

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.3054 OF 2017

JUDGMENT:

The present Criminal Revision Case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') by the revision petitioners - accused Nos.1 and 2 challenging the order, dated 09.10.2017, passed in CrI.M.P. No.5020 of 2017 in C.C. No.577 of 2014 by the learned I Additional Judicial Magistrate of First Class, Adoni, whereby and where-under, the learned Magistrate dismissed the discharge petition filed under Section 239 of the Code.

2. The revision petitioners are accused Nos.1 and 2 respectively, in the aforesaid C.C. They alleged to have committed the offences punishable under Sections 420 IPC.

i) On a private complaint filed by one D. Mahaboob Basha, the learned Magistrate referred to the concerned police under Section 156 (3) of the Code for investigation and report.

ii) Substantially, the allegations have been that, revision petitioner No.1 borrowed an amount of Rs.40,000/- from the *de facto* complainant, agreeing to repay the same with interest at 24% per annum and executed a promissory note in favour of the *de facto* complainant on 17.05.2009, by keeping an original document pertaining to the land standing in the name of revision petitioner No.1

situated at Holagunda village, which, according to revision petitioner No.1, was kept with the *de facto* complainant towards security for the amount lent.

iii) Revision Petitioner No.2, who is the son of revision petitioner No.1 and one Ms. P. Fathima attested the said promissory note, and one Vali Basha has acted as a broker for the said loan. It appears that revision petitioner No.1 filed insolvency petition before the concerned Court. It was found later that the property covered by the title deed kept as a security with the *de facto* complainant was already sold away by revision petitioner No.1 on 29.01.2008 itself. The *de facto* complainant learnt about it on 25.04.2011. Therefore, the *de facto* complainant opining that the revision petitioners and the said P. Fathima with a fraudulent or dishonest intention induced him to deliver the money and, thus, cheated him.

3. When the charge sheet was laid, the learned Magistrate taken cognizance for the said offence against the revision petitioners.

4. Heard Sri S.M. Rafee, learned counsel for the revision petitioners - accused Nos.1 and 2, and the learned Assistant Public Prosecutor for the State of Andhra Pradesh.

5. The learned counsel for the revision petitioners would submit that a mere execution of promissory note by revision petitioner No.1 and attested by revision petitioner No.2 would not give rise to

commission of offence of cheating punishable under Section 420 IPC. He would also submit that, in fact, the promissory note does not require any attestation and, therefore, revision petitioner No.2, who attested it, cannot be viewed as having committed any offence at all, much less the offence punishable under Section 420 IPC.

6. A cursory glance at the order passed by the learned Magistrate which is under challenge herein, would show that there has been *prima facie* element of fraudulent or dishonest intention in obtaining money from the *de facto* complainant by offering a title deed, which property covered by it, was sold away even one year four months prior to the loan transaction. It appears, the attestors have been taken for the promissory note only to lend assurance or to give a colour of reality that the loan transaction under the promissory note is genuine. In such an event, it cannot be said, even at this stage, that there is no *prima facie* material to proceed with trial against revision petitioner No.2 - accused No.2 even. The order passed by the learned Magistrate rejecting the request to discharge the revision petitioners is based on proper reasoning. The approach adopted by the learned Magistrate cannot be faulted. There is no merit in the present Criminal Revision Case.

7. The present Criminal Revision Case is, therefore, dismissed at the stage of admission itself.

As a sequel thereto, miscellaneous petitions, if any, pending in the present, stand closed.

A. SHANKAR NARAYANA, J

November 30, 2017.

Mgr

