

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.13775 of 2016

ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') to quash the proceedings in C.C.No.101 of 2015 pending on the file of II-Additional Judicial Magistrate of First Class, Ongole, on the sole ground that the trial Court without recording the statement of the complainant as required under Section 200 Cr.P.C. took the cognizance of the case, which is illegal against the settled principles of law.

2. During hearing, Sri T.Sreedhar, learned counsel for the petitioner, drawn attention of this Court to judgment of this Court in **P. Ravinder Reddy v. Nalamalapur Subba Reddy¹** and the judgment of Apex Court in **Pooja Ravinder Devidasani v. State of Maharashtra²** to contend that complaint of Section 200 Cr.P.C. i.e., recording of statement of the complainant is mandatory. When it is not complied, taking cognizance is vitiated by irregularity and prayed to quash the proceedings.

3. Learned counsel for the complainant/respondent No.1 relied the latest judgment of the Apex Court reported in **K.S.Joseph v. Philips Carbon Black Ltd. and anr.³**. The filing of affidavit in lieu of recording statement under Section 200 Cr.P.C. is sufficient. In view

¹ 2013 (1) L.S. 371

² 2014 (16) SCC 1

³ 2016 (3) CCC 67 (SC)

of Section 145 of N.I.Act, this irregularity pointed out by the counsel, at the time of taking cognizance by the Judicial First Class Magistrate, does not vitiate the proceedings and prayed to dismiss the petition.

4. No doubt, the Magistrate is required to record the statement of the complainant while taking cognizance. Filing of an affidavit is not a substitute to the requirement under Section 200 Cr.P.C. and this view is supported by the judgment of this Court in P. Ravinder Reddy's case and the Apex Court judgment in Pooja Ravinder Devidasani's case. However, there is a specific provision under Section 145 of the N.I.Act which permits the parties to file an affidavit in lieu of examination-in-chief as evidence, on the interpretation of Section 145 of N.I.Act in K.S.Joseph's case, filing of affidavit at the time of taking cognizance in lieu of the statement to be recorded under Section 200 Cr.P.C. is sufficient and said judgment is binding over on this Court. In view of the judgment of the Apex Court, the alleged irregularity does not vitiate the proceedings.

5. Accordingly, the criminal petition is dismissed.

6. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

10th November 2016

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