

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.17110 OF 2016

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure 1973 (for short 'Cr.P.C.'), is filed by accused No.3 viz., Smt. Kota Aparna, seeking to quash the proceedings against her in C.C. No.47 of 2016 on the file of II Additional Judicial Magistrate of First Class, Ongole, on the main ground that there has been conflicting charge sheets filed by the Investigating Officer, though, the charges are identical, but the name of the petitioner is shown as the alleged accused in one of them, whereas in the other, the petitioner's name is not at all mentioned. The second ground on which the petitioner wants to get the proceedings quashed is, that none of the witnesses did state about her alleged complicity in commission of the offences alleged against her. In support thereof, even the statement under Section 161 of Cr.P.C. of the *de facto* complainant - respondent No.2 herein is mostly relied on.

2. The petitioner along with two others, who are accused Nos.1 and 2 viz., Kota Venkata Sudeer Pavan Kumar and Kota Sreedevi alleged to have committed the offence punishable under Sections 420 of the Indian Penal Code (IPC) and Section 76 of the Chit Funds Act.

3. Heard Sri K. Satyananda Rao, learned counsel for the petitioner, and the learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. Though, notice was taken as ordered by this Court on respondent No.2 by the petitioner herein and service was completed, none appears for him. It appears, he has no interest in prosecuting the petition which reasons would be referred to at the relevant place.

5. As could be seen from the complaint lodged by respondent No.2, he has got acquaintance with accused No.1, whose wife is the petitioner herein, and became a member in the chit run by accused No.1 along with accused No.2. He makes a clear mention about the petitioner's participation stating that the petitioner along with one Sreedevi, who according to the petitioner is living with accused No.1, used to visit the local inmates and impressing upon them that they would earn more interest, prompted them to subscribe to the chits, and thus, participation of the petitioner has been mentioned in the complaint originally lodged on 10.06.2015.

6. Learned counsel for the petitioner has drawn attention of this Court to the statement recorded by the police under Section 161 (3) of Cr.P.C. of the *de facto* complainant dated 10.06.2015. It is to be found that the *de facto* complainant has totally omitted the name of the petitioner, and refers to Sreedevi alone, and, in fact, his statement shows that in the concluding portion. The petitioner has no connection with the chits organized by accused No.1 and was living away from accused No.1 and since he learnt that fact, the *de facto* complainant was making such a report to the police. The other statements of LWs.2 to 8 would not reflect the complicity of the

petitioner and refer to the names of accused Nos.1 and 2 alone, but not the petitioner's name.

7. These facts are not disputed by the learned Additional Public Prosecutor.

8. The learned Magistrate while taking cognizance on 19.01.2016, has also taken cognizance against the petitioner and ordered summons to all the three (3) accused.

9. The learned Additional Public Prosecutor would represent that in fact the concerned investigating officer has filed a memo dated 11.06.2015 stating that the name of the petitioner - accused No.3 was deleted and thereafter, it appears that charge sheet was filed without adding the name of the petitioner - accused No.3, but, with the same date, there is yet another charge sheet showing the name of the petitioner at serial No.3 projecting her as "alleged accused".

10. Be that as it may, except the complaint averments originally shown, the complicity of the petitioner in the commission of alleged offence was not spoken to by any of the witnesses and the very *de facto* complainant has given up the name of petitioner giving explanation in the concluding portion of his statement under Section 161 (3) of Cr.P.C.

11. Submissions were also made during the course of arguments that in fact, the petitioner was not residing with accused No.1 on account of accused No.2 living with him under the same roof.

12. Be that as it may, when the material placed on record, even if taken into consideration and accepted in entirety, the allegations do not *prima facie* set out any offence against the petitioner and do not disclose commission of the offence alleged against her and, therefore, it is a case where the request of the petitioner alone can be accepted to as the very *de facto* complainant has not supported the alleged complicity of the petitioner.

13. Therefore, the Criminal Petition is allowed quashing the cognizance taking by the learned Magistrate in C.C. No.47 of 2016 on the file of II Additional Judicial Magistrate of First Class, Ongole, against the petitioner alone.

As a sequel thereto, Miscellaneous Petitions, if any, pending stand closed.

A. SHANKAR NARAYANA, J

January 19, 2017.
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