

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1649 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the First Information Report in Crime No.3 of 2017 of Srikalahasti II Town Police Station, Andhra Pradesh.

2. The petitioners are arraigned as Accused Nos.1 to 5 in the aforesaid Crime. They alleged to have committed the offences punishable under Sections 420, 464, 465, 468 and 471 IPC.

3. Heard Sri C. Nageshwar Rao, learned counsel assisted by Sri Mohd. Khaleel, learned counsel for the petitioners, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioner would submit that it is a clear case of conversion of a civil case into criminal action, more particularly, the *de facto* complainant went on going to the extent of making witnesses in agreement of sale who stood as attestors of agreement of sale in favour of the petitioners executed by the original land owners as accused Nos.3 to 5 by falsely mentioning that the agreement of sale is fabricated by forging the signatures of the original owners, despite a civil suit being filed by the petitioner Nos.1 and 2 in O.S. No.50 of 2016 against the original owners to enforce the agreement of sale. The learned counsel has drawn the attention of the

copy of plaint filed in O.S. No.50 of 2016, on the file of the Senior Civil Judge, Srikalahasti, by petitioner No.1 for specific performance of agreement of sale and the copy of plaint in O.S. No.238 of 2016, on the file of the Principal Junior Civil Judge, Srikalahasti, filed by petitioner No.2 for permanent and mandatory injunctions and yet another suit in O.S. No.18 of 2017 filed by petitioner No.2 for the relief of mandatory injunction and for perpetual injunction concerning a water well which said to have been closed and sought to be restored with similar dimensions. It is his submission that it is purely a civil dispute and only to harass the petitioners, a false complaint is lodged implicating the vendees and the attestors to the agreement of sale.

5. The learned Assistant Public Prosecutor would strongly resist the request contending that in fact the original owners had sold the property in favour of one Kotte Vishnuvardhan on 21.03.2016, who in turn divided the said property into two portions and sold one portion to the *de facto* complainant and the other portion to one Kolathur Mani under registered sale deeds on 09.06.2016. Despite the same, the petitioners herein, one of them being a practicing lawyer at Srikalahasti, and the other is no other than brother of the said lawyer, aggrieved over selling the property to Kotte Vishnuvardhan and later to the *de facto* complainant and another and refusing to sell the property to the petitioners by the original owners, created the agreement of sale forging the signatures of the original owners and started claiming rights and, therefore, it is a case where investigation

into the allegations mentioned in the complaint required to be done and cannot be viewed that a civil case is converted into criminal action.

6. Perused the documents filed by the petitioners. It is no doubt true that certain orders were passed by the Courts below, but one thing is certain that all the three suits were filed by petitioner Nos.1 and 2, more particularly, latter two suits were filed by petitioner No.2 for incidental reliefs of both mandatory and perpetual injunction, whereas the first suit is filed for specific performance of alleged agreement of sale said to have executed by the original owners, Bachu Mohan Rao, Bachu Nageswara Rao, Bachu Pradeep and Bachu Naresh. One circumstance, even at this stage, would stand adverse to the petitioners' request to quash the FIR and makes to proceed with the investigation, which occurs on record. Petitioner Nos.1 and 2 when filed suit O.S. No.50 of 2016 to enforce the alleged agreement of sale stating that they have paid consideration of Rs.13,00,000/- out of the total sale consideration of Rs.13,50,000/-, and the balance sale consideration of Rs.50,000/- was payable by them to the defendant Nos.1 to 4 therein, and the said agreement of sale was, somehow, not got registered, though petitioner No.2 is a practicing lawyer. No period is mentioned in the agreement of sale to perform their respective obligations, though, the agreement of sale contains a recital that in case the vendors refuse to take balance sale consideration of Rs.50,000/- and goes on postponing the execution of a registered sale

deed, the vendees can approach the Court and deposit balance sale consideration and obtain a decree against them. This circumstance is only projected and it is made clear now itself that it shall not have any effect or bearing in either conducting investigation or in disposal of the suits pending on the file of respective Courts and it is only mentioned for the purpose of this petition.

7. It is clear that it is not an exceptional case where inherent power under Section 482 of the Code can be exercised, as the stand taken by the petitioners that a civil dispute is converted into criminal action cannot be accepted. Since the offences are punishable with imprisonment extending up to seven years, the Investigating Officer is directed to adhere to the procedure under Section 41-A of the Code and also to follow the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹.

Therefore, the present Criminal Petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending in the petition, stand disposed of.

A. SHANKAR NARAYANA, J

June 05, 2017.

Mgr

1. (2014) 8 SCC 273