

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION No.9534 of 2010

ORDER:

This petition is filed under Section 482 Cr.P.C., to quash the proceedings against the petitioner—accused in C.C.No.201 of 2009 on the file of the court of the Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard the learned counsel for both parties.

3. As per the allegations made in the complaint, the petitioner issued cheque bearing No.860541, dated 06.11.2006 in favour of the first respondent for an amount of Rs.1,50,000/-. The first respondent presented the cheque in Andhra Bank, Akkayyapalem Branch, Visakhapatnam for collection and the same was returned with endorsement, “insufficient funds”. The first respondent got issued notice on 30.11.2006 directing the petitioner to pay the amount within 15 days. Though the petitioner received the notice on 02.12.2016, he did not choose to pay the amount. Having no other alternative, the first respondent filed complaint under Section 190 and 200 Cr.PC read with Sections 138 and 142 of the Negotiable Instruments Act (the Act).

4. The predominant contention of 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 (the Act) without recording the sworn statement of the complainant.

5. 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 in view of the principle enunciated in the case cited supra, I am unable to accede to the contention of the learned counsel for the petitioner that without recording sworn statement of the complainant the learned Magistrate is not entitled to take cognizance of offence under Section 138 of the Act.

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

T.SUNIL CHOWDARY, J

February 26, 2016
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^[1] (2014) 5 SCC 590 = AIR 2014 2528