

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.15024 OF 2016

ORDER:

This petition is filed to quash the proceedings in Cr.No.307 of 2016 of Pattabhipuram Police Station, Guntur Urban, for the offences punishable under Sections 420 and 506 read with 34 I.P.C.

The case of the defacto complainant-2nd respondent is that the defacto complainant is carrying on business as proprietor dealing with agriculture tools under the name and style of “Devayani Marketing” and also working partner in cold storage under the name and style of “Uday Agrotech and Technology” and as she required site for purchase, first petitioner and his wife who promised to provide a house site for purchase, received Rs.1,19,00,000/- from the defacto complainant in advance but failed to provide any site for purchase and later gave a cheque for Rs.1,15,00,000/- on 30-1-2016 and later they expressed their inability to provide any site to purchase and on the basis of complaint, police registered a case in Cr.No.307 of 2016 for the aforesaid offences.

The present petition is filed contending that based on the same cheque dated 30-1-2016, the deacto complainant filed a case under Section 138 of Negotiable Instruments Act and C.C.No.353 of 2016 is pending on the file of II Additional Chief Metropolitan Magistrate, Vijayawada. Filing another complaint for the offences punishable under Section 420 and 506 of I.P.C. would amount to abuse of process of court.

Undoubtedly, in the cases for the offences punishable under Section138 of Negotiable Instruments Act, at the beginning of para

No.6 it is alleged that accused borrowed hand loan from time to time from the complainant and on the advise of her husband Sesha Rao, they issued cheque for Rs.57,571,000/- but it is a typographical mistake in view of the allegations made in the subsequent lines at the end of the same para, where the amount is mentioned as Rs.1,19,00,000/- in para 7, there is a discrepancy regarding the amount as it was mentioned as Rs.1,15,00,000/- but those details cannot be gone into at this stage. However it is evident from the complaint that defacto complainant was made to part with huge amount on the promise made by the petitioners to provide house site for purchase. The allegations made in the complaint on its face value would constitute offence punishable under Sections 420 and 506 read with 34 of I.P.C. Therefore, I am not inclined to quash the proceedings by exercising the powers under Section 482 of Cr.P.C.

However, conceding to the request of the learned counsel for the petitioners, I deem it appropriate to direct the police concerned to follow the procedure as contemplated under Section 41-A of Cr.P.C. and the guidelines laid down by the Supreme Court in *ARNESH KUMAR v. STATE OF BIHAR AND ANOTHER*¹.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE M.SATYANARAYANA MURTHY

Dated 2-11-2016.

Dvs.

¹ 2014(8) SCALE 250

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Dvs