

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.33006 of 2017

ORDER :

Heard learned counsel for the petitioners/accused Nos.1 to 4 of Crime No.217 of 2017 of Denkada Police Station, Vizianagaram District and also learned Government Pleader for Home representing respondent Nos.1 and 2 before ordering notice to the *de facto* complainant-3rd respondent and perused the grounds urged in the writ petition.

The petitioners pray for the following relief:

“..... to issue a Writ, order or Direction more particularly one in the nature of Writ of Mandamus, declaring the action of the 2nd respondent police calling the petitioners to attend before the Police Station and for arrest in connection with Crime No.217/2017 on a false complaint given by the 3rd respondent relates to the dispute civil in nature in violation of the law and procedure and in violation of Supreme Court judgment *Arnesh Kumar v. State of Bihar* curtailing the rights of freedom of movement of the petitioners is illegal, arbitrary and against the principles of natural justice and in violation of Articles 14, 19 and 21 of the Constitution of India and consequently direct the respondents police not to harass the petitioners in the interest of justice and to pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.”

Perused the supporting affidavit and contents of F.I.R., dated 05.09.2017, registered for the offences punishable under Sections 420, 354, 323, 354-B and 509 read with 34 IPC and the report given by the 2nd petitioner-accused No.2 herein on the even date registered as

Crime No.216 of 2017 against the *de facto* complainant and others for the offences punishable under Sections 452, 395, 397, 427, 354, 509, 506 and 342 read with 34 IPC.

The contention of the learned counsel for the petitioners including from the writ petition affidavit is that it is purely a civil dispute and the accused persons purchased the property from the father of the *de facto* complainant long back and they are residing therein. What the *de facto* complainant long after the death of her father and after recent death of her mother came with a version as if in the lifetime of her father, petitioner Nos.1 and 2 obtained the property by playing fraud as if General Power of Attorney-cum-sale under the guise of mortgage.

No doubt, there is a civil dispute. However, mere existence of any dispute of civil nature itself is not a ground to say that the criminal proceedings are unsustainable as rightly pointed out by learned Government Pleader for Home.

In fact, the averments show that there is a fraud and deception played by the accused persons in obtaining the sale without knowing under the pretence of mortgage to knock away the property by having wrongful gain to cause wrongful loss and when questioned attacked and outraged the modesty.

Having regard to the above, there is nothing to quash the F.I.R. by entertaining the writ petition, but for to say the petitioners shall not be arrested for Ten (10) days from today. In the meantime, the

petitioners can pursue their remedies available under law. Needless to say, for the offences punishable below seven years, the police strictly follow Section 41-A Cr.P.C. and the guidelines of the Apex Court in **Arnesh Kumar v. State of Bihar**¹.

4. With the above observation, the writ petition is disposed of.

5. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27th September 2017.

Note:

Issue C.C. today.

(b/o)

mar/rds



¹ (2014) 8 SCC 273