

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL PETITION No.1405 OF 2017**

**ORDER:**

The present Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973, requesting to quash the Calendar Case No.104 of 2015 on the file of the Judicial Magistrate of First Class, Mahabubnagar.

2. The petitioner alleged to have committed the offence punishable under Section 420 IPC.

3. Sri M.V. Subba Reddy, learned counsel for the petitioner, would submit that respondent No.2, who is *de facto* complainant, has filed a private complaint and the same is not accompanied with sworn affidavit of the *de facto* complainant and, therefore, the same is in contravention of law declared by the Hon'ble Supreme Court, hence, sought to quash the proceedings as the learned Magistrate ought not to have referred the case to police for investigation and report. It is also his submission that the allegations in the complaint do not make out any offence, much less the offence under Section 420 IPC.

4. The learned Additional Public Prosecutor for the State of Telangana would resist the request.

5. The complaint filed by respondent No.2 was in the year 2014 and it was registered by the police concerned as FIR No.234 of 2014 and, in fact, even charge sheet was filed on 19.02.2015 on completion of investigation. The decision rendered by the Hon'ble

Supreme Court declaring the law that the sworn affidavit shall accompany the complaint filed under Section 156 (3) of the Code was in the year 2015. Therefore, that ground is now not available to the petitioner.

6. Concerning the second ground that the allegations in the complaint would not reveal the commission of offence punishable under Section 420 IPC; the stage, at which the petitioner has approached this Court is, on completion of even framing of charge against the petitioner for the aforesaid offence on 20.12.2016 having examined the petitioner under Section 239 of the Code, for which, he pleaded not guilty and claimed to be tried. The learned Magistrate has applied his mind and reached the stage of framing the aforesaid charge having examined the petitioner herein and recorded the statement. At this stage, basing on mere ground that the allegations in the complaint would not make out a case for the offence punishable under Section 420 of the Code would not sustain. Even, the material on record through statements recorded under Section 161 of the Code and the complaint allegations would not favour the stand of the petitioner.

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

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**A. SHANKAR NARAYANA, J**

**March 06, 2017.**  
Mgr