

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15227 of 2016

ORDER :

This criminal petition is filed by the petitioners/A.1 and A.2 under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.4 of 2015 pending on the file of the Metropolitan Sessions Court, Vijayawada, for the offences punishable under Sections 406 and 420 IPC, Section 76 of Chit Funds Act, 1982 and Section 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999 (for short, 'the Act').

2. The case of the prosecution from the beginning is that the petitioners are running unauthorized chit business and the de facto complainant and others, believing the words of the petitioners that they would return the chit amount without fail, joined as members of the chit. The petitioners also collected monthly installments from victims and collected deposits from various persons with a promise to repay the double amount of their deposits. But, the petitioners did not repay the amount deposited by various persons including the de facto complainant and did not even pay the chit amount to the other bidders. Basing on the complaint, the police registered a crime against the petitioners for the above offences after due investigation. During investigation, the police examined 34 witnesses and collected material including two ledger books, 47 promissory notes and two cheques from the possession of the petitioners and filed charge sheet. Even the allegations made in the charge sheet on the face value would go to

show that the petitioners are guilty of an offence under Section 5 of the Act and Sections 406 and 420 IPC.

3. The contention of learned counsel for the petitioners before this Court is that the petitioners did not constitute a firm, therefore, they would not come within the meaning of 'financial establishment' to attract the offence punishable under Section 5 of the Act. Section 5 of the Act deals with penalty for default in payment of deposit as agreed upon and however person responsible for the management of the affairs of the financial establishment including the promoter, Manager or Member of the financial establishment shall be punished with imprisonment for a term which may extend to ten years and fine which may extend to Rs.1,00,000/- . Thus, every person connected with the affairs of financial establishment as defined under Section 2(c) of the Act are liable for punishment. The petitioners are individuals and they are allegedly carrying on chit fund business, collection of deposits by promising to repay the deposited amount. Section 2(c) of the Act defined 'financial establishment' under the Act as 'any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a co-operative society owned or controlled by any State Government or Central Government or a banking company as defined under clause (c) of Section 5 of the Banking Regulation Act, 1949.' Thus, the petitioners, who are wife and husband, being two individuals are allegedly running chit fund business and collecting

deposits would come within the definition of 'financial establishment' under the Act, prima facie. Therefore, the facts on the face value of the allegations made in the charge sheet would prima facie constituting the offence, if proved. Therefore, this Court cannot exercise the inherent power to quash such proceedings in C.C.No.4 of 2015, more particularly when the allegations made in the charge sheet on its face value constituting the offence. Consequently, the criminal petition is liable to be dismissed. However, the petitioner No.1/A.1, who is a lady, is permitted to file appropriate application under Section 205 Cr.P.C. after issuing notice to the Public Prosecutor to dispense with her presence and on filing such application, the Presiding Officer of the Court is directed to decide the petition independently uninfluenced by the observations made hereinabove, on the same day and pass orders in accordance with law.

4. With the above direction, the criminal petition is disposed of.
5. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

26th October 2016

mar