HON'BLE SMT. JUSTICE ANIS

CRIMINAL PETITION No. 6304 OF 2012

O R D E R:

This is a Criminal Petition filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioners/A.1 and A.2 requesting to quash the proceedings in C.C. No.625 of 2012 on the file of the V Additional District Munsif Magistrate, Tirupati.

2. The case of the prosecution is that the *de facto* complainant gave a complaint that the accused are running finance business without any valid pawn broker licence. The accused have been usually lending the meagre amounts of Rs.5,000/-, Rs.10,000/- and Rs.15,000/- to third parties and obtaining registered mortgage deeds and also obtaining blank promissory notes from them by taking advantage of the necessity of the third parties. The accused are also claiming interest @ 60% to 120%. While so, on 25.06.2002 the *de facto* complainant, his parents and his elder brother mortgaged their house bearing D.No.16-201 situated at S.No.395, Karakambodi Village, Renigunta Mandal to A.2 by executing a registered mortgage deed vide Document No.1911/2002 and borrowed a sum of Rs.30,000/- @ 2/- per month, and A.2 also obtained blank promissory note from his parents. Though the recitals of the mortgage deed shows only 24% interest, the accused has been claiming interest @ 60% to 120% per annum. Since then, they paid an amount of Rs.1,200/- per month towards interest as demanded by the petitioners. During the year 2009, the *de facto* complainant and his parents secured the principal and interest and approached the accused to pay the entire amount and to discharge the mortgage, but the accused have been postponing the same on one pretext or other. At last, the accused demanded them to give an amount of Rs.2 lakh,

otherwise they will not execute the document of discharge. Basing on the above allegation, the police registered a case in Crime No.17 of 2012.

3. The present Criminal Petition is filed on the ground that the allegation made in the complaint regarding demand of Rs.2 lakhs from the *de facto* complainant is not correct and for avoiding the payment of loan, a false case has been filed. Further, the persons, who were cited as witnesses in the complaint, are trying to evade the amount borrowed by them from the petitioners.

4. The learned counsel for the revision petitioners argued that the offence punishable under Section 420 IPC is not made out as the petitioners lent the money to the *de facto* complainant and obtained decree from the competent Court. It is further argued that the petitioners gave huge amount to the *de facto* complainant and other villagers and obtained the registered mortgaged deeds in favour of them, and if they failed to pay the amount, the petitioners have been filing civil suits and obtaining decrees, and therefore, the allegations of Section 420 IPC never attracts and if the *de facto* complainant wants to claim any relief against the petitioners, they have to approach the Civil Court and not by way of criminal complaint. It is further argued that the petitioners never demanded Rs.2 lakhs from the *de facto* complainant for redemption of the mortgage and never claimed interest @ 60% to 120% per annum. It is further argued that the prosecution is not competent to file Charge sheet against the petitioners as the transaction is purely civil in nature and pending of the proceedings in C.C.No.625 of 2012 amounts to abuse of process of law. Finally, prayed the Court to quash the proceedings in C.C.No.625 of 2012 on the file of the
V Additional District Munsif Magistrate, Tirupati.

5. On the other hand, the learned Public Prosecutor argued that

the petitioners are doing business without obtaining any licence and they are claiming interest @ 60% to 120% per annum; that even after discharge of the loan, the petitioner are not returning the blank promissory note and also not redeeming the mortgage, that is the reason why the *de facto* complainant filed a private complaint and the same was referred to the police, and police after completion of investigation filed the charge sheet, which was taken on file by the Magistrate as C.C.No.625 of 2012; that the petitioners cheated the *de facto* complainant and others and obtained the signatures on blank promissory notes, and taking advantage of the blank promissory notes, the petitioners filed the suits and obtained decrees, and therefore, prayed the Court to dismiss the revision case.

6. Now, the point for determination is –

> Whether the revision petitioners/A.1 and A.2 are entitled to quash the proceedings in C.C. No.625 of 2012 on the file of the V Additional District Munsif Magistrate, Tirupati?

7. **Point**:

A perusal of the record shows that the *de facto* complainant/2nd respondent filed a private complaint against the petitioners and the same was referred to the police, and the police after conducting investigation filed the Charge sheet in Crime No.17 of 2012 for the offence punishable under Section 420 IPC, which was taken on file by the
V Additional District Munsif Magistrate, Tirupati in C.C.No.625 of 2012.

8. The main contention of the *de facto* complainant is that the revision petitioners/A.1 and A.2 are running finance business without any valid licence and they are lending meagre amounts by claiming interest @ 60% to 120%, and when the *de facto* complainant and his family members paid the entire amount, the petitioners failed to return

the blank promissory note and mortgage deed and further they demanded Rs.2 lakhs. On the other hand, the revision petitioners denied the said fact.

9. Whether the petitioners are doing business without licence and whether they are giving meagre amounts by obtaining registered mortgage deeds for huge amounts and also obtaining blank promissory notes - are the subject-matter of C.C.No.625 of 2012. The Investigating Officer in his investigation found that the petitioner No.1 obtained 105 registered mortgage deeds and the petitioner No.2 obtained 28 registered mortgage deeds in their respective names in between 1999 to 2010 as per the records of Sub-Registrar's Office, Renigunta and they are doing finance business without any valid pawn broker licence. In these circumstances, the proceedings in C.C.No.625 of 2012 on the file of the V Additional District Munsif Magistrate, Tirupati do not amount to abuse of process of law and the petitioners are not entitled to quash the said proceedings.

10. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions pending, if any, in this Criminal Petition shall stand closed.

ANIS, J

Date: 13.03.2015
Anr