

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.1802 of 2013

ORDER:

The criminal petition is filed seeking quash of the proceedings in Cr.No.50 of 2013, against the petitioners, who are A1 to A3, on the file of the Station House Officer, Visakhapatnam I Town Police Station, Visakhapatnam. The offences alleged are under Sections 188 and 423 of the Indian Penal Code; Section 12 of CCA read with Section 34 of IBID.

2. Heard the counsel for the petitioners and the learned Public Prosecutor appearing for the first respondent. None appears for the second respondent.

3. The case of the complainant is that petitioner No.2 executed a sale deed on behalf of petitioner No.1 under General Power of Attorney, suppressing the fact that there was mortgage of the property and that in spite of there being an injunction order restraining the petitioners herein from selling the property, they have executed a lease deed.

4. So far as the suppression of the fact of mortgage is concerned, the counsel for the petitioners draws the attention of this Court to the judgment passed by the II Additional District Judge, Visakhapatnam in O.S.No.179 of 2010 dated 28.02.2013 wherein the Court observed that in the plaint filed by the plaintiff, it is clearly mentioned that the plaintiff is aware of the mortgage and that he also asked the petitioners herein to clear the loan out of the sale consideration or to clear the dues by themselves.

5. Hence, the fact of suppressing the existence of mortgage is belied by the pleadings of the plaintiff/first respondent herein filed in the said suit. As regards the violation of the injunction order, this Court opines that the *de facto* complainant has a remedy under the Civil Procedure Code and it cannot be brought under Section 188 IPC. By virtue of the fact that there was no suppression made by the petitioners, Section 423 IPC also does not get attracted.

In the light of the above, the criminal petition is allowed and the proceedings in Cr.No.50 of 2013, against the petitioners, who are A1 to A3, on the file of the Station House Officer, Visakhapatnam I Town Police Station, Visakhapatnam, are hereby quashed. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

December 13, 2018
DSK



T. RAJANI, J