

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.5793 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.451 of 2009 on the file of the Court of the Judicial First Class Magistrate, Anaparthi, East Godavari District.

2. Heard the learned counsel for both parties.

3. The only contention raised by the learned counsel for the petitioner is that the learned Magistrate has no power whatsoever to take the cognizance of offence under Section 138 of the Negotiable Instruments Act, 1881 without recording the sworn statement of the complainant.

4. The point urged by the learned counsel for the petitioner is no more *res integra*. The apex court in **Indian Bank Association v Union of India**^[1], after considering the scope of Section 145 of N.I. Act (*Evidence on affidavit*) in the light of relevant case law thus far on the point, held at para No.18 as follows:

"... .. under Section 145 of the Act, the complainant can give his evidence by way of an affidavit and such affidavit shall be read in evidence in any inquiry, trial or other proceedings in the court, which makes it clear that a complainant is not required to examine himself twice i.e., one after filing the complaint and one after summoning of the accused. The affidavit and the documents filed by the complainant along with complaint for taking cognizance of the offence are good enough to be read in evidence at both the stages i.e. pre-summoning stage and the post-summoning stage."

Certain guidelines to be followed by the courts while dealing with the cases under Section 138 of N.I. Act were also issued. The relevant guideline is extracted hereunder:

23.1. The Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and

the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

5. Having regard to the facts and circumstances of the case and also the decision cited supra, the contention of the learned counsel for the petitioner cannot be sustained either on facts or on law.

6. In the result, criminal petition is dismissed. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Petition shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 18.02.2016

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[\[1\]](#) (2014) 5 SCC 590 = AIR 2014 2528