. ought to be noticed. As noted herein before this power is to be exercised with care and caution and rather sparingly and has been so held on more occasions than one.

19. Considering the factual aspect of the matter, we unhesitatingly state, however, that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short circuited. We, thus, without expressing any opinion on the merits of the case allow the Appeal and set aside the impugned order of the High Court and restore the complaint. The learned trial Magistrate shall proceed with the complaint and dispose of the same in accordance with the law with utmost expedition. Be it clarified however that observations as above in this judgment be not taken as an expression of opinion of ours.”

14. In the case of ***MD. IBRAHIM AND ORS.*** (*supra* 3), the Hon’ble Apex Court at paragraphs 12 to 23, held as follows:

12. Section [464](#) defining "making a false document" is extracted below:

[464. Making a false document.](#)--A person is said to make a false document or false electronic record--

First.--Who dishonestly or fraudulently -

(a) makes, signs, seals or executes a document or part of a document;

(b) makes or transmits any electronic record or part of any electronic record;

(c) affixes any *digital signature* on any electronic record;

(d) makes any mark denoting the execution of a document or the authenticity of the *digital signature*,

with the intention of causing it to be believed that such document or a part of document, electronic record or *digital signature* was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.--Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with digital signature either by himself or by any other person, whether such person be living or dead at the time of such alternation; or

Thirdly.--Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his digital signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1 - A man's signature of his own name may amount to forgery.

Explanation 2 - The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

[Note: The words `digital signature' wherever it occurs were substituted by the words `electronic signature' by Amendment Act 10 of 2009].

13. The condition precedent for an offence under Sections [467](#) and [471](#) is forgery. The condition precedent for forgery is making a false document (or false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. An analysis of Section [464](#) of Penal Code shows that it divides false documents into three categories:

1) The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3) The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a 'false document', if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practicing deception, or from a person not in control of his senses.

15. The sale deeds executed by first appellant, clearly and obviously do not fall under the second and third categories of 'false documents'. It therefore remains to be seen whether the claim of the complainant that the execution of sale deeds by the first accused, who was in no way connected with the land, amounted to committing forgery of the documents with the intention of taking possession of complainant's land (and that accused 2 to 5 as the purchaser, witness, scribe and stamp vendor colluded with first accused in execution and registration of the said sale deeds) would bring the case under the first category.

16. There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is

his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bonafide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of 'false documents', it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section [464](#) of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section [467](#) nor Section [471](#) of the Code are attracted.

Section [420](#) IPC

18. Let us now examine whether the ingredients of an offence of cheating are made out. 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
- (iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

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

- (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).

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed, to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.

21. It is not the case of the complainant that any of the accused *tried to deceive him* either by making a false or misleading representation or by any other action or omission, nor is it his case that they offered him any fraudulent or dishonest inducement to deliver any property or to consent to the retention thereof by any person or to intentionally induce him to do or omit to do anything which he would not do or omit if he were not so deceived. Nor did the complainant allege that the first appellant pretended to be the complainant while executing the sale deeds. Therefore, it cannot be said that the first accused by the act of executing sale deeds in favour of the second accused or the second accused by reason of being the purchaser, or the third, fourth and fifth accused, by reason of being the witness, scribe and stamp vendor in regard to the sale deeds, deceived the complainant in any manner.

22. As the ingredients of cheating as stated in Section [415](#) are not found, it cannot be said that there was an offence punishable under Sections [417](#), [418](#), [419](#) or [420](#) of the Code.

A clarification

23. When we say that execution of a sale deed by a person, purporting to convey a property which is not his, as his property, is not making a false document and therefore not forgery, we should not be understood as holding that such an act can never be a criminal offence. If a person sells a property knowing that it does not belong to him, and thereby defrauds the person who purchased the property, the person defrauded, that is the purchaser, may complain that the vendor committed the fraudulent act of cheating. But a third party who is not the purchaser under the deed may not be able to make such complaint.

15. In the case of **ANDHRA PRADESH STATE WAKF BOARD** (*supra* 4), this Court at paragraphs 11, 12 and 13, held as follows:

“11. In *Sirajulu Haq Khan v. Sunni Central Board of Wakf*:

[1959]1SCR1287 , considering the expression any person interested in a waqf under Uttar Pradesh Muslim Wakf Act, the Supreme Court held as under:

When the Central Board assumes jurisdiction over any waqf under the Act it proceeds to do so on the decision of three points by the Commissioner of Waqfs. It assumes that the property is a waqf, that it is either a Sunni or a Shia waqf, and that it is not a waqf which falls within the exceptions mentioned in Section 2. The literal construction of the expression "any person interested in a waqf would render a pail of the sub-section wholly meaningless and ineffective. The legislature has definitely contemplated that the decision of the Commissioner of the Waqfs that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision, and it is this class of persons who are obviously intended to be covered by the words "any person interested in a waqf. 'Therefore the expression "any person interested in a waqf must mean "any person interested in what is held to be a waqf. It is only persons who are interested in a transaction which is held to be a waqf who would sue for a declaration that the decision of the Commissioner of the Waqfs in that behalf is wrong, and that the transaction in fact is not a waqf under the Act. Thus, persons whose case is that the properties in suit do not constitute a waqf under the Act but are held, by them as proprietors and that the notification issued by the Sunni Central Board of Waqf in respect of the said properties is wholly void and who claim a declaration and injunction against the Board are obviously interested in the suit properties and so the suit instituted by them would be governed by Section 5(2).

12. Having regard to the aforesaid principles laid down by the Supreme Court in the above said decisions, it quite clear that the proviso to aforesaid Section 6 of the Wakf Act, and the bar created thereunder, much less, the period of limitation, as prescribed there under, would in any way apply to the third parties who are in no way concerned with the Wakf.

13. Admittedly, the respondents herein are the third parties, who are absolutely, no way connected with the Wakf or the institute in any capacity. Therefore, the bar created thereunder would not come in their way nor the entries, as notified under Section 4(1) of the Wakf Act, are reliable. Be that as it may, the appellant has to establish his title in the present case. Both the Courts below on appreciation of the entire material on record held that the respondents have to establish their title vis-a-vis that of the appellant herein.”

16. In the case of ***U.P. SHIA CENTRAL BOARD OF WAKF & ORS.***

(*supra* 5), the Hon'ble Apex Court at paragraph 17 held as follows:

'17. From the conspectus of the statutory provisions noted above, the scheme of the statute is clear that in case of any dispute, whether a particular property is Wakf property or not or whether a Wakf is a Shia Wakf or Sunni Wakf the Board concerned or the mutawalli of the Wakf or any person interested in the Wakf may in accordance with the provisions of the law refer the dispute for adjudication to the Tribunal. Under the proviso to sub-section (1) a restriction is imposed that no such dispute shall be entertained by a Tribunal after the expiry of one year from the date of publication of the list of Wakfs under sub-section (4) of Section 6. On a plain reading of the provision in sub-section (1) it is clear that it is expressed in wide terms taking within its fold different types of disputes relating to a Wakf and its properties. The statute enables different classes of persons interested in the Wakf and its properties like the Board concerned, the mutawalli and any person interested in the Wakf to raise a dispute. The only restriction sought to be placed on such a reference is in the proviso, wherein it is laid down that after the list of Wakfs is published by the Commissioner under sub-section (4) of section 6 of the Act then the dispute has to be made to the Tribunal within one year from the date of publication and the Tribunal is precluded from entertaining the dispute after the expiry of one year. The section does not make any provision that the publication of a list of Wakfs by the Commissioner under section 6 is a sine qua non for a reference under section 8(1) of the Act. All that is laid down in the proviso to sub-section(1) is that after a list of Wakfs has been published by the Commissioner then a dispute as contemplated in the proviso has to be raised within one year from the date of the publication of the list of Wakfs and not thereafter. It is pertinent to note here that in the present case no list of Wakfs has been published by the Commissioner under Section 6(4). Therefore, the limitation prescribed in the proviso to sub-section (1) of section 8 has no application in the case."

17. In the case of ***LANCO HILLS TECHNOLOGY PARK PVT. LTD.***

(*supra* 6), a Division Bench of this Court at paragraphs 27 and 34, held as follows:

"27. All the wakfs created before or after commencement of it are governed by the Wakf Act. Section [2\(r\)](#) contains 'means as well as inclusive' definition of the wakf. Any dedication of movable or immovable property for pious, religious or charitable purposes shall be wakf. A property by

user is also a wakf. Both the Acts (1954 and 1995) contain similar provisions for the survey and notifying the wakfs. While considering whether any property is wakf, one can visualise three distinct categories. These are the wakfs which were published by the Wakf Board under 1954 Act, those published after coming into force of 1995 Act and those wakfs which are yet to be surveyed and published. This is not to suggest that those wakfs, which do not fall in first two categories cease to be wakfs or their properties lose the character of being wakf properties. In Muslim law, the wakf property always remains the same notwithstanding anything or anybody claiming or disputing the nature of the property. If the property is notified under 1954 Act or 1995 Act as wakf property, it is conclusive evidence of being so unless and until it is declared otherwise by a Court or statutory Tribunal, in accordance with the provisions of the Act.

34. What is the effect of Ex.P.4, errata notification? Does it relate back to the date of Ex.P.1, the original notification or from the date of publication of Ex.P.4? It is settled law that an errata published always dates back to the date of initial publication. In *State of Tamil Nadu v. Mahalakshmi Ammal* : (1996) 7 SCC 269, the following observations are made.

It is true that the Government having realised that the lands were initially notified to be acquired but did not cover the survey numbers being situated in the adjacent villages, the errata notification was published and included to lands in Surveys Nos. 2/5, 2/11 and 2/12. Once errata was published, it dates back to the date of initial Section [4\(1\)](#) notification, namely, 26-6-1978. It cannot be considered to be a fresh notification issued under Section [4\(1\)](#). It is not in dispute that the respondents, in fact, filed their objections to the notice issued under Section 5-A and Rule 3 of the rules made by the State Government.

(emphasis supplied)”

18. It may also be appropriate to refer to the judgment of the Hon’ble Apex 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***^{[\[7\]](#)}. The Hon’ble Apex Court while dealing with an allegation of cheating under Section 420 of IPC and the necessary ingredients of the same, at paragraph 15, held that in order to

bring a case for the offence of cheating, it is not merely sufficient to prove that a false representation had been made, but it is further necessary to prove that the representation was false to the knowledge of the accused and was made in order to deceive the complaint. In the instant case, the said indispensable ingredient is conspicuously absent in the complaint and the allegations contained therein. Therefore, further continuation of the prosecution against the petitioners undoubtedly amounts to abuse of process of law.

19. For the aforesaid reasons, the writ petitions are allowed, and the F.I.R.375 of 2007, on the file of the Station House Officer, Vijayawada Rural Police Station, Payakapuram, Vijayawada, Krishna District is quashed. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 10.02.2016
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

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