

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRL.R.C. NO.707 OF 2017

ORDER:

This revision is filed under Section Sections 397 and 401 of Cr.P.C. questioning the propriety, legality and correctness of the order dt.08.02.2017 in CrI.M.P.No.444 of 2016 in C.C.No. 379 of 2015 passed by the VII Special Magistrate at Erramanzil, Hyderabad dismissing the application filed under Section 245(2) Cr.P.C.

2. The petitioners filed application under Section 245 Cr.P.C. on the ground that the 1st respondent filed private complaint under Section 200 Cr.P.C. for the offence punishable under Section 138 of Negotiable Instruments Act suppressing the compromise recorded in CCCA No.37 of 2009 and CCCA No.141 of 2009 by this court and the encashment of cheque is only subject to vacating the premises in terms of the compromise recorded before this Court and till today, the first respondent did not vacate the premises and EP.No.4 of 2016 is pending before the civil court for execution of the decree in CCCA No.141 of 2009. Therefore, the complaint is not maintainable at this stage and requested the trial Court to discharge the petitioners by exercising powers under Section 245(2) Cr.P.C.

3. The first respondent filed counter denying material allegations contending that the petitioners issued cheque in lieu of discharge of legally enforceable debt or liability in terms of the compromise and the first respondent vacated the premises and despite vacating the premises, they filed EP. and even to the notice issued to the petitioners, no proper reply was given and therefore, power under Section 245(2) Cr.P.C. cannot be invoked at this stage and prayed for dismissal.

4. The trial Court on hearing, dismissed the petition on the ground that the petition is not maintainable, without touching the merits of the case.

5. Aggrieved by the impugned order, the present revision is filed reiterating the grounds urged before the court below and the counsel for the petitioners during hearing would contend that the revision is maintainable and the bar under Section 397(2) Cr.P.C. has no application, placed reliance on the judgment of the Apex Court reported in JAG NARAIN AND OTHERS v. STATE OF U.P. AND ANOTHER¹. He also contended that presentation of cheque is subject to compliance of terms of compromise and in the absence of compliance, presentation of cheque would not give rise to cause of action for the offence punishable under Section 138 of Negotiable Instruments Act. Therefore, the complaint is pre-matured. That apart, the trial court did not look into various contentions raised before the court regarding suppression etc. and committed an error in dismissing the petition.

6. Whereas, the learned counsel for the first respondent supported the impugned order while contending that the petition is not maintainable under Section 245(2) Cr.P.C.

7. Considering rival contentions and perusal of material available on record, the point that arises for consideration is:

“Whether the petitioners are entitled to claim discharge under Section 245(2) Cr.P.C. at the stage when they received summons in C.C.No.379 of 2015?”

8. POINT: Undisputedly, private complaint is filed under Section 200 Cr.P.C. against the petitioners by the first respondent for the offence punishable under Section 138 of Negotiable Instruments Act. The

¹ 2009 CRIL.J. 3833

procedure applicable to the private complaint for the offence punishable under Section 138 of the Act which is punishable under Section 147 of the Act is summons procedure under Chapter XX commencing from Sections 251 to 259 Cr.P.C. and the question of framing charge in the present case does not arise under Section 238 Cr.P.C. Therefore, the procedure contemplated under Chapter XIX of Cr.P.C. has no application to the cases for the offences punishable under Section 138 of the Act. Even otherwise, according to Section 245(2) Cr.P.C. such power can be invoked only upon recording evidence under Section 244 Cr.P.C. If the magistrate considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the magistrate shall discharge him. Therefore, such order can be passed only after recording evidence under Section 244 Cr.P.C., if the magistrate comes to the conclusion that the complainant has not made out any case against the petitioners, if unrebutted. In the present case, the petitioners received summons for appearance before the court under Section 204 Cr.P.C. in the private complaint. Therefore, the question of discharge under Section 245(2) Cr.P.C. would not arise at this stage, more particularly in a case triable by following summons procedure under Chapter XX of Cr.P.C. i.e. summons procedure. Section 258 Cr.P.C. deals with power to stop proceedings in certain cases, in any summons case instituted otherwise than upon complaint, a Magistrate of the first class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge. Instead of following the procedure under Section 258

Cr.P.C. under Chapter XX, the petitioners resorted to file petition under Section 245(2) Cr.P.C. which is applicable to the warrant cases triable under warrant procedure under Chapter XIX of Cr.P.C.

9. During hearing, the learned counsel for the petitioners contended that the court did not apply its mind before issuing summons under Section 204 Cr.P.C. But, at least at the request of the counsel for the petitioners, this Court has to apply its mind in the revision, by application of mind I conclude that the petition before the trial court under Section 245(2) Cr.P.C. is not maintainable and the trial court rightly recorded such finding. Therefore, the revision is liable to be dismissed as it is devoid of merits.

10. In the result, the criminal revision case is dismissed.

Miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

DATE: 01-09-2017
ccm

M. SATYANARAYANA MURTHY, J



THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY



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