

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.905 of 2018

ORDER:

This petition is filed seeking for grant of anticipatory bail to the petitioners, who are A4 and A5, in Crime No.405 of 2017 on the file of the Station House Officer, Kothur Police Station, Mahabubnagar District. The offences alleged are under Sections 420 and 468 IPC.

2. Heard the counsel for the petitioners and the Public Prosecutor appearing for the respondent.

3. The case of the prosecution is that A1 has fabricated sale deeds, projecting himself to be the owner of the disputed property and sold the property to the petitioners and that the petitioners also colluded with A1 and got the sale deeds registered in their name after bargaining for a lesser price. The commission that the petitioners got, as per the case of the prosecution, is the difference of the original price and the price paid by the petitioners.

4. The counsel for the petitioners submits that the petitioners cannot be brought within the purview of the Sections 468 and 471 IPC as they are stated to be the persons who did not create any false documents. He also relies on a ruling of the supreme Court in *Mohammed Ibrahim v. State of Bihar*¹ wherein the Supreme Court held that the condition precedent for an offence

¹ (2009) 8 SCC 751

under Section 467 and 471 IPC is forgery and the condition precedent for forging is making a false document, It was observed that that case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

5. But the facts of this case stand on a different footing. The case of the prosecution is that the petitioners are well in know of the fact that the petitioners have no title to the property and that they are lured by the difference of the price that they would be benefited for by purchasing such property, which does not bear the title of the seller. Hence, it can be said that unless they are willing purchasers for such property, A1 could not have sold the property. Hence, these petitioners cannot be said to have not participated in the offence that was purported to be committed by A1 and they bring themselves within the purview of Section 107 IPC, where they have engaged themselves with A1, in a conspiracy to bring out a forged document.

6. The contention that Section 420 IPC also does not get attracted to the facts of the case can be sustained as per the above ruling wherein it was held that to constitute an offence under Section 420 IPC, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived. Though the petitioners

cannot be attracted to Section 420 IPC, their acts clearly come within the purview of Sections 468 and 471 IPC.

6. Considering the above allegations, this court opines that this is not a fit case for granting anticipatory bail to the petitioners.

7. Accordingly, the Criminal Petition is dismissed. However, the petitioners can file a petition seeking for regular bail by surrendering themselves before the court below. The court below shall dispose of the bail application, if any filed, on merits, expeditiously, preferably on the same day, subject to the pressure of other work.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

February 7, 2018
LMV



T. RAJANI, J