

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1178 OF 2017

ORDER:

The petitioner herein is seeking to quash the proceedings in Calendar Case No.182 of 2015, on the file of the II Additional Judicial Magistrate of First Class, Kadapa, filed the present Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973.

2. The petitioner alleged to have committed the offences punishable under Sections 406 and 420 IPC.

3. Sri C. Sharan Reddy, learned counsel for the petitioner, would submit that the dispute herein is of civil in nature and the remedy available to *de facto* complainant, who is respondent No.1 herein, is to approach the Civil Court and seek enforcement of an agreement of sale or for refund the money, which alleged to have paid by the *de facto* complainant to the petitioner herein.

i) It is also his submission that the *de facto* complainant and two others have filed a suit in O.S. No.82 of 2013 on the file of the Principal District Judge at Kadapa against the petitioner and others showing him as defendant No.1, seeking a direction to defendant Nos.4 and 7 to execute a regular registered sale deed and on their failure to do so, to execute a sale deed on their behalf and to direct them to deliver the possession; or alternatively, to refund advance sale consideration of Rs.30,00,000/- plus penal amount of Rs.30,00,000/-,

thus, making a total sum of Rs.60,00,000/- and interest at 12% per annum, in case decree for specific performance is not granted. Thus, he submits that it is purely a civil dispute and the same is converted into criminal offence and, therefore, sought to quash the proceedings.

4. The learned Additional Public Prosecutor for the State of Andhra Pradesh opposed the request, contending that it is a clear case of cheating as the petitioner though, is not the owner of the property, by misrepresenting that the property originally belonged to Potteti Pedda Subbareddy, is still owned by him, which is an extent of Acs.4.00 cents covered by Survey Nos.602/5, 603, 604/1, 604/4, 604/5 and 604/6 of Utukur village and stating that he has got an agreement of sale from his vendor, who has also got an agreement of sale and obtained Rs.30,00,000/- under an agreement of sale by executing it on 31.01.2011 at the Sub-Registrar's office, Kadapa Rural drafted by a document writer, who is also a witness in the Calendar Case and in fact, one Potteti Chinna Subbareddy and Ponnolu Lakshmi Devi, who are no other than the brother and sister of Potteti Pedda Subbareddy, have sold away an extent of Acs.2.65 cents, which is the part and parcel of the subject land, to one Gangavaram Adinarayana Reddy on 28.11.2011 itself vide document No.8368 of 2011 and, thus, cheated them.

5. Perused the complaint averments. On perusal of the record, it shows that the date of agreement of sale in favour of the *de facto*

complainant was on 31.01.2011 and the date of final registration was fixed on 13.12.2011, whereas, out of Acs.4.00 cents of land, Acs.2-65 cents was sold by the original owners under a regular sale deed on 28.11.2011, that was about 15-20 days prior to the date fixed for registration in favour of the *de facto complainant*. Irrespective of probe into other aspects, it can be stated that there is material on record to proceed with trial in the calendar case for the offences alleged against the petitioner.

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

A. SHANKAR NARAYANA, J

February 28, 2017.

Mgr

