

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.733 OF 2011

ORDER:

This Criminal Revision Case is filed under Section 397 read with 401 Cr.P.C. assailing the order dated 18.01.2011 in C.R.P.No.132 of 2010 on the file of the Court of the III Additional Sessions Judge, Guntur, wherein and whereby the order passed in C.F.R.No.9392 of 2010 in C.C.No.57 of 2009 on the file of the Court of the Additional Junior Civil Judge, Bapatla, was set aside.

2. The learned counsel for the petitioner submitted that the Court cannot pass judicial orders basing on the memo. He further submitted that if the impugned order is allowed to stand, certainly it would amount to miscarriage of justice.

3. The learned counsel for the second respondent submitted that no second revision lies; therefore, the revision itself is liable to be dismissed in *limini*.

4. Now the point that arises for consideration is:

Whether there is any illegality, irregularity or impropriety in the impugned order warranting interference of this Court or not?

5. A perusal of the record reveals that the petitioner is facing trial in C.C.No.57 of 2009 on the file of the Court of the Additional Junior Civil Judge, Bapatla, for the offence punishable under Section 138 of the Negotiable Instruments Act. During cross-examination of PW.1 (second respondent-complainant), he filed a memo vide C.F.R.No.9392 of 2010 to receive the promissory note as additional evidence. The trial Court rejected the memo on the

ground that the second respondent-complainant has to file a petition to receive the documents. Feeling aggrieved by the order of the trial Court, the second respondent preferred C.R.P.No.132 of 2010 and the same was allowed. Hence, the revision.

6. The first and foremost contention of the learned counsel for the second respondent is that the revision is not maintainable under law. In order to appreciate the contention of the learned counsel for the second respondent, it is not out of place to extract hereunder Sub-Clause (3) of Section 397 Cr.P.C.:

“If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”

A perusal of the above clause clearly demonstrates that a person, who files the revision, is not entitled to file the second revision. In the instant case, the second respondent filed the revision before the Sessions Court. Sub-Clause (3) of Section 397 Cr.P.C. enables the respondent in the first revision to file the second revision. Therefore, in view of Sub-Clause (3) of Section 397 Cr.P.C., I am unable to accede to the contention of the learned counsel for the second respondent that the revision is not maintainable.

7. In all fairness, the learned counsel for the second respondent submitted that by inadvertently the second respondent filed a memo instead of filing a petition to receive the document. It is needless to say that the Criminal Procedure Code contemplates the procedure to be followed to receive the documents. The learned III Additional Sessions Judge, Guntur, without considering the

provisions of Criminal Procedure Code allowed the petition. It is needless to say that the Court cannot pass judicial orders basing on the memo. If at all the second respondent-complainant intends to mark any document, he has to follow the procedure as contemplated under the Criminal Procedure Code. As rightly pointed out by the learned counsel for the petitioner, if the impugned order is allowed to stand, certainly it would amount to miscarriage of justice. Hence, the impugned order is not sustainable either on facts or in law.

8. Accordingly, the Criminal Revision Case is allowed setting aside the order dated 18.01.2011 in C.R.P.No.132 of 2010 on the file of the Court of the III Additional Sessions Judge, Guntur.

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

Date: 14.09.2017
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T.SUNIL CHOWDARY, J