

THE HON'BLE SRI JUSTICE P.KESHA RAO
CRIMINAL PETITION NOS. 7565 OF 2011 AND
8072 OF 2011

COMMON ORDER:

Heard the learned counsel for the petitioners, learned Public Prosecutor and the learned counsel for the 2nd respondent.

The criminal petitions Nos. 7565 of 2011 and 8072 of 2011 are filed by accused No.4, and accused Nos.2 and 3 respectively seeking to quash the proceedings initiated against them in FIR No.30 of 2011 for the offences under sections 406, 420, 120 B read with 34 IPC on the file of P.S. Angara, East Godavari district.

As both the criminal petitions are arising out of the same crime, both parties agreed and given consent to hear both the matters together and to pass common orders. Accordingly, both the criminal petitions are clubbed together and a common order is being passed.

The facts of the case are that the 2nd respondent herein lodged a private complaint on 4.3.2011 against the petitioners and another on the file of the Judicial First Class Magistrate, Alamuru. In the said complaint, it is stated that accused No.1 is the owner of the flats bearing Nos.T-3 and T-4 in Surya

Residency Apartments and accused Nos.2 and 3 have induced the 2nd respondent to purchase the said flats. As far as accused No.4 is concerned, he is the builder who constructed the said flats. The basic allegation made against the accused is that before she was induced to purchase the said flats under registered sale deed dated 5.8.2010 from accused No.1, the subject flats were already mortgaged in favour of State Bank of India, Gaigolupadu branch. Since the flats were incomplete, she could not occupy the same. However, in the month of October, 2010, the 2nd respondent came to know that the Branch Manager, SBI, Gaigolupadu, affixed papers on the doors of the flats to the effect that the flats were taken into possession as the original borrower committed default in payment of the mortgage debt. In those circumstances, the complaint was lodged.

The said complaint was referred to the concerned police under Section 156 (3) of Cr.P.C. Pursuant to which, a case was registered in Crime.No.30 of 2011 for the offences under sections 406, 420 and 120-B IPC read with 34 IPC. Aggrieved by the registration of the said crime, Accused No.4 filed Criminal Petition No.7565 of 2011 and Accused Nos.2 and 3 filed Criminal Petition No.8072 of 2011.

Learned counsel for the petitioners would contend that the petitioners have not committed any offence much less the offence as alleged in the complaint. The matter is purely civil in nature. As far as Accused Nos.2 and 3 are concerned, they are only attestors to the registered sale deed. Therefore, they cannot be roped in as accused in the present crime. As far as Accused No.4 is concerned, he is only a builder and he has nothing to do with the transaction that was entered into between Accused No.1 and the 2nd respondent, and they sought to quash the proceedings initiated against the petitioners herein.

Per contra, learned counsel appearing for the 2nd respondent as well as the learned Public Prosecutor would contend that there is a specific allegation with respect to mortgage of the subject flats prior to execution of the registered sale deed dated 5.8.2010 in favour of the 2nd respondent. Unless and until the investigation is conducted, the truth will not come out.

A perusal of the contents of the complaint would reveal that it is an admitted fact that Accused No.1 is the owner of flats-T-3 and T-4 and the same are sold in favour of the 2nd respondent. However, before selling the said flats, whether the Accused No.1 mortgaged the same in favour of State Bank of

India, Gaigolupadu or not, and whether the State Bank has taken possession of the said flats since the original borrower committed default in payment of the mortgage debt, are the disputed questions of fact, which can be clarified after a full fledged investigation. Since the crime is at the stage of investigation, this Court feels that it is not a stage where the jurisdiction of this Court under section 482 Cr.P.C. can be invoked to quash the proceedings initiated against the petitioners. Therefore, no case is made out to quash the proceedings and the petitions are liable to be dismissed.

Accordingly, both the Criminal Petitions are dismissed. However, it is made clear that if the presence of the petitioners is required during the course of investigation, the procedure as contemplated under section 41-A of Cr.P.C. may be followed as per law.

Interim orders, if any, stand vacated.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

P.KESHAVA RAO,J

Date:5.1.2018

KPM