

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

CRIMINAL PETITION No.8513 of 2015

ORDER:

This Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') to quash the proceedings in Calendar Case No.467 of 2006 on the file of I Additional Chief Metropolitan Magistrate, Visakhapatnam, where the learned Magistrate has taken cognizance for the offences punishable under Sections 379, 419, 467, 468, 471 read with Section 120-B of I.P.C. against the petitioner herein who is accused No.1 and the other accused.

2. The case of the petitioner-accused No.1 is that respondent No.2-*de facto* complainant filed a private complaint before the III Metropolitan Magistrate, Visakhapatnam on 06.01.2004 contending that in September, 2003, he (respondent No.2) came across a public notice published in Eenadu, Telugu Daily, issued by Andhra Bank, Gowri Sankar Theatre Road Branch, Guntur, whereunder it is stated that the Andhra Bank lent certain amount to M/s. Satavahana Exports Private Limited, represented by the petitioner-accused No.1, for the business of prawn culture, for which respondent No.2 offered his property mentioned in the schedule annexed to the notice as collateral security and the said firm is liable to pay Rs.71,99,000/- and respondent No.2 never offered the said property described in the schedule annexed to the notice as collateral security for the loan granted to the petitioner. The petitioner further states that he lost original title deed on 20.02.2001 at Visakhapatnam Railway Station and he made a complaint to the police and the police issued non-traceable certificate also on 01.07.2001. According to the petitioner, respondent No.2 alleges in the complaint that the petitioner was with respondent No.2 as on the date of R.2 lost the document and he (petitioner) might have committed theft of the same and used the same for creating equitable mortgage. The petitioner further states that the said complaint was forwarded to respondent

No.1 on 22.01.2004, which was registered as a case in Crime No.50 of 2004 for the aforesaid offences and, thereafter, the police filed charge sheet, which was registered as Calendar Case No.467 of 2006. The present criminal petition is filed for quashing the said calendar case.

3. Learned counsel for the petitioner submits that L.W.2-Bank Manager in his statement recorded under Section 161 Cr.P.C. stated that both the petitioner and respondent No.2 approached the Bank for obtaining loan, as such, the said statement does not find place in the charge sheet and in view of the same, the proceedings are liable to be quashed. He further states that it was the crux of the case that the petitioner cheated respondent No.2 and created the mortgage by deposit of title deed.

4. On the other hand, the learned Public Prosecutor opposed the same stating that statements of several witnesses are recorded and all the aspects can be gone into at the time of trial and the petitioner may have a good defence, but the said defence cannot be considered in the petition filed under Section 482 Cr.P.C. for quashing the proceedings.

5. A perusal of the complaint and the statement of L.W.2-Bank Manager recorded under Section 161 Cr.P.C. goes to show that the petitioner and respondent No.2 approached the bank for obtaining loan. The statement can be put to the witnesses during the course of trial or the petitioner can make the same as a ground for seeking discharge under Section 239 Cr.P.C. But any amount of defence cannot be a ground for quashing the proceedings by exercising power under Section 482 Cr.P.C. In view of the same, I do not see any ground to quash the proceedings in the said calendar case by exercising power under Section 482 Cr.P.C. However, it is open for the petitioner to seek for discharge basing on the statement of L.W.2-Bank Manager.

6. Accordingly, this Criminal Petition is dismissed. However, in the facts and circumstances of the case, the presence of the petitioner-accused No.1 in C.C. No.467 of 2006 on the file of I Additional Chief Metropolitan Magistrate,

Visakhapatnam, is dispensed with during the course of trial and the learned Magistrate is at liberty to call for the presence of the petitioner as and when required during the course of trial.

7. As a sequel thereto, miscellaneous petitions, if any pending in this writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

03.11.2015

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