

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.2755 OF 2015

ORDER:

The petitioner has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the docket order, dated 03.11.2015, passed in C.F.No.3142 of 2015 by the Judicial Magistrate of First Class, Kota, whereby the learned Judge returned the petition filed by the petitioner to take cognizance of the offence under Section 138 read with 142 of Negotiable Instruments Act against the accused.

Heard and perused the material available on record.

Learned counsel for the petitioner submits that the Court below erroneously returned the petition filed by the petitioner on the ground that the Bank Return Memo has not been filed.

This Court is of the view that it is necessary to extract the docket orders passed by the learned Judge on different occasions and the same read as follows.

Returned:-

1) As per the New Amendment to the Negotiable Instruments Act, 1981, the cheque return memo to be filed on the point of this Court jurisdiction.

Sd/- 12-10-2015

JFCM, Kota.

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Re-presented:-

This return memos already filed along with the petition. Objection complied herewith.

Sd/- 14-10-2015.

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Returned:-

2) N.I.Act complainant/petitioner was not filed within time. Hence, returned in C.F.No.3142/2015

Sd/- 17-10-2015

JFCM, Kota

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Re-presented:-

I have filed Section 5 petition, the delay of 24 days. The same may be considered and number the case. Hence objection complied with.

Sd/- 02-11-2015.

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Returned:-

Concerned bank return memo to be filed as per the new amendment act on point of jurisdiction.

Sd/- 03.11.2015

JFCM, Kota.

It is unfortunate to note that in most of the cases, the trial Courts are insisting that the documents are to be filed along with the complaint to take cognizance of the case. It is to be noted that even if the documents are not filed, if the question of jurisdiction is explained in the complaint, it is the duty of the learned Judge to take cognizance of the offence and the Court can ask the complainant to produce the documents required at the time of trial. Further, it is not the duty of the learned Judge to peruse entire material like the written memo and other documents concerned, prior to taking cognizance of the case. If the complaint discloses the cognizable offence, the learned Judge has to take cognizance of the case and to proceed with the trial, and if the documents are not produced during the course of trial, the Court can take an adverse view against the complainant.

In view of the above observations, the docket orders passed by the Court below are totally erroneous in nature and hence, the order dated 03.11.2015 passed in C.F.No.3142 of 2015 is hereby set aside and the Court below is directed to take cognizance of the offence and proceed with the case in accordance with law. The petitioner herein is directed to produce all the relevant documents at appropriate time.

The Criminal Revision Case is accordingly disposed of. Consequently, the miscellaneous petitions filed in this revision, if any, shall stand closed.

JUSTICE RAJA ELANGO

17.11.2015

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