

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5097 of 2011

ORDER:

This criminal petition is filed seeking for quash of the proceedings passed in C.C.No.101 of 2005 on the file of the Judicial Magistrate of First Class, Sullurupet, Nellore District.

2. Heard the counsel for the petitioners and counsel for the 2nd respondent and Public Prosecutor who takes notice for the 1st respondent.

3. The case of the complainant is that Accused No.1 was running finance business and he collected huge amounts from various persons and agreed to pay higher rate of interest to them. The accused compelled the complainant to deposit amount, for construction of office complex at Sullurupet in his own site and another site at Nellore, to expand the financial business. The accused, after executing a promissory note in favour of the complainant, started construction in the above two sites with the amount given by the complainant. The complainant also personally visited the site and the presence of the complainant was secured by the accused at the two sites, to create confidence and to obtain further deposits, with an intention to cheat. The complainant submits that the accused with a common intention of cheating the complainant, without informing anybody, stopped his finance and chit business and shifted his residence.

4. After perusing the averments of the complaint, it can be understood that the complainant, before advancing further amounts, visited the sites, in order to ascertain the solvency of the accused. Even prior to the visiting of the complainant to the site, it appears that he advanced some amount and borrowing of the said amount by the accused is for the construction of the building and it appears that construction was started. But the contention of the complainant, now, is that the accused, by deceiving him, showed the site, but immediately after obtaining the amount he left the site and thereby committed cheating. Filing of the insolvency petition is also brought to the notice of this Court. The period of the promissory note is still not completed. The counsel for the 2nd respondent contended that because of the accused leaving the place, he had to file this complaint and immediately after filing this complaint the accused filed another insolvency petition.

5. In view of the above, this court is of the opinion that it is a matter to be enquired into, as to whether the accused had the intention to cheat the complainant from the inception or otherwise. This court is of the opinion that this case is not fit for quashing of the proceedings and hence this criminal petition is dismissed.

6. Counsel for the petitioner submits that warrants are issued against A1 and A3 on 12.03.2010. Since they were residing in a different places, summons could not be served.

7. Considering the said submission, the lower court is directed to recall the warrant issued by it on a petition filed by him, after considering the merits of the said petition and by taking sufficient security to ensure the presence wherever required by the Court.

8. The Miscellaneous Petitions pending, if any, shall stand closed.

December 11, 2017
JR

T. RAJANI, J

