

SMT. JUSTICE T. RAJANI

CRIMINAL PETITION No.11918 OF 2011

ORDER:

The present Criminal Petition is filed, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), by the petitioners - accused Nos.1 to 5 seeking to quash the proceedings against them in Calendar Case No.820 of 2006, pending on the file of the learned Judicial Magistrate of First Class, Chilakaluripet, registered for the offences punishable under Sections 420 and 120-B read with 109 of the Indian Penal Code, 1860 (for short 'IPC').

2. Heard learned counsel for the petitioners and learned Assistant Public Prosecutor for the State of Andhra Pradesh appearing for respondent No.2, and also learned counsel for respondent No.1.

3. Originally, respondent No.1 filed a complaint with the police against the petitioners and others alleging that accused No.1 is the Managing Partner of Venkateswara Constructions, while accused Nos.2 to 5 are its partners. On 16.05.1997, accused No.4, who is a General Power of Attorney Holder of one Kancherla Rajyalakshmi and three others, executed a sale deed in favour of the complainant to an extent of 44 square yards of undivided and specified area from out of 2276.23 square yards, and on the same day, another agreement was also executed between accused No.1 - builder and the complainant for construction of apartment which includes the flat of complainant. As per the terms and conditions, accused No.1 agreed to construct a flat for a specified

consideration, and part of consideration was already paid to accused No.1. Accused No.1 undertook to complete the construction within 18 months, and the balance amount has been paid at different times to accused No.1. There is a condition in the agreement that the land owner shall not commit any default in payment of amount. As per the terms and conditions of the agreement, the complainant paid the amounts at different times to accused No.1, but the flat was not completed as agreed. The complainant approached accused No.1 several times, and she ultimately came to learn that accused Nos.1 to 3 and 5 have colluded with accused No.6 at the instigation of accused No.4 and got executed a *binami* sale deed in favour of accused No.6.

4. These being the allegations made in the complaint, learned counsel for the petitioners submits that in respect of the said dispute, the complainant approached the District Consumer Forum, Guntur, and by virtue of the order, dated 09.12.2005, in C.D. No.328 of 2002, the case was allowed in part with costs and expenses, directing the opposite party to pay Rs.1.80 lakhs to the complainant with interest at 9% per annum from the date of alleged receipt of amount. As against the said order, the complainant preferred appeal in F.A. No.149 of 2006 before the Andhra Pradesh State Consumer Disputes Redressal Commission at Hyderabad, and by virtue of order, the said appeal was dismissed confirming the order passed by the District Consumer Forum. Apart from that, the complainant also filed a suit in O.S. No.241 of 2004 on the file of the Principal Senior Civil Judge, Narasaraopet, seeking for

recovery of possession of property, and by virtue of judgment, 15.12.2010, the said suit was dismissed. Having failed in all attempts the complainant now filed the present complaint.

5. Merits of the case were already decided by two competent Forums, one being Civil Court and the other being Consumer Forum. Hence, on the face of it, the complaint seems to be frivolous. Therefore, this Court finds no ground for continuation of the proceedings as it amounts to abuse of process of law. Hence, all the further proceedings in the aforesaid Calendar Case are liable to be quashed.

6. Accordingly, the present Criminal Petition is allowed, and proceedings against the petitioners - accused Nos.1 to 5 in Calendar Case No.820 of 2006, pending on the file of the learned Judicial Magistrate of First Class, Chilakaluripet, are hereby quashed.

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

SMT. T. RAJANI, J

October 29, 2018
Mgr