

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2380 of 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') to quash the proceedings in C.C.No.323 of 2016 on the file of I-Additional Judicial Magistrate of First Class, Proddatur, Kadapa District.

2. The petitioners 1 & 2, who are arraigned as A1 & A2, alleged to have committed the offence punishable under Section 420 read with Section 34 of I.P.C.

3. Heard Smt.P.Rajani Reddy, learned counsel for the petitioners and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. Learned counsel for the petitioners submits that from the allegations levelled in the Charge-sheet and First Information Report no offence of cheating, punishable under Section 420 of I.P.C., would make out, more particularly, against the 2nd accused, who is father of 1st accused, as there cannot be any promise by the accused No.2 to see that he would perform the marriage of the *de facto* complainant with petitioner No.1.

5. Though, certain other submissions are made by the learned counsel for the petitioner, however, when looked at the order taking cognizance of the offence punishable under Section 420 of IPC against the petitioners by the learned Magistrate, it is clear that there was hardly any application of mind by the learned Magistrate. An

office note was put up by the concerned staff of his Court, then a seal was used to fill up the blanks, more particularly, the seal containing a judicial order of cognizance being taken, which ought not to be. Therefore, it is a case where the said order is liable to be set aside remanding the matter to the learned Magistrate for consideration afresh, by examining the material placed on record along with charge sheet filed by the investigating agency and act in accordance with the law declared by the Hon'ble Supreme Court in **Lalitha Kumar v. Government of Uttar Pradesh**¹, **Maksud Saiyed v. State of Gujarat and others**², **Ramdev Food Products Private Limited v. State of Gujarat**³, **Priyanka Srivastava and another v. State of Uttar Pradesh and others**⁴ and **Maraboina Venkatesu and others v. State of Andhra Pradesh and another**⁵.

6. Accordingly, the criminal petition is allowed setting aside the order questioned herein and directing the learned Magistrate to examine the material on record placed by the Investigating Officer and take a decision in accordance with law.

7. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 23, 2017.

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¹ (2014) 2 SCC 1

² (2008) 5 SCC 668

³ (2015) 6 SCC 439

⁴ (2015) 6 SCC 287

⁵ 2014 (2) ALD 297