

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.1825 OF 2017

ORDER:

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'the Code') requesting to quash the proceedings in Calendar Case No.403 of 2016 on the file of the Additional Junior Civil Judge - cum - Judicial Magistrate of First Class, Bapatla, Guntur District, Andhra Pradesh.

2. The petitioner, who is arraigned as sole accused in the aforesaid Calendar Case, alleged to have committed the offences punishable under Sections 448, 354B and 509 of IPC.

3. Heard Sri Nimmagadda Satyanarayana, learned counsel for the petitioner and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

4. The learned counsel for the petitioner pleads innocence and false implication of the petitioner. It is according to him that respondent No.2 - *de facto* complainant borrowed a sum of Rs.5,00,000/- from the petitioner by executing a promissory note, and when she evaded to discharge the debt, the petitioner filed a suit for recovery of money in O.S. No.33 of 2016 on the file of the Senior Civil Judge, Bapatla, which is still pending. It is also his submission that the mother-in-law of respondent No.2 borrowed Rs.6,00,000/- from the petitioner's brother-in-law and failed to repay, his brother-in-

law filed suit in O.S. No.102 of 2016 on the file of the very same Court, and even obtained attachment before judgment and the Court Amin went to execute the warrant, and in that context, the *de facto* complainant created a false story and foisted the present case against the petitioner and it is intended only to evade the debt due to the petitioner and his brother-in-law. The learned counsel also would point out that out of 14 witnesses examined by the Investigating Officer, most of the witnesses are kith and kin of respondent No.2 and the Process Server and Amin, who were examined as LWs.7 and 8, respectively, stated that on 09.04.2016 at 9.00 a.m., they left to Appikatla village to attach the schedule property, whereas respondent No.2 projects that the incident allegedly happened at 9.30 a.m. and, thus, the statements of LWs.7 and 8 would falsify the report given by respondent No.2 and, hence, sought to quash the proceedings.

5. The learned Assistant Public Prosecutor would resist the request.

6. Perused the complaint as well as the other material available on record.

7. On perusal, complaint would clearly indicate *prima facie* allegations and so also the statements of the witnesses recorded by the police under Section 161 of the Code. The statements of LWs.7 and 8 can only be appreciated when they are examined as witnesses by the prosecution. The defence now agitated by the learned counsel relate

to disputed questions of fact, which can only be resolved during trial when the evidence is recorded. Therefore, it cannot be said that prosecution of petitioner for the offences alleged against him would amount to the abuse of process of law as contended by the learned counsel for the petitioner. There is no merit in the present petition.

Therefore, the Criminal Petition is dismissed, at the stage of admission itself. As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

April 21, 2017.
Mgr

A. SHANKAR NARAYANA, J

