

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.3103 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed requesting to quash the proceedings in C.C.No.228 of 2015 on the file of I Additional Judicial Magistrate of First Class, Kothapeta, East Godavari District.

2. Petitioner is arraigned as accused No.1 in the aforesaid Calendar Case. He, along with other accused, alleged to have committed the offences punishable under Sections 403, 420, 463, 467, 468, 474, 477 and 477A read with 34 and 120B I.P.C.

3. Heard Sri S. Chakrapani, learned counsel for the petitioner, and learned Additional Public Prosecutor for the State of Andhra Pradesh.

4. Learned counsel for the petitioner has drawn the attention of the Court to the order, dated 26.07.2011, passed in I.A.No.206 of 2009 in O.S.No.40 of 2001 on the file of Senior Civil Judge, Kothapeta, East Godavari District. The said I.A. was filed by respondent No.2 - *de facto* complainant requesting to lodge a complaint against the respondents therein, who are the petitioner, respondent No.3 and two others, and to set the criminal law into motion for giving false evidence and fabricating the documents. But,

the civil Court did not incline to accede to such a request on the ground that the main Suit filed by respondent No.2 itself was dismissed with a finding that respondent No.2 retired from partnership by 31.03.1992 and therefore, the said petition was not maintainable. The learned counsel has also made various submissions, but the fact is that the said submissions relate to disputed questions of fact, touching the alleged forgery and fabrication of certain documents marked as Exs.B3, B6, B7, B22 and B23 to B42, and the same can only be resolved when the witnesses step into witness box and depose, where the petitioner would get an opportunity to cross-examine the *de facto* complainant as well as the witnesses cited by him. In an application under Section 482 of the Code, it is difficult to view the abuse of process of law, since, a roving enquiry cannot be held by giving a go-bye to the regular trial, to invite definite findings or observations on the disputed questions of fact. Therefore, the request in the present Criminal Petition cannot be acceded to.

5. At this stage, learned counsel for the petitioner makes a request to exempt the appearance of petitioner on the ground that the petitioner has been attending the Court since about two decades. Since the age of the petitioner is shown as 60 years in the cause title, the request appears to be reasonable. Therefore, the presence of petitioner viz., Ganiseti Tataji Rao, is exempted during trial of C.C.No.228 of 2015 on the file of I Additional Judicial Magistrate of First Class, Kothapeta, East Godavari District, except on the dates of

examination under Sections 239 and 313 of the Code and on other occasions where the learned Magistrate opines that his presence is necessary.

6. With the above direction, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A.SHANKAR NARAYANA, J

April 20, 2017.
MD

