APHC010313432023

**IN THE HIGH COURT OF ANDHRA PRADESH**
**AT AMARAVATI** **[3604]**
**(Special Original Jurisdiction)**

TUESDAY, THE 10th DAY OF NOVEMBER 2026

**PRESENT**

**THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM**

**CRIMINAL PETITION NO: 4524/2023**

**Between:**

1. M/S.GAYATHRI INFRA, A REGISTERED PARTNERSHIP FIRM REP BY ITS MANAGING PARTNER SRI KALIDINDI DEVI SRI RAMA RAJU S/O SRI KSR ANJANEYA RAJU, HINDU, AGED ABOUT 40 YEARS R/O D/NO 4-47-12/3, LAWSON'S BAY COLONY, VISAKHAPATNAM

**...PETITIONER/ACCUSED**

**AND**

1. THE STATE OF ANDHRA PRADESH, REP. BY SPL PUBLIC PROSECUTOR ACB, HIGHCOURT OF ANDHRA PRADESH, AMARAVATHI.
2. KOTARU ESWARA RAO, S/O LATE APPA RAO , SENIOR ASSISTANT, KGH VISAKHAPATNAM R/O D/NO 1-81-5, PLOT NO 104, LIG, SECTOR III, MVP COLONY, VISAKHAPATNAM
3. SMT TALATAM RAMLAKSHMI, W/O BEZAWADA VENKATA PRABHAKARA RAO, R/O D/NO 9-22, SIVAPURAM,

**...RESPONDENT/COMPLAINANT(S):**

Petition under Section 437/438/439/482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court pleased to QUASH the order passed in CRL.MP No 232/2020 in CRL.MP NO 798/2019 in CR NO 13/IRCA-ACB-VSP/201.8 on the file of III Addl District Judge cum Special Judge For SPE AND ACB Cases, Visakhapatnam and pass

**IA NO: 1 OF 2023**

Petition under Section 482 of Cr.P.C and 528 of BNSS praying that in the circumstances stated in the Memorandum of Grounds of Criminal Petition, the High Court may be pleased to allow the petitioner to proceed with the construction to raise the attachment by imposing conditions till the disposal of the Main Quash Petition in the interest of the justice and pass

**Counsel for the Petitioner/accused:**

1. P RAJASEKHAR

**Counsel for the Respondent/complainant(S):**

1. S.SYAM SUNDER RAO SC cum Spl P.P. For ACB

**The Court made the following:**

**THE HONOURABLE SMT JUSTICE SUNITHA GANDHAM**

**CRIMINAL PETITION No.4524 OF 2023**

**ORDER:**

This Criminal Petition is filed by the petitioner/ accused No.3 to quash the order dated 01.02.2023 passed in Crl.M.P. No.232 of 2020 in Crl.M.P. No.798 of 2019 in Crime No.13/RCA-ACB-VSP/2018, by the learned III Additional District Judge-cum-Special Judge for SPE & ACB Cases, Visakhapatnam.

2. The case of the petitioner, in brief, is that the petitioner firm entered into an agreement with the flat owners of Prince apartment bearing Door No.16-1-16/C, to reconstruct the apartment for the reason that the building is aged about 40 years, situated opposite to sea and it is in a dilapidated condition and except entering into agreement with the respondent No.3 and flat owners, the petitioner could not proceed further to execute work, even as per the case of the prosecution the flat stands in the name of respondent No.3, who is sister in law of the main accused and she does not fall under the category of member of family. Further, the petitioner has invested an amount of Rs.25,00,000/- for execution of development agreement and because of the attachment order, remaining flat owners suffered a lot. Further, the learned trial Court without looking into the factual aspects simply dismissed the application on the ground that the petitioner has no right to sought for raising of attachment.

3. Before the learned trial Court, the petitioner filed the instant original petition with the same averments mentioned in the petition filed before this Court. Respondent No.3/ owner of the said flat and respondent/ accused filed separate counters sailing the contentions of the petitioners, whereas, the respondent No.1 filed counter refuting the averments made in the petition contending that the petitioner has no right to file petition seeking raising of

attachment as he has no title over the property and at the culmination of enquiry, the learned Trial Court dismissed the petition on the ground that the petition is not maintainable as the petitioner has no right over the disputed flat which stands in the name of respondent No.3.

4. Heard Sri P.Rajasekhar, learned counsel for the petitioner and Sri C.Shyam Sundar, learned Assistant Public Prosecutor for ACB. Perused the material available on record including the impugned order and counters.

5. Learned counsel for the petitioner initially would argue that without going into the merits of the case, the learned trial Court erroneously dismissed the petition on the ground that the petitioner has no right or title over the property, respondent No.2 who is owner of the disputed flat had executed development agreement in favour of the petitioner along with other 23 flat owners, the learned trial Court failed to consider the condition of the building and also imminent urgency for demolition of the said building. Further, though respondent No.3 expressed her willingness to execute any undertaking affidavits and ready to abide the conditions imposed by the learned trial Court, erroneously dismissed the petition. Further, as per Section 4 (4) of Criminal Law (Amendment) Ordinance, 1944 any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection before the District Judge and further, the learned trial Court should have been considered the objections raised by the petitioner as he has obtained development agreement-cum-GPA from others, and provisions of CPC would apply to the proceedings and without properly appreciating the facts of the case at the hand, the learned trial Court erroneously dismissed the petition.

6. Per contra, while relying upon the judgment of coordinate bench of erstwhile High Court in ***A.Sambaiah Nayak and another vs The State of***

***Telangana*** [1], learned special Public prosecutor would argue that this petition is not maintainable and as per the provisions of the Act, appeal is to be filed against the order passed by the learned trial Court, the petitioner is third party to the proceedings and he has no right or title over the property and as such, the learned trial Court rightly dismissed the petition. Further, the petitioner does not come under the purview of aggrieved party and instead of preferring the appeal, he has filed quash petition which is not maintainable.

7. Having considered the rival submissions and the material placed on record, the question that arises for consideration is whether the order passed by the Court below, dismissing the petitioner's application merely on the ground that he is a third party without examining his claim in accordance with the provisions of the Ordinance, warrants interference by this Court.

8. At the outset, it is relevant to refer to Section 4(4) of the Criminal Law (Amendment) Ordinance, 1944. The said provision enables any person claiming an interest in the attached property or any portion thereof to raise an objection before the District Judge, notwithstanding that no notice has been served upon such person. Thus, the provision recognises the right of a person claiming an interest in the attached property to place his objection before the competent Court.

9. Further, Section 5(2) of the Ordinance provides that whenever an objection is made under Section 4, the District Judge shall proceed to investigate the same. While conducting such investigation, the Court shall follow the procedure and exercise the powers of a Civil Court in hearing a suit under the Code of Civil Procedure, 1908. The person raising the objection is required to adduce evidence to establish that, on the date of attachment, he had an interest in the property. After such investigation, the Court shall pass an appropriate order in accordance with Section 5(3) of the Ordinance.

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[1] Crl.P.15912 of 2016, dated 05.01.2017

10. A combined reading of Sections 4(4) and 5 of the Ordinance makes it clear that a person claiming an interest in the attached property cannot be denied an opportunity to raise an objection merely on the ground that he is a third party. Whether such person has a genuine and legally recognisable interest in the property is a matter to be examined on the basis of the pleadings, documents and evidence placed before the Court.

11. In the present case, the Court below has not undertaken any such exercise. It has rejected the application at the threshold by treating the petitioner as a third party. The Court below has not examined the nature of the claim made by the petitioner, the documents relied upon in support of such claim or whether the petitioner had any interest in the property as on the date of attachment. In the considered view of this Court, such an approach does not conform to the procedure contemplated under Sections 4(4) and 5 of the Ordinance.

12. The contention of the learned Special Public Prosecutor regarding the availability of an alternative remedy under Section 11 of the Ordinance also requires consideration. No doubt, Section 11 provides a statutory remedy of appeal against orders passed by the District Judge under the relevant provisions of the Ordinance. This Court is also conscious of the principle laid down in ***A.Sambaiah Nayak (supra)***, wherein the importance of availing the statutory appellate remedy was emphasised.

13. However, the present case involves a situation where the Court below has declined to exercise the jurisdiction vested in it under the Ordinance by rejecting the petitioner's application solely on the ground that he is a third party. The statutory right recognised under Section 4(4) and the duty to investigate objections under Section 5(2) have not been given effect to. The defect in the impugned order is not merely an error in appreciating the evidence or deciding the claim on merits, but a failure to undertake the enquiry contemplated by the statutory provisions.

14. In these peculiar circumstances, this Court is of the view that interference is warranted to prevent an unjust rejection of the petitioner's claim at the threshold. The availability of an alternative remedy is an important consideration in exercising inherent jurisdiction, but it does not require this Court to remain a silent spectator where the impugned order discloses a patent failure to exercise jurisdiction in accordance with the governing statutory provisions. The power under Section 482 Cr.P.C. is therefore being exercised in the peculiar facts of this case, not to decide the petitioner's claim over the property, but to ensure that the statutory procedure is properly followed.

15. This Court makes it clear that no opinion is being expressed on the genuineness of the petitioner's claim, the validity of the documents relied upon by him or his entitlement to seek release of the attached property. Those questions are matters for consideration by the Court below after giving an opportunity to the concerned parties and conducting an enquiry in accordance with law.

16. **In the result,** and in view of the foregoing discussion, this Criminal Petition is allowed, quashing the order dated 01.02.2023 passed in Crl.M.P. No.232 of 2020 in Crl.M.P. No.798 of 2019 in Crime No.13/RCA-ACB-VSP/2018, by the learned III Additional District Judge-cum-Special Judge for SPE & ACB Cases, Visakhapatnam. The matter is remitted to the Court below for fresh consideration of the application filed by the petitioner, in accordance with Sections 4(4) and 5 of the Criminal Law (Amendment) Ordinance, 1944. The Court below shall give an opportunity to the petitioner as well as the prosecution and other necessary parties to place their respective claims and supporting material on record. Thereafter, it shall conduct an enquiry as contemplated under Section 5(2) of the Ordinance and pass an appropriate order on merits, in accordance with law, without being influenced by the observations made in this order. The attachment shall

continue to operate until an appropriate order is passed by the competent Court in accordance with law.

As a sequel thereto, pending miscellaneous petitions, if any, shall stand closed.

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**SUNITHA GANDHAM, J**

Date:10.11.2026
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