

THE HON' BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL PETITION No.4287 of 2017

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings against the petitioner/ accused in Crime No.758 of 2016 on the file of the Station House Officer, Pendurthy Police Station, Visakhapatnam, registered for the offences under Sections 417, 418 and 420 IPC.

2. Learned counsel for the petitioner submitted that even if the allegations made in the complaint are *ex facie* taken to be true and correct, the lis involved between the parties is purely civil in nature, without any element of criminality. He further submitted that the petitioner purchased the property knowing fully well the tenant was in possession of the same. Per contra, learned Assistant Public Prosecutor submitted that the allegations made in the complaint are *prima facie* sufficient to constitute the offence alleged to have been committed by the petitioner.

3. A perusal of the record reveals that the petitioner is the sole accused and the third respondent is the *de facto* complainant. As per the allegations made in the complaint, the petitioner herein sold the flat to the third respondent on 01.01.2015 assuring that he will hand over vacant possession of the flat on or before 18.01.2015. It is further alleged that the petitioner sold the flat without disclosing the factum of attachment of the flat in O.S.No.22 of 2014. A perusal of the record reveals that one Seshagiri Rao filed a suit in O.S.No.2 of 2014, against the petitioner herein, on the file of II Additional Junior Civil Judge Court, Bheemunipatnam.

4. While exercising the inherent power under Section 482 Cr.P.C., the Court has to take into consideration the allegations made in the complaint only. The Court is not justified in embarking upon an enquiry as to probability, reliability or genuineness of the allegations made in the complaint at the initial stage of investigation. Whether the alleged offence is purely civil in nature or not will come to light during the course of investigation. Whether the attachment order was in existence as on 01.01.2015 or not is purely a disputed question of fact, which cannot be gone into at this stage. The material placed before the Court is *prima facie* sufficient to investigate into the matter in order to ascertain the truthfulness or otherwise of the allegations made in the complaint.

5. Having regard to the facts and circumstances of the case and also the principle enunciated in *R.P.Kapoor v. State of Punjab*¹, *State of Haryana v. Bhajan Lal*², *V.Y.Jose v. State of Gurajat*³ and *Teeja Devi v. State of Rajasthan*⁴, I am of the considered view that it is not a fit case to quash the criminal proceedings at the threshold.

6. Hence, the Criminal Petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 13.06.2017
Pns

¹ AIR 1960 SC 866

² AIR 1992 SC 604

³ (2009) 3 SCC 78

⁴ 2015 (1) ACR 564 (SC)