

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.2264 OF 2011

ORDER:

The present Criminal Petition is filed, under Section 482 of the Code of Criminal Procedure, 1973, by the petitioner - accused seeking to quash the proceedings against him in Crime/FIR No.51 of 2011, dated 18.02.2011, of Visakhapatnam II Town Police Station, Visakhapatnam City, Andhra Pradesh State, registered for the offences punishable under Sections 420 and 506 of the Indian Penal Code, 1860 (for short 'IPC') read with 156 (3) of the Code.

2. Heard Sri P. Ravi Kiran, learned counsel for the petitioner - accused and learned Public Prosecutor for the State of Andhra Pradesh, appearing for respondent No.2. None appears for respondent No.1 despite service of notice.

3. The petitioner herein is arraigned as sole accused in the aforesaid Crime, while respondent No.1 is the *de facto* complainant. The *de facto* complainant filed a private complaint before the learned II Additional Chief Metropolitan Magistrate at Visakhapatnam against the accused and the learned Magistrate referred the complaint under Section 156 (3) of the Code to investigate and to file report. Pursuant to the same, the aforesaid crime was registered by the police.

4. As per the version of the *de facto* complainant he purchased the Tipper (Ashok Leyland 10-Tyre) bearing registration No.TN 67H

6962 with the assistance of finance provided by M/s. Sriram Finance, Madhuravada Branch, and accused entered into an agreement with him for purchase of said Tipper. The agreement is also to the effect that the accused has to pay overdue amount to the Financier and to clear the loan due amount. The allegation is that though the overdue amount was paid by the accused on the date of agreement, the finance people approached the *de facto* complainant and demanded him for payment of instalments and they also showed the statement copy stating no instalments were paid since June, 2010.

5. The learned counsel for the petitioner - accused would contend that even going by the allegations made in the complaint, no offence under Section 420 IPC can be made out as the overdue amount was paid by the accused on the date of agreement. From the fact of payment of overdue amount on the date of agreement, it can be understood that in order to take possession of the Tipper, he had to pay the said overdue amount. It is possible that he did not have any intention to pay instalments after taking over the possession of the Tipper. Hence, this aspect has to be decided at the time of trial.

6. Regarding the offence punishable under Section 506 IPC, there is a specific allegation that when the *de facto* complainant approached the accused and questioned about non-payment of installments, as agreed by him, the accused threatened him. Hence, considering the said circumstances, this Court opines that it is not a fit case to quash the proceedings in the aforesaid Crime.

7. Accordingly, the present Criminal Petition is dismissed. However, the police are directed to follow the procedure inlaid in Section 41-A of the Code.

Consequently, Miscellaneous Petitions, if any, pending in the present Criminal Petition stand closed.

SMT. T. RAJANI, J

October 22, 2018
Mgr

