

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.815 of 2013

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the orders dated 15.02.2013 passed in Crl.M.P.No.3908 of 2012 in C.C.No.568 of 2011 on the file of the Judicial Magistrate of First Class, Special Mobile Court, Kurnool.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor representing the State.

3. As per the allegations made in the complaint, the petitioner issued a cheque bearing No.751536 in favour of the second respondent for an amount of Rs.40,000/- on 16.01.2010 drawn on Andhra Bank, Park Road, Kurnool. On 09.03.2010, the second respondent presented the said cheque for collection and the same was returned with an endorsement "funds insufficient". Later, he presented the said cheque for second time and the same was returned with an endorsement "insufficient funds". On 19.08.2010, the second respondent got issued a notice directing the petitioner to pay the amount within 15 days, failing which, legal consequences follows. But the petitioner did not choose to repay the amount. Having no other alternative, the second respondent filed the present complaint.

4. I have carefully perused the record in order to ascertain whether the learned Magistrate has committed any illegality while taking cognizance of offence. A perusal of the record clearly reveals that after following the due procedure, the second respondent filed a private complaint. The learned Magistrate, after satisfying himself with the material placed before him, has taken cognizance of the offence against the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the N.I. Act'). The learned Magistrate has not committed any illegality or irregularity while taking cognizance of the offence against the petitioner for the offence under Section 138 of the

N.I. Act.

5. When the matter is coming up for cross examination of P.W.1, the petitioner filed a petition under Section 227 of Cr.P.C. for discharge. It is needless to say that the trial Court has to follow the summons procedure while adjudicating the matters filed under Section 138 of the N.I. Act. There is no need to frame charges if the complaint is filed under Section 138 of the N.I. Act. It appears that in order to protract the matter, the petitioner intentionally and wilfully filed the petition under Section 227 of Cr.P.C. The trial Court rightly made an observation that the petition is not maintainable under law.

6. At the time of arguments, the learned counsel for the petitioner, in all fairness, submitted that the petition under Section 227 of Cr.P.C. is not maintainable if the complaint is filed under Section 138 of the N.I. Act.

7. When the petition itself is not maintainable, this Court is unable to understand how the petitioner filed the petition under Section 227 of Cr.P.C. The possibility of filing of this petition in order to protract the matter cannot be ruled out completely. There are no grounds much less valid grounds to interfere with the order passed by the trial Court. Viewed from factual or legal aspects, the petition is not maintainable.

8. Hence, the Criminal Revision Case is dismissed. However, the trial Court is hereby directed to dispose of C.C.No.568 of 2011 within a period of three (3) months from the date of receipt of a copy of this order.

9. Consequently, Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

Date: 29.02.2016

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