

***HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO**

+ CRIMINAL PETITION No.6799 of 2013

% 27-11-2015

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#M.Koteswara Rao

....Petitioner

Vs.

\$ State rep. by its Public Prosecutor, High Court of A.P.

Hyderabad and another.

.... Respondents

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!Counsel for the Petitioners : Sri Gade Venkateswara Rao

Counsel for the Respondents: Public Prosecutor

<Gist :

>Head Note:

? Cases referred:

2. (2014)5 SCC 590
3. LAWS (MAD) 2008(1) 396
4. 2004 Cr.L.J.4566
5. 2005(1) OLR 586
6. 2005(2) Mh.L.J 1003
7. 2006(1) LS 38
8. 2010(1) ALD (Cr.L.) 990 (AP)
9. 2014(1) ALD (Cr.L.) 649 (SC)

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6799 of 2013

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ORDER :

This criminal petition is filed by the petitioner/Accused under Section 482 Cr.P.C to quash the proceedings in C.C. No.412 of 2011 on the file of V Additional Munsif Magistrate Court, Guntur which is the private complaint filed by the 2nd respondent for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2) The learned Magistrate taken cognizance pursuant to the private complaint after accepting the sworn statement affidavit of the complainant. The contentions urged in seeking to quash the cognizance and issuing of the summons by the learned Magistrate against the accused, in the petition are that the Magistrate ought not to have been taken cognizance for no territorial jurisdiction and erred in condoning the delay of five days and erred in taking cognizance on the affidavits instead of recording sworn statements. So far as the jurisdiction aspect concerned, there is no quarrel on the proposition existing prior to the ***Dasarath Roop Singh V. State of Maharashtra*** and the subsequent ordinance No.6/2015, dated 15.06.2015 and further extended which says not only the place where from the

cheque issued but also the place where the cheque presented dishonoured equally confers jurisdiction and the ordinance gives retrospective effect. Coming to the other contention regarding delay condonation concerned, the very Section 142 of the Negotiable Instruments amended by Act 55/2002 with effect from 06.02.2003 makes a provision statutorily for requiring the Magistrate to take cognizance after expiry of one month period if there is sufficient cause shown for the delay.

3) It is not the case that from peculiar facts by bringing anything brought to the notice, there is no sufficient cause. Once the learned Magistrate properly exercised the judicial discretion in condoning the delay invoking the statutory provision supra, there is nothing for this Court to suit against. Coming to the core contention of taking cognizance only on affidavit not by recording sworn statement, it is not in dispute that Section 145 of the Negotiable Instruments Act introduced by the Amended Act in the Act supra containing two sub-sections of which sub-section (2) says the Court may, if it things fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein. The scope of this provision is well considered in ***Indian Bank Association V. Union of India***. Coming to the scope of Section 145(1) of the Negotiable Instruments Act, undisputedly it commences with the non-obstante clause of whatever contained in Cr.P.C, for evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code. It is not only for pre-cognizance enquiry but also for other proceeding irrespective of for pre-cognizance as per Section 200 to 202 Cr.P.C. It provides to record sworn statement, when Section 145 of the Negotiable Instruments Act provides to accept affidavit in evidence, the cognizance taken by the Magistrate per se no way shown how unsustainable.

4) No doubt, the learned counsel placed reliance on the expression of a Single Judge of this Court in Crl.P.No.5557 of 2010

dated 23.03.2013 in P.Ravinder Reddy V. N.Subba Reddy. The learned Magistrate did not refer Section 145 of the Negotiable Instruments Act, but decided only by the wording of Sections 138 and 200 Cr.P.C. Once Section 145 of the Negotiable Instruments Act commences with non-obstante clause as discussed supra and a special procedure under a special Act is even saved by Sections 4 and 5 of the Cr.P.C, had it been brought to the notice of the Court, it could not have been the result. No doubt, the learned counsel placed reliance on another expression of Madras High Court in **Nellaiappan V. Samuvel** where referring to Sections 300 to 204, 396 Cr.P.C and Sections 145 of the Negotiable Instruments Act and placed reliance upon a single Judge expression of Karnataka High Court in **K.Srinivasan V. Kashinath** and another single judge expression of the Orissa High Court in **Panda Leasing and Properties Ltd. V. Hemant Kumar Moharana** and another single Judge expression of Bombay High Court in **Mamtadevi Prafullakumar Bhansali V. Pushpadevi Kailashkumar Agarwal** held that even from reading of Section 145 of the Negotiable Instruments Act read with Section 200 to 204 Cr.P.C, the cognizance must be by sworn statement and not by affidavit.

5) Before considering the above expressions and its binding nature on the Court but for the persuasive value, it is also necessary to refer the expressions of this Court earlier even in **Ghulam Hider Ali Khan V. Managing Partner, SSFC** where the Judgments referred by the Madras High Court of particularly the Karnataka and Orissa High Courts referred and came to the conclusion that the sworn statement can be taken by affidavit. The said judgment is binding on this Court. Further more, in another single Judge bench expression of this Court in CrI.P.No.2852 of 2009 dated 07.10.2010 in **Gayatri Devi Traders V. State of A.P** referring to several expressions including of the Apex Court on the scope of pre-cognizance enquiry and a need of taking sworn statement by affidavit or recording including by referring to Single Judge bench expression of this Court in **A.V.R.Murthy V. Nunna Venkata Ravanamma** observed that as

rightly found by the Court that Section 145 of the Negotiable Instruments Act is an exception to the mode of recording sworn statement of complainant envisaged by Section 200 Cr.P.C, thereby accepting affidavit is valid.

6) It is needless to say further in this context there is a direct expression of the Apex Court in dealing with the scope of Section 145 and 138 of Negotiable Instruments Act. A three Judge bench in ***A.C.Narayana V. State of Maharashtra*** categorically observed that for the Magistrate neither mandatorily obliged to call upon the complainant to remain present before the Court nor examine the complainant or his witnesses upon oath for taking decision regarding cognizance in the form of affidavit filed by complainant in support of the complaint to take cognizance.

7) Having regard to the above, none of the grounds urged to quash the proceedings are sustainable and accordingly the same is liable to be dismissed. However, it no way prejudice the defence otherwise available to the accused before the trial Court to face by participation.

8) In the result, the criminal petition is dismissed. Miscellaneous petitions, if any pending, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27.11.2015

N.B.: L.R. Copy to be marked.

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