

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.3067 of 2011

ORDER:

This petition is filed seeking for quash of the proceedings against the petitioners, who are A5 and A6, in Crime No.16 of 2011 on the file of Wankidi Police Station.

2. Heard the counsel for the petitioners; the Public Prosecutor appearing for the 1st respondent and the counsel for the 2nd respondent.

3. The crime was registered on the basis of a court referred complaint, for the offences under Sections 468, 471, 420, 409, 406 and 149 IPC. The allegations made in the complaint are that the complainant and some others are the beneficiaries of Indiramma Housing Scheme, Phase II and were sanctioned houses at their native place. The housing department authorities, who are A1 to A3, distributed only little quantity of Cement bags and money, which is not sufficient for construction of houses. On the advice of housing authorities, A1 to A4, the complainant, and other beneficiaries of their village opened accounts with the postal department and passbooks were handed over to A5 and A6 on the advice of A1 to A4. After that, A5 and A6 withdrew the amount by forging their signatures and all the accused misappropriated the amounts.

4. The counsel for the petitioners contends that A5 and A6 are not the persons, who are entrusted with the amounts. They only received the passbooks as per the instructions of A1.

The counsel also draws the attention of this court to an undertaking, which was given by A1, stating that he would repay the amount, and contends that the said undertaking is a proof of the fact that these petitioners are innocent. But, even if A1 undertakes to pay the amount, it cannot be said that the allegations that A5 and A6 misappropriated the amount, by withdrawing the same, are false. If there was collusion between all the accused, it is possible that A1 would give an undertaking on behalf of all the accused and payment of the amount would not exonerate the accused from the offence committed by them.

5. The contention of the petitioners' counsel that A5 and A6 did not withdraw the amount is not supported by any material. The statements recorded from the witnesses support the allegations made in the complaint. Hence, unless a detailed enquiry is made into the allegations, by conducting trial, it would not be safe to quash the proceedings against the accused.

6. However, considering the plea of the petitioners' counsel to dispense with the presence of the petitioners, the Court below is directed not to insist upon the presence of the petitioners unless it is necessary for the proceedings of the case.

7. With the above observations, the Criminal Petition is dismissed.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

T. RAJANI, J