

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.951 OF 2015

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the order dated 28.04.2015 in CrI.M.P.No.1384 of 2015 in C.C.No.410 of 2014 on the file of the Court of the III Additional Judicial First Class Magistrate, Rajahmundry.

2. Heard Sri N.Vijay, the learned counsel for the petitioner and Sri M.V.S.Sarma, the learned counsel for the second respondent.

3. A perusal of the record reveals that the petitioner is facing trial in C.C.No.410 of 2014 for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881. On 18.03.2015 the complainant (PW.1) was further examined and Ex.P.6 was marked. For one reason or other, the petitioner's counsel did not cross-examine PW.1 on that day. The petitioner filed CrI.M.P.No.1384 of 2015 to recall PW.1 for further cross-examination and the same was dismissed.

4. The predominant contention of the learned counsel for the second respondents is that the present revision is not maintainable under law.

5. Learned counsel for the petitioner submitted that revision lies against the interlocutory orders.

6. In order to appreciate the rival contentions, this Court is placing reliance on the ratio laid down in **Sethuraman v.**

Rajamanickam¹, wherein the Hon'ble Apex Court held at para No.4 as follows:

“4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed.”

7. As per the principle enunciated in the case cited supra, no revision lies against the orders passed under Sections 91 and 311 Cr.P.C. The facts of the case on hand are almost identical to the facts of the case cited supra.

8. Having regard to the facts and circumstances of the case and also the principle enunciated in the case cited supra, I am of the considered view that the criminal revision case is not maintainable.

¹ 2009 (1) ALD (CrL.) 871 (SC)

9. Accordingly, the Criminal Revision Case is dismissed.
10. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

T.SUNIL CHOWDARY, J

Date: 19.10.2016
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