

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

CRL.P.No.10414 of 2010

ORDER:

Petitioner-accused seeks to quash the proceedings initiated against her in C.C.No.156 of 2010 on the file of the V-Additional Judicial Magistrate of First Class, Kakinada, registered for the offence under Section 138 of the Negotiable Instruments Act.

The 2nd respondent-complainant filed a private complaint against the petitioner-accused before the V-Additional Judicial Magistrate of First Class, Kakinada, and the same was taken on file for the offence under Section 138 of the Negotiable Instruments Act.

Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the 2nd respondent and also the learned Public Prosecutor, representing the State.

Learned Counsel for the petitioner-accused submitted that Section 200 Cr.P.C. mandates examination of the complainant and the provision does not contemplates taking cognizance basing on the sworn affidavit of the complainant and, therefore, taking cognizance of the offence under Section 138 of the Negotiable Instruments Act basing on the sworn affidavit is not legal and proper.

While dealing with the similar issue, a learned single Judge of this Court in *A.V.R.Murthy V. Nunna Venkata Ravanamma*^[1] and *Gayatri Devi Traders V. State of A.P.*^[2] held as under:

“Proceedings under Section 200 Cr.P.C are in the

nature of enquiry prior to taking cognizance by the Magistrate. When Section 145 of the Act which starts with non-obstante clause provides for taking evidence on affidavit of the complainant not only during trial, but also during enquiry or other proceedings under Cr.P.C, it cannot be said that recording of sworn statement by the Magistrate personally in his/her own hand or typed to his/her dictation is a mandatory condition for taking cognizance of the offence punishable under Section 138 of the Negotiable Instruments Act. Examining the complainant on oath under Section 200 Cr.P.C is nothing but taking evidence during pre-cognizance enquiry or pre-registration enquiry by the Magistrate under that provision. Therefore, this Court is of the view that receiving of sworn affidavits from the complainants instead of recording sworn statement by the Magistrate before taking cognizance of offences under Section 138 of the Negotiable Instruments Act, is permissible and is not in any way contrary to the procedure prescribed by law. I see absolutely no merit in these petitions filed by the accused.”

In view of the aforesaid decision of this Court, I am of the view that there is no procedural irregularity in taking cognizance of the case against the petitioner-accused for the offence under Section 138 of the Negotiable Instruments Act basing on the sworn affidavit of the 2nd respondent-complainant. I find no merit in this petition.

Accordingly, the Criminal Petition is dismissed. However, the trial Court is directed to proceed with the trial of the case expeditiously.

Miscellaneous petitions, if any, pending shall stand closed.

M.S.K.JAISWAL, J

18-09-2015

Gsn

[\[1\]](#) 2010 (1) ALD (CRL) 990

[\[2\]](#) 2011-Crimes-1-554