

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1209 of 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973, by the petitioners/Accused Nos.1 to 5, to quash the proceedings in Calender Case No.372 of 2016 on the file of the II Additional Judicial First Class Magistrate, Rajamahendravaram, East Godavari District.

The petitioners, who are arraigned as Accused Nos.1 to 5 in the above Calender Case, alleged to have committed the offences punishable under Sections 420 and 406 read with 34 IPC.

Sri Chandra Sekhar Ilapakurti, learned counsel for the petitioners, would submit that it is purely a civil case where the stocks are said to have been purchased by the petitioners from various persons including the *de facto* complainant and amount was not paid and such amount ought to have been recovered by filing a civil suit by the concerned victims, if at all their version is true, and petitioner No.2, in fact, filed I.P.No.30 of 2015 on the file of I-Additional District and Sessions Judge, East Godavari District, Rajahmundry, and even notices were sent to the *de facto* complainant and, therefore, the question of committing the offences punishable under Sections 420 and 406 read with 34 IPC does not arise. No element of dishonest

intention can be gathered and, hence, sought to quash the proceedings in the aforesaid Calender Case against the petitioners.

Learned Additional Public Prosecutor for the State of Andhra Pradesh would submit the very fact that in the wee hours of the date of occurrence, the petitioners broke open the lock of the premises and removed the entire stock, is sufficient enough to cull out the culpability on the part of the petitioners and, therefore, it is not a case to quash the proceedings against the petitioners.

Perused the complaint, to which the attention is drawn by the learned counsel for the petitioners, and also the proceedings in I.P.No.30 of 2015 and 161 Cr.P.C. statements. The submission of learned counsel for the petitioners is that 161 Cr.P.C. statements are parrot like statements and, in fact, there is no case made out against the petitioners 3 to 5 and merely petitioner No.3 is the owner of the complex and petitioners 4 and 5 are labourers, who said to have assisted in removing the stock, cannot be alleged to have committed any offence.

The submissions made by learned counsel for the petitioners have to be tested during the trial of the Calender Case, but not at this stage. The dishonest intention can be inferred at this stage from the fact that the stock was removed during the wee hours of that particular night, which ought not to have been done, that too, having filed I.P. by

the petitioner No.2. These are all the matters to be looked into during trial. Therefore, it is not a case where it can be construed that it is vexatious or amount to abuse of process of law.

Accordingly, the Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous Petitions, if any, pending in this petition, shall stand closed.

February 16, 2017.
v v

A. SHANKAR NARAYANA, J

