

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 5820 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'Cr.P.C.') to quash the proceedings in crime No. 469 of 2016 of Chikkadapally Police Station, Hyderabad City, registered for the offence punishable under Section 420 of IPC read with Section 156 (3) of Cr.P.C.

2. Respondent No. 2 filed a private complaint under Section 200 of Cr.P.C. on the file of the Court of IX Additional Chief Metropolitan Magistrate, Hyderabad (for short, 'the Court below'), for the offence punishable under Section 420 of IPC alleging that he advanced an amount of Rs.82,00,000/- to the petitioners and in repayment of the said amount, petitioner No. 1 issued cheques; that on presentation of the cheques, they were dishonoured; that thereafter, he filed C.C.No. 712 of 2012 and O.S.No. 690 of 2013 and during pendency of the above two cases, petitioner No. 1 voluntarily settled the dispute and executed a memorandum of compromise (hereinafter referred to as MOC) dated 18-04-2014, under which petitioner No. 1 issued three cheques bearing Nos. 517034, 517035 and 517036 for the amount covered by MOC; that as per the MOC, petitioner No. 1 is supposed to register a flat as per market value; that at his insistence, petitioner No. 1 stated that the flat in Uppal is in dispute and as such requested him to accept for a plot which is in the name of petitioner No. 2 in survey No. 155/A1, admeasuring 500 square yards or 418 square meters, *vide* patta No. 163, pattadar passbook No. 75551, title deed No. 181160, situated at Peerzadiguda, Ghatkesar Mandal, R.R. District; that petitioner No. 1 in collusion with petitioner No. 2 played fraud on him and executed a registered document in his favour and that on verification, it has come to light that the petitioners sold the

property without having any title to it. The Court below instead of taking cognizance by itself referred the matter to police by exercising power under Section 156 (3) of Cr.P.C. and on reference, the above crime was registered for the offence referred *supra*.

3. The petitioners questioned the F.I.R. on the ground that the property was assigned to petitioner No. 2 by Government and obtained pattadar passbook and title deed and the same was sold to respondent No. 2. The registered sale deed executed in favour of respondent No. 2 and MOC are placed on record. As per the recitals in the registered sale deed, land of an extent of 418 square meters equivalent to 500 square yards within four boundaries was sold. On verification by respondent No. 1, it is found that the land is part of Musi River. When the petitioners sold the property, which is part of Musi River, belonging to Government, it is nothing but inducing respondent No. 2 dishonestly to part with huge amount for sale of the property and such an act would attract *prima facie* the offence punishable under Section 420 of IPC. When the allegations made in the complaint on its face value would constitute an offence under the penal provisions, this Court cannot exercise its jurisdiction under Section 482 of Cr.P.C. to quash the proceedings. It is not even the case of the petitioners that the present complaint was lodged with a view to wreak vengeance or to harass them and it is the case of the petitioners that the land sold to respondent No. 2 was assigned to them. However, the documents are not placed on record for perusal of the Court. The genuineness or otherwise of those documents can be investigated by police during investigation only. The Apex Court in State of **Orissa Vs. Saroj Kumar Sahoo**¹ held that the inherent powers under Section 482 of Cr.P.C. should not be exercised by High Court to stifle a legitimate

¹ (2005) 13 SCC 540

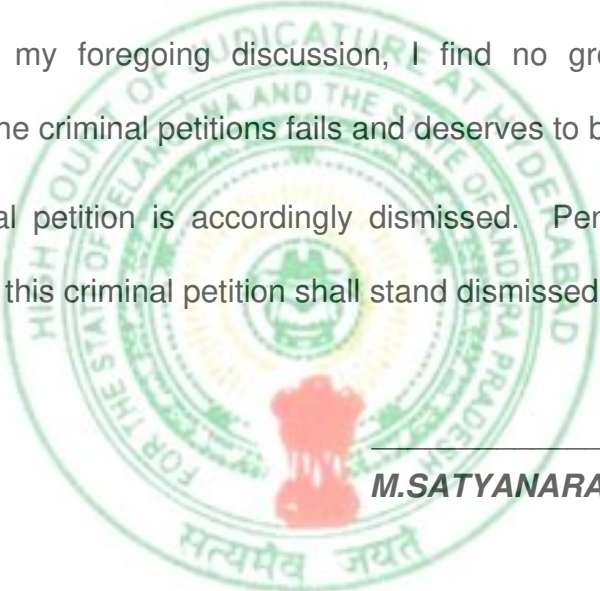
prosecution. The High Court, being the highest Court of a State, should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. In the case on hand, the investigation is at the threshold and at this stage, this Court cannot exercise its inherent jurisdiction under Section 482 of Cr.P.C. to quash the proceedings, more particularly when the allegations made in the complaint would constitute the above offence.

4. In view of my foregoing discussion, I find no ground to quash the proceedings and the criminal petitions fails and deserves to be dismissed.

5. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 12-06-2018.

JSK

A large, faint, circular watermark seal of the High Court of Karnataka, Bangalore, is centered on the page. The seal features the text 'HIGH COURT OF KARNATAKA AND THE STATE OF KARNATAKA' around the top and 'FOR THE STATE OF KARNATAKA' around the bottom. In the center is the State Emblem of India, with the motto 'सत्यमेव जयते' (Satyameva Jayate) in Devanagari script at the bottom.

M.SATYANARAYANA MURTHY, J.