

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No. 380 of 2014

JUDGMENT:-

Aggrieved by an order dated 29.01.2014 passed in CrI.M.P.No.155 of 2014 in C.C.No.88 of 2013 on the file of XI Special Magistrate, Secunderabad, the petitioner/accused preferred the present Criminal Revision Case under Sections 397 and 401 Cr.P.C.

The facts in issue are as under:

The 2nd respondent herein filed a private complaint against the petitioner for an offence punishable under Section 138 of the Negotiable Instruments Act. The said complaint was taken on file as C.C.No.88 of 2013 on the file of XI Special Magistrate, Secunderabad. Pending the said proceedings, the petitioner filed an application vide CrI.M.P.No.155 of 2014 under Section 258 Cr.P.C. requesting the Court to drop the proceedings against him by dismissing the complaint. By an order dated 29.01.2014, the learned Special Magistrate dismissed the complaint. Challenging the same, the present Criminal Revision Case is preferred.

The learned counsel for the petitioner submits that the finding of the learned Special Magistrate that Section 258 Cr.P.C. is not applicable to a case filed under Section 138 of the N.I. Act as it is based on a private complaint, is not correct. He further submits that no notice was served on the petitioner and, as such, continuation of proceedings would be an abuse of process of law. The learned Public Prosecutor opposed the

revision.

Section 258 Cr.P.C. reads as under:

“Power to stop proceedings in certain cases. In any summons- case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.”

A reading of the said provision would clearly disclose that in any summons case instituted otherwise than upon a complaint, the Magistrate of the First class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage, without pronouncing any judgment. In the instant case, a private complaint was filed by the 2nd respondent against the petitioner for an offence punishable under Section 138 of the N.I. Act and the said case is tried as a summons case. When the proceedings are initiated based on a private complaint, provisions of Section 258 Cr.P.C. cannot be invoked, as it applies only to cases which are instituted otherwise than on a complaint. The said view of mine is fortified by the judgment of the Apex Court in **John Thomas Vs. Dr. K.**

Jagadeesan^[1] in which it was held as under:

“Summons cases are generally of two categories; those instituted upon complaints and those instituted otherwise than upon complaints. The latter category would include cases based on police reports. Section 258 of the Code is intended to cover those cases belonging to one category

alone i.e., “summons cases instituted otherwise than upon complaints”. The segment separated at the last part of the section by the words “and in any other cases” is only a sub-category or division consisting of “summons cases instituted otherwise than upon complaints. That sub-category is not intended to cover all summons cases other than those instituted on police report. In fact, Section 258 vivisects only “summons cases instituted otherwise than on complaints” into two divisions. One division consists of cases in which no evidence of a material witness was recorded. The section permits the court to acquit the accused prematurely only in those summons cases instituted otherwise than on complaints wherein the evidence of material witnesses was recorded. But the power of the court to discharge an accused at midway stage is restricted to those cases instituted otherwise than on complaints wherein no material witness was examined at all.

The upshot of the above is that Section 258 of the Code has no application to cases instituted upon complaints. The present is a case which was instituted on a complaint. Hence, the endeavour made by the accused to find help from Section 258 of the Code is of no avail.”

Therefore, the application filed under Section 258 Cr.P.C. seeking dismissal of the complaint was rightly rejected by the trial Court. Hence, the Criminal Revision Case is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed. Consequently, miscellaneous petitions, if any, pending in the criminal revision case shall also stand dismissed.

C. PRAVEEN KUMAR, J

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[\[1\]](#) (2001) 6 SCC 30