

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL PETITION No.5038 OF 2017**

**ORDER:**

1 This petition is filed under Section 482 Cr.P.C to quash the proceedings against the petitioners/Accused Nos.1 and 2 in Cr.No.98 of 2017 on the file of Station House Officer, III Town Police Station, Eluru, West Godavari District, registered for the offences punishable under sections 120(B), 427, 447, 463, 468 and 506 (2) r/w 34 of IPC.

2 The learned counsel for the petitioners submitted that the second respondent converted civil litigation into criminal dispute with an ulterior motive to defeat the legal rights of the petitioners. He further submitted that even if the allegations made in the complaint are ex facie taken to be true and correct, no case is made out against the petitioners.

3 The learned Public Prosecutor representing the State of Andhra Pradesh submitted that the allegations made in the complaint prima facie constitute the offences alleged to have been committed by the petitioners.

4 A perusal of the record reveals that the petitioners are accused Nos.2 and 3 and the second respondent is the *de-facto* complainant. A perusal of the record reveals that the first petitioner filed O.S.No.35 of 2016 on the file of the Court of the I Additional Junior Civil Judge, Eluru against the second respondent and one Nageswara Rao for perpetual injunction in respect of an extent of 150 sq. yards in RS No.199/1-B of Vatluru village. As per the allegations made in the complaint, the

petitioners herein trespassed into the house of the second respondent on 05.12.2016. It is further alleged that the petitioners herein along with other accused created a gift deed to deprive the legal rights of the second respondent. The entire controversy revolves around the alleged gift deed.

5 While disposing of the petition filed under Section 482 Cr.P.C, the Court has to take into consideration the allegations made in the complaint. The Court is not justified in embarking upon an enquiry to ascertain the truthfulness or otherwise of the allegations made in the complaint. Whether the petitioners have committed the alleged offences or not and whether the lis involved between the parties is purely civil in nature will come to light during the course of investigation only. The very purpose of investigation is to ascertain the truthfulness or otherwise of the allegations made in the complaint. The allegations made in the complaint are prima facie sufficient to investigate into the matter.

6 Having regard to the facts and circumstances of the case on hand and also the principle laid down in **R.P.Kapoor v. State of Punjab**<sup>1</sup>, **State of Haryana v. Bhajan Lal**<sup>2</sup>, **V.Y.Jose v State of Gurajat**<sup>3</sup> and **Teeja Devi v State of Rajasthan**<sup>4</sup>, I am of the considered view that this is not a fit case to quash the proceedings at this stage.

7 Having regard to the facts and circumstances of the case and also the principle enunciated by the Supreme Court in **Arnesh**

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<sup>1</sup> AIR 1960 SC 866

<sup>2</sup> AIR 1992 SC 604

<sup>3</sup> (2009) 3 SCC 78

<sup>4</sup> 2015 (1) ACR 564 (SC)

**Kumar v. State of Bihar**<sup>5</sup>, the Station House Officer, III Town Police Station, Eluru West Godavari District is hereby directed to follow the procedure as contemplated under Section 41A Cr.P.C., in Cr.No.98 of 2017 so far as the petitioners who are accused Nos.2 and 3 are concerned.

8 With the above direction, the Criminal Petition is disposed of. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

**T. SUNIL CHOWDARY, J**

**Date: 30<sup>th</sup> June, 2017**  
**Kvsn**




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<sup>5</sup> (2014) 8 SCC 273