

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No. 7832 of 2011

O R D E R:

This criminal petition has been filed seeking to quash the Proceedings in Crime No.49 of 2011 on the file of P.S.Kakumanu, Guntur District, against the Petitioners/A1 toA3 for the offence punishable under Section 420 r/w.34 IPC.

2. The learned counsel for the Petitioners is not present. Heard the learned Public Prosecutor.

3. The allegations in the complaint briefly are, that petitioner Nos.1 to 3 came to his house and purchased rice from him and did not pay the money and harassing him. When he asked for payment of money, the petitioners stated that they would file Insolvency Petition, that the 3rd petitioner went to Hyderabad and doing business and petitioner Nos.1 and 2 are not residing in the village and that the paddy purchased by them was 75 Kgs. and the amounts due by them was around Rs.6,59,760/-. According to the complainant, the petitioners had cheated him with a dishonest intention and left the village without paying the amounts. On these allegations, the police registered a case in Crime No.49/2011 for the offence under Section 420 IPC against the petitioners.

4. In this case, interim stay has been granted by this Court on 30.08.2011. At this length of time, basing on the allegations made in the complaint, which are purely of civil nature, no useful

purpose would be served to prosecute the petitioners. Moreover, the ingredients of Section 420 IPC are not attracted in this case.

Section 420 IPC reads as under:

420. Cheating and dishonestly inducing delivery of property.—Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

5. In the light of the above provision, even if the allegations made in the complaint are accepted to be true and correct, the petitioners cannot be said to have committed any offence of cheating. The offence of cheating would be established only when the accused thereby induces the complainant to deliver any property. The inducement should be with a dishonest intention to deliver any property to any person.

6. In the instant case, there are mere allegations against the petitioners that they have purchased the rice from the complainant and thereafter they have stated that they are filing insolvency petitions. The complainant has to exhaust civil remedies available to him, because the transaction is of civil in nature. The complainant, instead of filing a civil suit for recovery of money against the petitioners, has filed this criminal complaint stating that the petitioners have left the village without making payments to him. A reading of the complaint does not disclose that the petitioners with a dishonest intention have deceived the complainant to deliver any property to them from the inception.

Therefore, the present complaint is nothing but abuse of the process of Court.

7. To constitute the offence under Section 420 IPC, it is required to show that the accused had fraudulent and dishonest intentions while he made the transaction. In the absence of culpable intention at the time of making initial promise being absent, no offence under Section 420 IPC can be made out. The said proposition of law was held by the Hon'ble Apex Court in *HARMAN PREET SINGH AHLUWALIA v. STATE OF PUNJAB*¹.

8. It is also pertinent to note that petitioner Nos.2 and 3 have filed Insolvency Petition in I.P.No.18 of 2011 against several respondents therein. It shows that the petitioners could not pay the amounts due to their creditors and they are exhausting the civil remedies available to them and it does not amount to cheating under Section 420 IPC. It is also pertinent to note that the defacto-complainant has not filed any documentary evidence to show that he has sold the paddy to petitioner Nos.1 to 3, except mentioning in the complaint that he had sold paddy to them. It appears that there is no basis for the complaint or any prima-facie evidence in proof of the transaction filed along with the complaint. Therefore, this is a typical example of a civil dispute being converted into a criminal case, which is nothing but abuse of the process of Court and hence the proceedings in Crime No.49 of 2011 are liable to be quashed.

¹ 2009 CrLJ 3462 (SC)

9. Having regard to the facts and circumstances of the case, and in the light of the decision cited above, this court is of the view that it is a fit case to quash the proceedings against the Petitioners/A1 to A3.

10. In the result, the Criminal Petition is allowed quashing the Proceedings in Crime No.49 of 2011 on the file of P.S.Kakumanu, Guntur District, against the Petitioners/A1 to A3 for the offence punishable under Section 420 r/w.34 IPC. Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand dismissed.

GUDISEVA SHYAM PRASAD, J

06th October, 2017
Mjl/Msr

