



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3396]

**TUESDAY, THE SIXTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR**

**PRESENT
THE HONOURABLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA**

CRIMINAL PETITION NO: 81/2023

Between:

Puli Chakrapani

...PETITIONER/ACCUSED

AND

The State of Andhra Pradesh
and others

...RESPONDENT/COMPLAINANT(S)

Counsel for the Petitioner/accused:

1.P BADRINATH

Counsel for the Respondent/complainant(S):

1.PUBLIC PROSECUTOR (AP)

The Court made the following:

ORDER:

The instant petition under Section 482 of the Code of Criminal Procedure, 1973¹ has been filed, by the Petitioners/Accused, seeking quashment of the proceedings against him in C.C.No.614 of 2017 on the file of the Additional Judicial Magistrate of First Class, Kavali, for the offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860².

¹ in short 'Cr.P.C.'

² in short 'I.P.C.'

2. Petitioner herein is the sole Accused and Respondent No.2 is the *defacto* complainant.

3. Facts leading to filing of the present case:

(i) The Petitioner herein is the proprietor of rice mill in the name and style of M/s. Maruti Modern Rice Industries at Kavali, Nellore District, who is in the business of processing paddy for the last many years.

(ii) In the course of his business, the Petitioner entered into a contract dated 29.04.2016 with A.P.State Civil Supplies Corporation Ltd. for converting the paddy to Custom Milling Rice for the kharif season 2015-2016. As per the said agreement, the Petitioner is obligated to purchase the paddy from farmers and shall convert the same to raw rice/boiled rice and handover it to the 2nd respondent within 15 days from the date of receipt of paddy in 50 Kgs bags.

(iii) Under the said agreement, the Petitioner received a quantity of 7588.360 Mts of paddy out of which the Petitioner is obligated to deliver 5084.201 Mts of Rice to the 2nd respondent. However, the Petitioner delivered only 891 Mts of CMR Rice and the balance rice to be delivered is 4193.201 Mts. The 2nd respondent alleged that during inspection of the Petitioner's mill, there is only 5892.080 Mts and there

is a shortage of 366.080 Mts of CMR Paddy equivalent to the resultant rice to be delivered.

(iv) In the above background, 2nd respondent herein lodged a complaint dated 14.10.2016 before the SHO, Kavali P.S., Nellore alleging that the Petitioner intentionally cheated AP State Civil Supplies Corporation Limited and the police have registered the same vide FIR No.209 of 2016.

(v) In September, 2019, the 2nd respondent and their staff conducted an inspection at the Petitioner's premises and seized paddy and rice stocks belonging to a third party on the ground that Petitioner and his wife's firm has certain dues payable to the Civil Supplies Department.

(vi) Aggrieved thereby, the Petitioner approached the High Court in W.P.No.18403 of 2019. During the pendency of the said writ petition, the Petitioner herein delivered the resultant CMR rice, which fact is admitted by the 2nd respondent in his counter affidavit in W.P.No.18403 of 2019.

(vii) Further, the Petitioner made a representation dated 01.11.2019 requesting the 2nd respondent to withdrawn FIR No.209 of 2016. However, till date, no action was taken. Meanwhile, police have

filed charge sheet and was numbered as C.C.No.614 of 2017 on the file of the Additional Judicial Magistrate of First Class, Kavali.

4. Feeling aggrieved thereby, the Petitioner preferred the present petition on the following grounds:

a) Mere failure to discharge a contractual obligation cannot result in initiation of criminal proceedings.

b) The Petitioner has been handling CMR works of the complainant for past many years and by no stretch of imagination, dishonest intention to deceive can be inferred against the Petitioner.

c) As held by the Hon'ble Supreme Court in Dalip Kaur and Ors v. Jagnar Singh and Another,³ if the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the accused, the same would not constitute an offence of cheating.

d) Despite the Petitioner delivered the CMR rice, the 2nd respondent has not taken any steps for withdrawal of the complaint even after submission of representation, thereby causing irreparable loss to the Petitioner by forcing him to face the trial.

³ (2009) 14 SCC 696

Arguments advanced at the Bar

5. Heard Sri P.Badrinath, learned counsel for the Petitioner. Despite notice served on Respondent No.2, none appeared. Heard Sri K.Sandeep, learned Assistant Public Prosecutor representing the State/Respondent No.1 on behalf of Respondent No.2.

6. (i) Learned counsel for the Petitioner would submit that in the counter filed by Respondent No.2, there is a clear admission that the Petitioner delivered the rice after due date and it is a civil contract. The only allegation made against the petitioner is that he could not supply and deliver the rice within the due date. No offence u/s.406 or 420 of I.P.C. is made out from the contents of the complaint. Learned counsel for the Petitioner further would submit that the Petitioner is a miller. The farmer directly transports his paddy to the miller and obtains signatures of the miller on the vouchers after he received the paddy. Rice miller uploads online that he received the paddy. The farmer gives the voucher to PPC incharge, transport contractor takes the transport amount. On that the complainant approves and uploads the same. On that, APSCSCL, Hyderabad allots money to Andhra Bank account and then the farmers directly receive the amount in their concerned bank accounts.

(ii) Learned counsel further submits that Petitioner herein is the proprietor of M/s. Sri Maruthi Modern Industry. He entered into an agreement on 11.04.2016 with Civil Supplies Department. The petitioner was allotted paddy from some villages. As per the procedure, petitioner should give CMR rice to the Government within 15 days basing on the allotted paddy received from the Government. It is alleged that the petitioner has supplied 891.000 metric tonnes. There is a shortage of supply of paddy. Government officials inspected the rice mill on 04.08.2016, there is a shortage of stock. It is alleged in the charge sheet that the accused informed that he has not misappropriated anything and he will supply the remaining shortage of rice to the Government. The Joint Collector agreed to give some time to the accused to supply the shortage of paddy subject to production of bank guarantee within 5 days, but the accused failed to produce the bank guarantee.

(iii) Learned counsel further submits that in September 2019, Respondent No.2 conducted inspection and seized paddy and rice stocks belonging to a third party on the premise that the petitioner and his wife's firm has certain dues payable to the Department. Petitioner has approached the High Court in W.P.No.18403 of 2019. During pendency of the said writ petition, petitioner has delivered the resultant CMR rice which was admitted by Respondent No.2 in the counter and

that he made a representation on 01.11.2019 to withdraw the present case.

(iv) Learned counsel further submits that the petitioner has been handling CMR works for the past many years. There is no dishonest intention and deceived the department on the part of the petitioner. It is a mere breach of contract, would not constitute the offence of cheating. Continuing the criminal proceedings against the petitioner is mere abuse of process of law.

7. Learned Assistant Public Prosecutor would submit that there are clear allegations since there is a shortage of stock in the rice mill at the time of inspection. As such, learned Joint Collector ordered to show bank guarantee within 5 days and supply the rice within 25 days as requested by the petitioner, but the petitioner failed to submit the bank guarantee. Learned Assistant Public Prosecutor finally submits for dismissal of the petition.

Point for Determination

8. Having heard the submissions made by the learned counsel representing both parties and on perusal of the material available on record, the point for determination that arises in this case is as follows:

Whether the case against the Petitioner/Accused in C.C.No.614 of 2017 on the file of the Additional Judicial Magistrate of First Class, Kavali, is liable to be quashed by exercising jurisdiction under Section 482 of the Cr.P.C.?

Determination by the Court

9. A bare perusal of Section 482 makes it clear that the Code envisages that inherent powers of the High Court are not limited or affected so as to make orders as may be necessary; (i) *to give effect to any order under the Code or, (ii) to prevent abuse of the process of any Court or, otherwise (iii) to secure ends of justice.* This Court in **Gade Venkateswara Rao v. State of A.P.**,⁴ encapsulated this principle underlying the exercise of jurisdiction under Section 482 in the following terms;

*“8. Section 482 Cr.P.C. powers must be invoked for compelling reasons of abuse of process of law or glaring injustice or violation of sound principles of criminal jurisprudence. Specific circumstances warranting invocation of powers under Section 482 have been strongly emphasized in a catena of decisions. To cite a few, **State of Haryana v. Bhajanlal**⁵ at paras 102 and 103, **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra**⁶ at para 57.”*

(emphasis supplied)

10. A three-Judge Bench of the Hon'ble Apex Court in **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre**⁷ held as follows;

“The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court

⁴ 2023 SCC OnLine AP 4021

⁵ 1992 Supp (1) SCC 335

⁶ (2020) 10 SCC 118

⁷ (1988) 1 SCC 692

to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the court cannot be utilised for any oblique purpose and where in the opinion of the court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage.”

(emphasis supplied)

11. To constitute the offence under Section 420, there must be deception i.e. the accused must have deceived someone; that by such deception the accused must induce a person (i) to deliver any property; or (ii) to make, alter, destroy a whole or part of the valuable security or anything which is signed or sealed and which is capable of being converted into a valuable property; or (iii) that the accused must have done so dishonestly. In the judgment of the Hon'ble Apex Court in ***Vijay Kumar Ghai and others v. State of West Bengal and others***, it is held that,

“24. This Court in *G. Sagar Suri & Anr. Vs. State of UP & Ors.* (2000) 2 SCC 636 observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.

37. The following observation made by this Court in the case of *Uma Shankar Gopalika Vs. State of Bihar & Anr.* (2005) 10 SCC 336 with almost similar facts and circumstances may be relevant to note at this stage:-

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the

complaint any criminal offence whatsoever is made out much less offences under Section 420/120-B IPC. The only allegation in the complaint petitioner against the accused person is that they assured the complainant that when they receive the insurance claim amounting to Rs. 4,20,000, they would pay a sum of Rs. 2,60,000 to the complainant out of that but the same has never been paid. It was pointed out that on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs. 4,20,000. **It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases of breach of contract would amount to cheating where there was any deception played at the very inception.** If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused person to cheat which is a condition precedent for an offence under 420 IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-B IPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482 Cr.P.C which it has erroneously refused.”

(emphasis supplied)

12. In the judgment of the Hon'ble Apex Court in ***Vir Prakash Sharma v. Anil Kumar Agarwal and another***, which is also relied on by the learned counsel for the petitioner, the following discussion is relevant;

“15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time to inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed. The ingredients of Section 420 of the Indian Penal Code are as follows:

- i) Deception of any persons;
- ii) Fraudulently or dishonestly inducing any person to deliver any property; or
- iii) to consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

No act of inducement on the part of the appellant has been alleged by the respondent. No allegation has been made that he had an intention to cheat the respondent from the very inception.”

(emphasis supplied)

13. It is the case of the prosecution that the Petitioner failed to supply his CMR rice to the Government and collected paddy from the farmers. He has supplied the CMR rice to the Government belatedly, after due date. It is the case of the Petitioner that huge amount is due to him from the Government. As can be seen from the affidavit filed along with W.P.No.18403 of 2019, wherein it is stated as follows:

“5. It is respectfully submitted as per the industry practice, invoices are usually raised in the next crop year and the respondent authorities release the invoices amount within a reasonable time in a phased manner. However, in respect of the invoices for the KMS 2014-2015 and 2015-16, the respondent authorities neglected to clear the invoices amount to Rs.80,91,448/- despite repeated requests. It is pertinent to state that the petitioner has availed bank loans on the hope that the respondent authorities would make payments, but due to the inaction of the respondent in release of amounts and consequential failure of the petitioner to clear the loan, the petitioner’s account was classified as Non-performing Asset by the lender bank.

6. It is further submitted that considering the cost of maintenance in running the mill, the petitioner could not continue milling work due to financial constraints and to raise revenue the petitioner entered into a working agreement with M/s. Rajani Tradesr on 08.05.2015 and another agreement with M/s. Sri Anjaneya Traders. Under these two agreements, the petitioner granted license over the two milling units to be utilized by the aforesaid firms. A copy of the Mill Working Agreement with M/s. Rajani Traders and M/s. Sri Anjaneya Traders are herewith filed as Annexure P-3 & 4. Simultaneously, the petitioner also addressed a representation to the 2nd respondent dated 07.09.2019 requesting for release invoice amounts specifically stating the financial difficulties on account of non-payment of invoices. The 2nd respondent received the said representation on 11.09.2019 but has not released any amounts till date. A copy of the petitioner’s representation dated 07.09.2019 along with postal receipt and acknowledgement are herewith filed as Annexure P-5”.

14. As can be seen from the contents of the charge sheet, it is alleged that Petitioner having collected paddy from the farmers, failed to supply rice to the Government within time, as per the complaint. After inspection, though the Joint Collector ordered to give bank guarantee within 5 days, Petitioner failed to do so. The contentions of the Petitioner referred supra are matter of trial. Truth or otherwise of such contentions cannot be decided at this stage. Without causing any prejudice to the rights and contentions of the Petitioner and as the allegations *prima facie* require full length of trial, the petition deserves dismissal.

15. In that view, the Criminal Petition is dismissed. This Court makes it clear that this Court has not expressed anything touching the merits of the case.

Pending applications, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 06-08-2024
PND