

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO
+ CRIMINAL PETITION Nos.2715 and 2716 of 2013

% Dated 28.01.2016

J.Sesha Ratna Kumar (Crl.P.No.2715 of 2013) &
A.Suchitra (Crl.P.No.2716 of 2013)

....Petitioners

VERSUS

\$ State of A.P., Rep. by its Public Prosecutor,
High Court of A.P.,
Hyderabad and another

... Respondents

! Counsel for Petitioners: Smt. A.Anasuya

^ Counsel for Respondent No.1: Public Prosecutor (A.P.)

Counsel for Respondent No.2 : Mr.Srinivas Velgapudi

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> HEAD NOTE:

? CITATIONS:

**IN THE HIGH COURT OF JUDICATURE AT
HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE
OF ANDHRA PRADESH**

CRIMINAL PETITION Nos.2715 and 2716 of 2013

Between :

J.Sesha Ratna Kumar (Crl.P.No.2715 of 2013) &
A.Suchitra (Crl.P.No.2716 of 2013)

... Petitioners

AND

State of A.P., Rep. by its Public Prosecutor,
High Court of A.P.,
Hyderabad and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: 28.01.2016

THE HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

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

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION Nos.2715 and 2716 of 2013

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COMMON ORDER :

The petitioner-Smt.J.Sesha Ratna Kumari in Crl.P.No.2715 of 2013 is the sole accused in C.C.No.307 of 2012 on the file of the Additional Judicial First Class Magistrate, Sangareddy, where the learned Magistrate has taken cognizance for the offences punishable under Sections 418, 420 and 406 IPC, which is an out come of a

private complaint of the 2nd respondent-de facto complainant-P.Venkatesham dated 23.06.2011. The said private complaint was referred to Ramachandrapuram Police Station under Section 156(3) Cr.P.C. by the learned Magistrate for investigation, from which Crime No.206 of 2011 was registered and after investigation police filed the final report. After taking cognizance for the offences supra, the learned Magistrate issued summons and impugning the same, Crl.P.No.2715 of 2013 is filed.

1(a). The petitioner-Smt.A.Suchitra in Crl.P.No.2716 of 2013 is the sole accused in C.C.No.308 of 2012 on the file of the Additional Judicial First Class Magistrate, Sangareddy, where the learned Magistrate has taken cognizance for the offences punishable under Sections 418, 420 and 406 IPC, which is an out come of a private complaint of the 2nd respondent-de facto complainant-P.Venkatesham dated 23.06.2011. The said private complaint was referred to Ramachandrapuram Police Station under Section 156(3) Cr.P.C. by the learned Magistrate for investigation, from which Crime No.207 of 2011 was registered and after investigation police filed the final report. After taking cognizance for the offences supra, the learned Magistrate issued summons and impugning the same, Crl.P.No.2716 of 2013 is filed.

2(a). The private complaint of the de facto complainant

dated 23.06.2011 in registering the crime from reference by the learned Magistrate supra, in nut shell of C.C.No.307 of 2012 is that the de facto complainant is a registered Company engaged in construction and development of residential or commercial complexes with own reputation and the petitioner-J.Sesha Ratna Kumari-accused represented as owner of Plot Nos.82 to 84, 132 and 153, totally admeasuring 1,015 sq. yards comprising of Sy.No.198 of Ameenpur Village, Patancheru Mandal, Medak District, for commercial use in the approved lay out of HUDA. Originally the said plots were agricultural lands later converted into plots and sold the same to individuals and the above four plots are the remaining after alienation and when accused supra was searching for purchasers or developers, mediators introduced the de facto complainant and accused impressed upon the de facto complainant about the viability of plots for development into independent houses and induced and persuaded the de facto complainant to enter into agreement with petitioner to construct duplex houses on mutually agreed terms and from that representations, the de facto complainant entered into registered deed-cum-General Power of Attorney (GPA) vide document No.9172 of 2008 dated 01.07.2008. As per the terms, the de facto complainant should construct duplex houses and share the constructed area into agreed ratio and the de facto complainant paid Rs.2,00,000/- through Cheque bearing

No.077028 dated 01.07.2008, to the petitioner as refundable deposit. After entering said agreement, the de facto complainant applied for permission on 18.08.2008 and 05.09.2008 to construct the residential houses. The Ameenpur Gram Panchayath, by letter dated 11.09.2008, informed the de facto complainant that permission will be considered only after obtaining necessary clearance from the concerned authorities after verifying full bank level of 'Pedda Cheruvu' and when the de facto complainant enquired with the petitioner in this regard as to whether the plots ever got inundated with flood waters of the said Cheruvu, the accused expressed ignorance, though informed they are holding particular lands for more than 15 years and never witnessed flood water into the lands. The Ameenpur Gram Panchayat never intimated the de facto complainant with regard to the grant or refusal of permission to construct residential houses for long time. Later, the de facto complainant came to know that Ameenpur Gram Panchayath addressed letter dated 23.08.2008 to the Deputy Executive Engineer, Irrigation Department, for information regarding the full tank level and whether the lands in Sy.Nos.198 of Ameenpur Village fall within the full tank level of Pedda Cheruvu and the Deputy Executive Engineer did not respond to the request of Ameenpur Gram Panchayath for a long time and the de facto complainant even addressed a letter dated 23.06.2010 to the Deputy Executive Engineer, I.B. Sub

Division, Irrigation Department, Sangareddy, for information in this regard. On such requisition, the Deputy Executive Engineer, I.B. Sub Division, conducted survey of lands of Sy.No.198 of Ameenpura Village with respect to full tank level of Pedda Cheruvu and to the astonishment of the de facto complainant, the Deputy Executive Engineer, I.B. Sub Division, issued a letter dated 25.01.2011 stating that entire extent of Sy.No.198 admeasuring Ac.16.13 guntas except Ac.0.29 guntas fall within the full tank level of Pedda Cheruvu and in fact all the plots which are subject matter of agreement between the de facto complainant and the petitioner fall within the full tank level of Pedda Cheruvu.

2(a1) It is further stated in the complaint that in the Mansoon season of the year 2010 was very vigorous and most of the tanks and kuntas were full and over flowing and during that season, Pedda Cheruvu was full and over flowing for a long time, which was witnessed by the de facto complainant and to his astonishment, the first floor portions of the constructed houses of third parties were submerged in flood water for two or three weeks therein and that was also photographed by the de facto complainant. When the de facto complainant confronted with the accused about the situation and the certificate issued by the Irrigation Department with regard to full tank level of pedda cheruvu and consequent refusal by Gram Panchayath of Ameenpur Village, the accused expressed

ignorance, therefore, the de facto complainant got issued a legal notice dated 18.06.2009 to refund the deposited amount for which the accused did not reply and with a malafide intention to defraud the de facto complainant intentionally suppressed the vital information and induced to enter into the development agreements-cum-GPA only to extract money from the de facto complainant by inducing and falsely represented to enter into above agreement. If the accused has not suppressed such vital information to the de facto complainant, the de facto complainant would not pay such heavy amounts to the accused and in fact would have withdrawn from the proposed agreement with the accused and since received money from the de facto complainant is refundable deposit that is not returning, thereby the accused committed the offence of breach of trust under Section 406 IPC and also committed the offences punishable under Sections 418 IPC and 420 IPC by cheating and dishonest inducement to enter into the agreement-cum-GPA to cause wrongful loss to the de facto complainant. Hence, to refer the complaint to police for investigation.

2(b). The private complaint of the de facto complainant dated 23.06.2011 in registering the crime from reference by the learned Magistrate supra, in nut shell of C.C.No.308 of 2012 is that the de facto complainant is a registered Company engaged in construction and

development of residential of commercial complex with own reputation and the accused-A.Suchithra represented as owner of Plot Nos.142, 143 and 153, totally admeasuring 784

sq. yards comprising of Sy.No.198 of Ameenpur Village, Patancheru Mandal, Medak District, for commercial use in the approved lay out of HUDA. Originally the said plots were agricultural lands later converted into plots and sold the same to individuals and the above three plots are the remaining after alienation and when accused was searching for purchasers or developers, mediators introduced the de facto complainant and accused impressed upon the de facto complainant about the viability of plots for development into independent houses and induced and persuaded the de facto complainant to enter into agreement to construct duplex houses on mutually agreed terms and from that representations, the de facto complainant entered into registered deed-cum-General Power of Attorney (GPA) vide document No.9173 of 2008 dated 01.07.2008. As per the terms, the de facto complainant should construct duplex houses and share the constructed area into agreed ratio and the de facto complainant paid Rs.2,00,000/- through Cheque bearing No.077079 to the accused as refundable deposit. After entering said agreement, the de facto complaint applied for permission on 18.08.2008 and 05.09.2008 to construct the residential houses. The Ameenpur Gram

Panchayath, by letter dated 11.09.2008, informed the de facto complainant that permission will be considered only after obtaining necessary clearance from the concerned authorities after verifying full bank level of 'Pedda Cheruvu' and when the de facto complainant enquired with the accused in this regard as to whether the plots ever got inundated with flood waters of the said Cheruvu, the accused expressed ignorance though informed they are holding particular lands for more than 15 years and never witnessed flood water into the lands. The Ameenpur Gram Panchayat never intimated the de facto complainant with regard to the grant or refusal of permission to construct residential houses for long time. Later, the de facto complainant came to know that Ameenpur Gram Panchayath addressed letter dated 23.08.2008 to the Deputy Executive Engineer, Irrigation Department, for information regarding the full tank level and whether the lands in Sy.Nos.198 of Ameenpur Village fall within the full tank level of Pedda Cheruvu and the Deputy Executive Engineer did not respond to the request of Ameenpur Gram Panchayath for a long time and the de facto complainant even addressed a letter dated 23.06.2010 to the Deputy Executive Engineer, I.B. Sub Division, Irrigation Department, Sangareddy, for information in this regard. On such requisition, the Deputy Executive Engineer, I.B. Sub Division, conducted survey of lands of Sy.No.198 of Ameenpura Village with respect

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2(b1) It is further stated in the complaint that in the Mansoon season of the year 2010 was very vigorous and most of the tanks and kuntas were full and over flowing and during that season Pedda Cheruvu was full and over flowing for a long time, which was witnessed by the de facto complainant and to his astonishment, the first floor portions of the constructed houses of third parties were submerged in flood water for two or three weeks therein and that was also photographed by the de facto complainant. When the de facto complainant confronted with the accused about the situation and the certificate issued by the Irrigation Department with regard to full tank level of pedda cheruvu and consequent refusal by Gram Panchayath of Ameenpur Village, the accused expressed ignorance, therefore, the de facto complainant got issued a legal notice dated 18.06.2009 to refund the deposited amount for which the accused did not reply and with a malafide intention to defraud the de facto complainant

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3. In the complaints, there is no witness cited and there is no document referred or filed and what is the document referred even in the complaints is the respective agreement-cum-GPA only.

4. The police after investigation filed the final report in both the cases saying the witnesses referred in the charge sheet ie., P.Venkatesam-de facto complainant as LW.1, Sri Gangadhar Goud, Executive Officer at

Patacherru as LW.2, Sri T.Srinivasa Rao as LW.3 and Sri J.Satyanarayana, a retired employee as LW.4, stated in the course of investigation from examination in support of version of the de facto complainant, thereby to take action as it makes out the offences under Sections 406, 418 and 420 IPC. It is the same that was taken cognizance by the learned Magistrate by allotting C.C.Nos.307 and 308 of 2012 against respective accused Smt.J.Sesha Ratna Kumar and Smt.A.Suchitra.

5. It is the said two calendar case proceedings taken cognizance by the learned Magistrate sought for quashing by accused respectively (being referred as petitioners here after for convenience) with contentions almost common in both the quash petitions respectively that the petitioners purchased the agricultural lands in Sy.No.198 of Ameenapur under registered document No.4460 of 1984 and besides the petitioners other relatives also purchased agricultural lands in that survey number out of the total extent of Ac.16.13 gts. from the original owners and the petitioner in Crl.P.No.2716 of 2013 gifted Ac.1.00 of land out of love and affection under a registered Gift Settlement Deed No.6443 of 2002 dated 03.10.2002. In Crl.P.No.2715 of 2016 the brother of petitioner's husband, by name Jaladi Rama Koteswara Rao and his elder son Jaladi Ravindranath were looking after the affairs of the land on behalf of all the owners and there has been no occasion to deal with either in its development or

otherwise personally and that all the land owners entered into a Development Agreement with M/s.Panchajanya Real Estates and Constructions for making the land into residential plots in accordance with HUDA Norms and obtained the necessary HUDA approval and permission vide No.5/MP2/HUDA/05 dated 11.02.2005 and developed the total extent of land admeasuring Ac.16.13 guntas as per HUDA approved layout. After the development was completed in all respects, HUDA released the land mortgaged to them through a registered document No.118 of 2007 dated 02.08.2007 and sanctioned the final layout on 17.08.2007. According to the development agreement, the respective owners and the developer shared the residential plots as per agreed terms are (1) J.Ravindranath for Plot Nos.1 to 12 and 58 to 72, total 27 plots, (2) J.Vimala for Plot Nos.13 to 17, 29 to 33, 112, 113 and 116 to 126, total 23 plots (3) V.Madhuri for Plot Nos.18 to 28, 96 to 98 and 103 to 105, total 17 plots (4) I.Sirnivas Rao for Plot Nos.55 to 57, 73 to 75, 87, 88, 90 to 92 and 109 to 111, total 14 plots (5) J.Sesharatna Kumar (petitioner in CrI.P.No.2715 of 2013) for Plot Nos.82 to 84, 132, 141, 146, 145 and 153, total 8 plots (6) A.Suchitra (Petitioner in CrI.P.No.2716 of 2013) for Plot Nos.80, 81, 85, 86, 142, 143 and 154, total plots 7 (7) I.Indira Rani for Plot Nos.89, 133 to 137, 150 to 152 and 155 to 160, total 15 plots and (8) Panchajanya Real

Estates for Plot Nos.34 to 54, 76 to 79, 93 to 95, 99 to 102, 106 to 108, 114, 115, 127 to 131, 138 to 140, 146 to 149 and 161 to 169, total 58 plots respectively for 169 plots total extent of 45,937 sq. yards and all the land owners including the petitioners partitioned the extent of 30,819 sq. yards of plotted area that fell into seven shares under the Registered Partitioned Deed No.4818 of 2005 dated 25.04.2005, as per which the allotted separate shares described in Schedule 'A' to 'G' and remaining land went to the developer towards the developmental charges and while stood thus, the de facto complainant-P.Venkatesham, being the Managing Director of M/s.S.V. Shelters Private Limited, approached Sri Jaladi Rama Koteswara Rao (husband's brother of petitioner in Crl.P.No.2715 of 2013) and his elder son Ravindranath to construct duplex houses and after finalization of the terms and conditions, entered into five development agreements-cum-GPA with the quash petitioners, J.Vimala, J.Ravindranath and I.Sivarama Krishna respectively. As per the terms and conditions, the construction shall be completed within 24 months after obtaining permission from HUDA/GHMC/Gram Pancayat and refundable deposit paid by the developer was to be refunded by the petitioners and other owners in phased manner as per clause 16 of the said agreements and as per clause 39, if the development to make construction and handover the agreed houses, they shall pay

damages of Rs.25,000/- per month for each proposed house allotted to the agreement holders till possession is delivered. There is also an arbitration clause No.42. The de facto complainant proposed that if the plots given to the previous developer and the plots if any sold out to third parties are acquired from them, they can construct duplex houses as a gated colony and also given assurance to Ramakoteswara Rao and his son, who were looking after the affairs throughout, finance for acquiring those plots and it is reiterated that except for signing the development agreement-cum-GPA, petitioners never participated in any of the talks or discussions held with the developer ie., de facto complainant herein and subsequently, due to the slump in the real estate market, the de facto complainant being developer in order to withdraw from the development if possible and to claim refund of advance paid and started making allegations as if the land is falling in Full Tank level while the negotiations were continuing between Rama Koteswara Rao and his son and the de facto complainant issued legal notice dated 18.06.2009 with false allegations and started threatening calls through phone to kidnap them and send unsocial elements to their flat and in fact Rama Koteswara Rao given a complaint against the de facto complainant herein and Gopalapuram Police Station registered it as Crime No.379 of 2009 on 17.10.2009. On 20.10.2009, J.Ravindranath was kidnapped by some persons at the

behest of the de facto complainant herein and taken him to Kondapur area and forced to sign some papers and later he was released, for which another Crime No.625 of 3009 was registered against the de facto complainant and others in Madhapur Police Station. The petitioners were informed that Sri Ravindranath recognized through T.V.Channel that he was taken to the Sri Bhanu Kiran, an accused in the murder of Suri, when he was kidnapped, thus it shows the de facto complainant is having links with unsocial elements and the notices were issued by the de facto complainant were replied by the petitioners and other owners on 19.10.2009 suitably and the arbitrator Sri V.Veera Raghavan, a Retired District Judge, was proposed and sought for the objections and thereafter without communication, filed the false complaints and the proceedings are liable to be quashed in saying no ingredients to attract the other contentions.

6. Heard learned counsel for the quash petitioners and also the learned counsel for the de facto complainant and perused the material on record. The counter to the interim stay application seeking to vacate stay filed by the 2nd respondent- de facto complainant reiterated the complaint averments.

7. From the very report of the de facto complainant, there was already a development agreement entered into respectively. The development agreement was dated

01.07.2008 respectively. The private complaint filed in cause referring to police was undisputedly on 23.06.2011. It is hardly believable of without knowing about the land of the landlord and the other aspects, even the de facto complainant is a land developer and real estate owner from his very say of 11 years experience entered into the agreements of the land known as Peddacheruvu area. Even from the agreements and the complaints averments, there is nothing to say at the inception of entering into a development agreement-cum-GPA, there is any dishonest intention to deceive or to cheat on the part of the respective two accused persons. What all stated is the accused-petitioners expressed no knowledge of inundation of the land during rainy season. It is only at instance of de facto complainant through the panchayat and respective department cause found liable for inundation and that due to heavy rainpour of that year, noticed nearby constructed houses in water for two or three weeks. The fact of the area is with houses developed also proves there from. The recourse is providing drainage facility and raising height of land for construction at best. Otherwise even it is a writ dispute. The very complaints speak that as accused when asked by complainant to refund the advance, did not refund he says it is cheating and breach of trust. Every breach of contract is not breach of trust or cheating.

8. In this record, the decision of the Apex Court Two-Judges bench in **Uma Shankar Gopalika V. State of Bihar**^[1], it is held that a breach of contract is different from the offence of cheating under I.P.C and in the absence of the allegation in the complaint that at the very inception there was intention on behalf of the complainant, no offence of cheating with criminal conspiracy would be made out in relation to the facts where the accused entity represented by its directors financing the truck purchased by the complainant under hire purchase agreement subsequently the truck not traced and when claim submitted to the insurance company, the claim was allowed, the representative of the complainant was allowed to handle the claim, received the amount and failed to pay therefrom that principal and in reference to the facts held no offence of cheating made out in quashing the F.I.R from non-disclosure of the offence not only against the accused impugning the F.I.R but also against the other non-disclosure also.

9. Thus, from the above in the absence of showing from the allegations in the complaint that the accused from the very inception got the intention to deceive, no offence either under Section 418 or 420 IPC that attracts.

10. The other decision placed reliance is three Judge bench in **State of West Bengal V. Swapan Kumar**

Guha^[2], where Prize Chits and Money Circulations Act, 1978, application under Section 2(c) read with 3 and 4 involved or not was in question, the Apex Court observed, the transaction under which one party deposits with the other or lends to that other a some of money or promise of being paid interest at a rate higher, agreed rate cannot without more be a money circulation scheme under Section 2(c) of the Act to attract the penal consequences.

11. The another Three Judges' bench expression in **Anil Mahajan V. Bhor Industries Ltd**^[3], where it is observed that in a contract for sale for supply of goods to allege the offence of cheating under Section 415 punishable under Section 418 or 420 I.P.C, it must be shown from the very beginning of the transaction, there exists fraudulent and dishonest intention and mere failure to keep a promise at a subsequent stage does not tantamount to cheating. A cheating is different from mere breach of contract and mere use of the words of cheating in the complaint would not be sufficient in the absence of such a substance from the complaint. On facts held a perusal of the substance shows a civil case of breach of contract and not a criminal case of cheating for supply of steel grip tapes on 50% advance payments against monthly quantity to pay the balance on receipt of goods for the breach subsequently committed pursuant to the M.O.U, in saying remedy of damages under Section 73 to

75 of Contract Act and the learned Magistrate held erred in issuing process under Section 204 of Cr.P.C. For the conclusion referred the earlier expression of the Apex Court in **Alpic Finance Ltd. V. Sadasivan**^[4], where on facts, it is alleged the accused was continuing payment of the instalments in default and the bank has dishonoured the cheques issued by him and the further allegation is on physical verification of certain chairs were supplied were found missing from premises of accused, for that alleged as committed the offence of cheating and misappropriation, the Apex Court observed the appellant has no case that the respondent obtained the article by any fraudulent inducement or willful misrepresentation and default in payment of instalments not an offence of cheating or misappropriation, but misappropriation of the chairs supplied which were already sold in fact but a civil dispute.

12. The other decision placed reliance is **Ford India Ltd V. Sunbeam Ancillary P. Ltd**^[5] where it is observed in controversial allegations made in F.I.R when did not disclose any offence, the F.I.R can be quashed by referring to **State of Haryana V. Bajanlal**^[6] and **Pepsi Foods Limited V. Special Judicial Magistrate**^[7], **Anil Mahajan** supra and **Umashankar Gopalika** and another expression in **Hotline Telegubes and Components V.**

State of Bihar^[8], **Ashok Sachdev V. G.S.Chauhan**^[9] in quashing the F.I.R for the offence under Section 420 I.P.C which is outcome of private complaint referred to police by the learned Magistrate for investigation referring to **Maksud sayeed V. State of Gujarat**^[10], it is observed the Magistrate did not apply his judicial mind in simply referring directing to register the crime, thereby held liable to be quashed. It was observed the essential ingredients of cheating that there must be misrepresentation and on that basis complainant's acts and suffered wrongful loss or it cause wrongful gain to accused and in the absence of which if one acts on credibility of a firm and there is no misrepresentation in its acting in purchase of the car there is no offence of cheating held made out. In **Girish Sarwate V. State of A.P.**^[11], the full bench on reference, approved the expression in **Gudavalli Murali Krishna V. Gudavalli Madhavi**^[12] of a single Judge differing to the earlier expressions holding not good law by mainly placing reliance upon **Bhajanlal** supra though while saying inherent power is to be exercised sparingly with care and circumspection.

13. In support of the said version, the accused persons placed reliance upon **Inder Mohan Goswami V. State of Uttaranchal**^[13] where it is observed that the inherent

powers of the High Court under Section 482 Cr.P.C are though wide that has to be exercised sparingly with great caution and to exercise ex-debito justitia that is to do real and substantial justice for the administration of which the Courts exist, and for not to allow to use the prosecution is an instrument of harassment or private vendetta or with a motive to pressurize the accused to terms and the powers too could not be exercised to stifle a legitimate prosecution and Court should refrain from giving prima facie decision in a case where entire facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issue involved are of such a magnitude that they cannot be seen in the true perspective without sufficient material, though no hard and fast rule can be laid down for exercise of the extraordinary jurisdiction. It is observed that Court should balance with personal liberty, the societal interest and a warrant for arrest of accused should not be issued without proper scrutiny of facts from complaint or F.I.R in application of judicial mind and where dispute is a pure civil in nature or from reading of F.I.R the ingredients of offence are absent, the proceedings can be quashed.

14. There on facts in relation to contract for sale and the respondent No.3, the prospective vendee of the sale agreement-cum-General Power of Attorney failed to pay balance amount despite requests of the appellants of the

society and the respondents allegedly misusing the same for further sale of the property in question for the alleged prosecution maintained held, the offences alleged under Section 420 and 467 not made out. It was observed in paras 41 and 42 of the Judgment that intention is the gist of the offence of cheating defined under Section 415 I.P.C and to hold a person guilty of cheating, it is necessary to show he had a fraudulent or dishonest intention at the time of making the promise and mere fact that primary could not keep his promise cannot be presumed that he all along had culpable intention to brake the promise from the beginning.

15. Thus, from the above, when the very complaint averments show nothing of cheating or deception, but for if at all there is any non disclosure without knowledge for not even directly dealt with, but through relatives and others and when there is no deception or suppression of fact inducing to enter into the agreement mere breach of contract itself is not sufficient to attract the offence of cheating and any refundable advance even asked not refunded, there is no entrustment and breach of trust to attract, thereby from the very complaint averments that were not properly investigated by the police, but for simply filed the final report based on the complaint averments for that the learned Magistrate has taken cognizance even which is not by proper verification, thereby no offence is

made out against the petitioners, but for it is purely a civil dispute. In this regard, it is also necessary to refer the decision of the Apex Court in **Rishipal v. State of Uttar Pradesh**^[14], wherein it is held that mere dereliction of duty does not attract any penal consequences and continuation of criminal proceedings is a pure abuse of process of law and deserved to be quashed the proceedings. The Apex Court in another expression of **V.P.Shrivastava v. Indian Explosives Limited and others**^[15] held in relation to the offence of cheating and criminal breach of trust that to hold a person guilty of cheating, it must be necessary to show with averments that at the time of making promise, the accused had fraudulent or dishonest intention to deceive or to induce person so deceived to do something which he would not otherwise do and in the absence of such culpable intention right at the time of entering into agreement that cannot be presumed merely from failure to keep the promise subsequently and in the absence of specific averment in the report or complaint, the presumption is unsustainable and thereby the proceedings for cheating and criminal breach of trust alleged no way sustain and liable to be quashed.

16. Having regard to the above, both the criminal petitions are allowed and all the proceedings relating to C.C.Nos.307 and 308 of 2012 on the files of the Additional

Judicial First Class Magistrate, Sangareddy, are quashed. The bail bonds of the petitioners in both the criminal petitions, if any, shall stand cancelled.

17. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt: 28.01.2016.

L.R. copy to be marked-Yes.

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- [\[1\]](#) (2005) 10 SCC 336
 - [\[2\]](#) (1982) 1 SCC 561
 - [\[3\]](#) (2005) 10 SCC 228
 - [\[4\]](#) AIR 2001 SC 1226
 - [\[5\]](#) MANU/DE/2535/2008 dated 04.07.2008
 - [\[6\]](#) (1992) Supp.1 SC 335
 - [\[7\]](#) AIR 1998 SC 128
 - [\[8\]](#) (2005) 10 SCC 261
 - [\[9\]](#) MANU/DE/2077/2012 dated 09.07.2012
 - [\[10\]](#) (2008) 5 SCC 668
 - [\[11\]](#) 2005 (1) ALD (CrI.) 150 (AP) (FB)
 - [\[12\]](#) 2001 (1) ALD (CrI.) 489 (A.P)
 - [\[13\]](#) (2007) 12 SCC 1
 - [\[14\]](#) 2014 (7) SCC 215
 - [\[15\]](#) (2010) 10 SCC 361