

HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL PETITION No.4268 of 2015

ORDER :

The question raised in this petition is whether the trial Court can take cognisance of the case under Section 138 of the Negotiable Instruments Act without recording the sworn statement/oral evidence of the complainant. The petitioner sought for the quashment of the case on the ground that the sworn statement of the complainant has not been recorded, so much so the case is liable to be quashed.

2. There were divergent views in this context with reference to Section 200 Cr.P.C as well as with reference to Sections 142 and 445 of Negotiable Instruments Act. One view was that the sworn statement of the complainant is compulsory before the Court to take cognisance of the complaint. The other view is that once the complaint is lodged so far as under Section 138 of the Negotiable Instruments Act is concerned, if prima facie case is made out, the case shall be taken cognisance of. On this issue the Supreme Court constituted a Special Bench consisting of three Judges and a decision was rendered by the Supreme Court in **A.C. NARAYANAN V. STATE OF MAHARASHTRA**. Although the question before the Supreme Court primarily was regarding the duty of the Court vis-à-vis the power of attorney holder of the complaint, the Supreme Court gave other findings. Paragraph 26 (iv) of the decision refers to the present controversy viz., that once a complaint is lodged under Section 138 of the Negotiable Instruments Act, in view of Section 145 of the Negotiable Instruments Act, the Court is entitled to take cognisance of the same even without recording the sworn statement of the complaint. In view of this decision of the Supreme Court, this Criminal Petition is liable to be dismissed as it is filed on the ground that the complaint should be quashed since sworn statement of the complaint has not been recorded.

3. Consequently, this Criminal Petition is dismissed. It is made clear that the petitioner is entitled to move the Court for quashment of the case on other grounds. The presence of the petitioner before the trial Court is dispensed with

for the trial. The trial Court, however, is at liberty to insist upon the presence of the petitioner on any date of hearing in the event the trial Court considers it necessary for the petitioner to be present. Miscellaneous Petitions pending, if any, in this Criminal Petition, shall stand closed.

JUSTICE M.S.K. JAISWAL

11.06.2015.

Msr

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