

HON'BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL PETITION No. 6615 of 2011

ORDER

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor. The present Criminal Petition is filed by the petitioner to quash the proceedings initiated against him in Cri.No.80 of 2011 of Kurnool II Town Police Station for the offence under Section 420 IPC.

2. The brief facts of the case are as follows:

3. The 2nd respondent lodged a complaint on 26.04.2011 with the Inspector of Police, II town Police Station, Kurnool, stating that with an intention to purchase plot No.21, Maruthimega City, Nandyala Check Post, Kurnool Town from the petitioner, for a total consideration of Rs. 89,00,000/-, the 2nd respondent paid a sum of Rs.26,00,000/- towards advance in the presence of D.Sainadh and K.Jayaprakash to the petitioner. The petitioner in turn promised to register the above said plot in favour of the 2nd respondent after payment of the remaining amount. After 5 days of payment of the advance amount, the 2nd respondent herein along with his wife and all the witnesses went to the house of the petitioner, requesting to register the above said plot in his name by taking the balance sale consideration. But the same is not registered in his favour and the petitioner herein had made the 2nd respondent run from pillar to post. Finding no other way, when the 2nd respondent asked to return the advance amount paid to the petitioner, the same was not paid and the 2nd respondent came to know that the

plot for which they have paid the advance amount was mortgaged in the State Bank of India, TLF Company, Kurnool. Therefore, they requested to take appropriate action against the petitioner herein, for entering into agreement by taking advance amount for sale of plot, which was already mortgaged. Pursuant to the said complaint, a crime vide FIR No.80/2011 of II Town Police Station, Kurnool for the offence under Section 420 I.P.C. was registered against the petitioner. Aggrieved by the registration of the crime, the present criminal petition is filed.

4. The learned counsel for the petitioner would contend that the matter is purely civil in nature and the criminal proceedings initiated against the petitioner are liable to be quashed. She also would contend that the petitioner is ready to execute a registered sale deed in favour of the 2nd respondent.

5. A perusal of the contents of the complaint would clearly indicate that the petitioner, knowing fully that the said property was already mortgaged in favour of State Bank of India, TLF Company, entered into the agreement of sale with 2nd respondent by receiving a part sale consideration of Rs.26,00,000/- out of Rs.89,00,000/-. The suppression of the said aspect appears to be malafide one and presupposes that the petitioner has got an ill motive from the inception of the transaction. This aspect cannot be decided in a petition under Section 482 Cr.P.C. for the reason that it is a disputed fact as to whether the petitioner has already mortgaged the said property prior to entering into agreement of sale with the 2nd respondent. The disputed question of fact can be elicited and

brought on record only during the course of investigation and trial. In the present case, the crime is only at the stage of investigation. Therefore, this Court is not inclined to interfere, when the crime is in the investigation stage.

6. Therefore, there are no merits in the criminal petition and the same is liable to be dismissed. Accordingly, the criminal petition is dismissed. However, if the presence of the petitioner is required during the course of investigation, the investigating agency may invoke the provisions of Section 41 A of Cr.P.C. as per law. The interim stay granted earlier in CrI.M.P.No.6790/2011 shall stand vacated and other Miscellaneous Petitions pending, if any, shall stand closed.

Dated: 03.01.2018

JR

P. KESHAVA RAO, J

