

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.2342 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/A2 in C.C. No.525 of 2008 on the file of IV Additional Chief Metropolitan Magistrate Court, City Criminal Courts, Nampally, Hyderabad.

2. In spite of service of notice, second respondent– complainant did not choose to appear and oppose the criminal petition.

3. The learned counsel for the petitioner submitted that the provisions of A.P. Apartments (Promotion of Construction & Ownership) Act, 1987 (for short, the Act) are prospective; therefore, the building in question, which was constructed in the year 1966, would not fall within the ambit of apartment. He further submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, no *prima facie* case is made out under Section 28 of the Act. It is the contention of the complainant that the Act applies retrospectively.

4. In order to appreciate the contentions, it is not out of place to extract hereunder Section 1 of the Act.

1. **Short title, extent and commencement:–**

1. This Act may be called the Andhra Pradesh Apartments (Promotion of Construction and Ownership) Act, 1987;
2. It extends to the whole of the State of Andhra Pradesh;
3. This section shall come into force at once, and the remaining provisions of this Act shall come into force in such areas and on such dates as the Government may, by notification, appoint, and different dates may be appointed for different areas.

5. As per Section 1(3) of the Act, the Act will come into force with effect from the date of issuance of notification. The notification was published in A.P. Gazette Pt.I (Ext.) No.532, dt.7.8.1987. The Apartments Act came into force with effect from 07.8.1987. There is no provision in the Act indicating that the Act applies with retrospective effect. It is a settled principle of law that unless there is a specific provision indicating application of the Act with retrospective

effect, the Act comes into force with prospective effect.

6. A perusal of the record reveals that the petitioner/A2 in C.C. No.525 of 2008 is brother of A3. The allegations made against the petitioner herein are common to the allegations made against A3. This court has dealt Criminal Petition No.8703 of 2009 filed by A3. After considering the provisions of the Act in the light of various decisions and the facts of the case, this court allowed the criminal petition acquitting A3 in C.C. No.525 of 2008.

7. Having regard to the facts and circumstances of the case and the decision of this Court in CrI.P.No.8703 of 2009 dated 14.11.2014, I am of the considered view that continuation of criminal proceedings against the petitioner/A2 certainly would amount to abuse of process of court. Viewed from any angle, it is a fit case to quash the proceedings against the petitioner/A2.

8. In the result, the criminal petition is allowed quashing the proceedings against the petitioner/A2 in C.C.No.525 of 2008 on the file of IV Additional Chief Metropolitan Magistrate Court, City Criminal Courts, Nampally, Hyderabad. Miscellaneous petitions, if any pending in the criminal petition, shall stand closed.

T.SUNIL CHOWDARY, J

February 17, 2016.

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