

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.14795 OF 2016**

**ORDER:**

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 to quash the FIR in Crime No.212 of 2016 of Tanuku Town Police Station, West Godavari District, registered for the offences punishable under Sections 420 and 406 IPC, against the petitioner/A.2 and others.

02. The allegation in the complaint is that the petitioner and other accused persons in the said crime took 2 Kgs. of gold and 4 Kgs of silver from the second respondent-*de facto* complainant by agreeing to pay interest on the value of such gold and silver and accordingly, they paid interest till July, 2014 and thereafter, they committed default in payment of interest and when the *de facto* complainant insisted for return of gold and silver, they handed over inferior quality of gold and silver, and on questioning, they took back the gold and silver acknowledging a receipt for Rs.65 lakhs, but the accused neither paid the amount nor returned the gold and silver. Hence, the complaint.

03. In the case of **MADHAVRAO JIWAJI RAO SCINDIA VS. SAMBHAJIRAO CHANDROJIRAO ANGRE**<sup>1</sup>, the Apex Court held as under:

“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

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<sup>1</sup> AIR 1989 SC 709

the offence. It is also for the court 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 is 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.”

04. In view of the law declared by the Apex Court in the above judgment, the allegations made in the complaint alone shall be taken into consideration to find out whether such allegations would constitute the offences punishable under Sections 420 and 406 IPC. Truth or otherwise of the allegations made in the complaint cannot be enquired into at the stage of deciding the petition under Section 482 Cr.P.C.

05. Therefore, I find no grounds to quash the proceedings in the aforesaid crime. However, learned Public Prosecutor requested to pass an order directing the police concerned to follow the procedure as envisaged under Section 41-A Cr.P.C., and as held by the Apex Court in **ARNESH KUMAR V. STATE OF BIHAR<sup>2</sup>**.

06. In view of the request made by the learned Public Prosecutor and having found that there are no grounds to quash the FIR, I deem it appropriate to direct the police concerned to follow the procedure as envisaged under Section 41-A Cr.P.C.,

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<sup>2</sup> 2014(2) ALT (Crl.) 457 (SC)

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and the principles laid down by the Apex Court in **ARNESH KUMAR**'s case

07. With the above direction, the Criminal Petition is disposed of.

08. Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

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**M. SATYANARAYANA MURTHY, J**

Date: 20.10.2016  
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