

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2025 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed challenging the order, dated 21.07.2017, which is in the form of endorsement, passed by the V Additional Judicial Magistrate of First Class, Guntur, on the chief examination affidavit filed by the petitioner herein, as DW.1, in C.C.No.114 of 2016 on the file of said learned Magistrate.

2. Heard Sri P. Nageswara Rao, learned counsel for the petitioner.

3. In view of the fact situation occurring in the instant case, it is opined that there is no need to direct for personal service of notice on respondent No.2 – *de facto* complainant.

4. The facts giving rise to preferring the present Criminal Petition have been that when the petitioner, who is the sole accused in the aforesaid Calendar Case, where he is clutched for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, was supposed to tender evidence, he filed chief-examination affidavit as DW.1 before the Court below. By the impugned endorsement, dated 27.01.2017, the learned Magistrate has taken objection as to how the said affidavit was maintainable, in view of the decision of the Honourable Supreme Court in **Mandvi Co-operative**

Bank Limited v. Nimesh B. Thakore¹, and asked to explain. Instead of explaining the same before the Court below, the petitioner rushed to this Court questioning the endorsement, dated 27.01.2017. When the learned counsel for petitioner was posed a question as to whether there was any analogous provision in Cr.P.C. to that of Order XVIII Rules 3 and 4 C.P.C., more particularly, Rule 4, of course, he is unable to point out any such provision either in the Negotiable Instruments Act or in the Code. Learned counsel for the petitioner, in support of his contentions, placed reliance on a decision of the Karnataka High Court in **Afzal Pasha v. Mohamed Ameerjan** (Crl.P.No.1684 of 2016), but, certainly, it is only persuasive. In fact, nothing prevented the petitioner herein to step into the witness box and depose what he stated in the chief affidavit. When no procedure is contemplated under the provisions of the Code, certainly, the impugned order cannot be presumed to be patently illegal, warranting interference.

5. Accordingly, the Criminal Petition is dismissed. Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

A. SHANKAR NARAYANA, J

March 14, 2017.
MD

¹ (2010) 3 SCC 83