

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3919 OF 2017

ORDER:

The present Criminal Petition is filed under Section 438 of the Code of Criminal Procedure, 1973 (for short 'the Code'), requesting to grant anticipatory bail.

2. The petitioners are arraigned as accused Nos.2 and 3 in Crime No.265 of 2016 of Visakhapatnam III Town Police Station, Visakhapatnam District, State of Andhra Pradesh, and they, along with accused No.1 alleged to have committed the offence punishable under Section 420 read with 34 IPC.

3. Heard Sri Akurathi Ramakrishna, learned counsel for the petitioners and learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel, having tendered elaborate arguments touching complaint allegations, while pleading innocence and false implication of the petitioners, he initially, submitted that the persons, who did not receive the amounts from the petitioners, moved the Civil Courts by filing suits for recovery of amounts and, therefore, the offence of cheating said to have committed by the petitioners does not arise. However, lastly he makes a submission that a direction be given to the police concerned to follow the procedure under Section 41A of the Code.

5. Perused the complaint allegations. Petitioner No.2 is son of petitioner No.1 and they are arraigned as accused Nos.2 and 3, whereas

accused No.1 is husband of accused No.2 and incidentally father of accused No.3. The learned counsel submitted that petitioner No.2 has only collected the amounts and he has no role to play.

6. So far as the complaint allegations are concerned, husband of petitioner No.1 started chits scheme, and in that connection, they borrowed the amounts and even the *de facto* complainant was made to stand as surety for the loans they obtained and ultimately they did not return the amounts to the subscribers, though, initially they paid certain amounts, luring the villagers to subscribe chits, and even according to the learned counsel for the petitioners, the amount involved was about Rs.50.00 lakhs, whereas, the learned Assistant Public Prosecutor would state that to the tune of Rs.1.00 Crore, the villagers were cheated by them.

7. Irrespective of the allegations are true or otherwise, since the submission made by the learned counsel to follow the procedure under Section 41A of the Code appears to be reasonable. While dismissing the present Criminal Petition, the Investigating Officer is directed to follow the procedure under Section 41A of the Code and also the guidelines laid down by the Hon'ble Supreme Court in **Arnesh Kumar v. State of Bihar**¹.

A. SHANKAR NARAYANA, J

JULY 12, 2017

Mgr

¹. (2014) 8 SCC 273