

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.629 of 2014

ORDER:

This petition is filed under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C') to quash the proceedings in C.C.No.205 of 2012 pending on the file of I Additional Judicial First Class Magistrate, Kothagudem, for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'the Act').

2. The 2nd respondent filed a private complaint under Section 200 Cr.P.C. against the petitioner alleging that the petitioner borrowed an amount of Rs.9,00,000/- on 25.09.2010 and executed two promissory notes for a sum of Rs.5,00,000/- and Rs.4,00,000/- respectively on even date agreeing to repay the same with interest @ 24% per annum as and when demanded by the 2nd respondent. Subsequently, the petitioner borrowed another amount of Rs.6,00,000/- on 29.09.2010 executing registered mortgage deed agreeing to repay the loan with interest @ 24% per annum. Though the petitioner borrowed the said amount for his business purpose, he did not repay the same. On several requests of the 2nd respondent, the petitioner verified the due amount and issued cheque bearing No.214305 on 12.03.2012 for Rs.19,64,400/- drawn on Axis Bank, Khammam and when it was presented for collection, the same was dishonoured and returned with an endorsement 'insufficient funds'. Thereupon, the 2nd respondent issued notice on 23.03.2012 calling upon the petitioner to pay the amount covered by the cheque within 15 days from the date of receipt of the notice. The petitioner issued reply denying the material allegations of the notice and liability under the

impugned notice. Therefore, the 2nd respondent filed the private complaint.

3. The present petition is filed mainly on the ground that the Magistrate did not record sworn statement of the 2nd respondent/complainant on the date of filing the complaint or any subsequent date before taking cognizance of offence. Therefore, it is contrary to the principles laid down in **P.Ravinder Reddy v Nalamalapur Subba Reddy and another¹**, **RBF Nidhi Limited and another v State of A.P. and others²**, **Indra Kumar Patodia and another v Reliance Industries Ltd. And others³**, and **Jannathal Mala v S.Bala Ramudu and another⁴**.

4. During hearing, on the strength of the principles laid down in the above judgments, learned counsel for the petitioner contended that failure of the Magistrate to record sworn statement on the date of filing of the complaint is contrary to Section 200 Cr.P.C., which is mandatory and on that ground alone the proceedings are liable to be quashed.

5. However, learned counsel for the 2nd respondent contended that the sworn statement is not required for the offence punishable under Section 138 of the Act and relied on the judgments of the Apex Court in **A.K.K.Nambiar v Union of India and another⁵** and **Indian Bank Association and others v Union of India and others** (W.P.(Civil)No.18 of 2013) wherein the Apex Court directed all the criminal Courts to follow the procedure mentioned in the judgment in disposal of cases under the Negotiable Instruments Act.

¹ 2013(1) Law Summary 371

² 2003(1) ALD (CrL.) 152 (AP)

³ 2013(5) SCJ 754

⁴ 2013(1) ALD (CrL.) 435 (AP)

⁵ AIR 1970 SC 652

6. As per the material produced before this Court, on 12.04.2012, the complainant was absent and there was no representation on his behalf. Therefore, the matter was adjourned to 24.04.2012. On that day, the complainant was present, sworn statement of complainant was recorded, the Magistrate perused the record, and found that *prima facie* case made out against the accused, directed to register the case i.e C.C.No.205 of 2012, issue notice to accused and adjourned to 08.06.2012. Thus, the Magistrate recorded the sworn statement of the petitioner before taking cognizance, but not on the date of presentation of the complaint i.e on 20.04.2012, but on the later date i.e. 24.04.2012. According to Section 200 Cr.P.C, Magistrate has to take cognizance of an offence on complaint, shall examine the complainant on oath and the witnesses present, if any, and substance of such examination shall be reduced in to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate, provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses, if a public servant acting or purporting to act in discharge of his official duties or Court has made the complaint and if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 and provided further that if the Magistrate makes over the case to another Magistrate under Section 192 and examining the complainant and the witnesses, the later Magistrate need not re-examine them. Thus, the requirement under Section 200 Cr.P.C. before taking cognizance of offence on a complaint, the Magistrate shall examine upon oath of the complainant and other witnesses produced.

7. Admittedly, on the date of filing of the complaint i.e. 20.04.2012, the 2nd respondent herein was not examined as he was absent, but the sworn statement was recorded under Section 200 Cr.P.C on 24.04.2012 by the Magistrate and took cognizance of offence and ordered issue of process to the petitioner/accused. What mandates Section 200 Cr.P.C. is that the Magistrate has to record sworn statement of complainant on oath before taking cognizance. The word 'cognizance' is not defined in Criminal Procedure Code and it is nothing but applying its mind to the facts of the case to issue process to the accused. Therefore, the date of taking cognizance was on 24.04.2012, but not on 20.04.2012.

8. Learned counsel for the petitioner relied on the judgments of the Supreme Court and this Court referred in para 3 of the order, wherein it was held that before taking cognizance, the Magistrate has to record statement of the accused on oath. There is no dispute regarding the law declared by this Court and the Apex Court about obligation of the Magistrate to record statement of the complainant on oath before taking cognizance. The Act was amended in the year 2003 by Act 55 of 2002 incorporating Section 145, which clarifies that evidence on affidavit can be permitted. In **A.C.Narayanan and others v State of Maharashtra**⁶, at para 26 clause 4, the Apex Court held that filing an application verifying the allegations made in the complaint is suffice after incorporation of Section 145 of the Act with effect from 06.02.2003 and the Court is not required to record sworn statement of the complainant before taking cognizance of offence and the Magistrate need not call the complainant to give statement on oath.

⁶ 2013(11) Scale 639

9. The complaint was filed in the year 2012, but the Magistrate after taking cognizance, ordered summons to the petitioner/accused, and recording of sworn statement of the complainant was not mandatory as held by the Apex Court referred supra.

10. Even otherwise, if for any reason, the Magistrate did not record the statement before taking cognizance of the offence, this is only a mistake of the Court based on the principle laid down by the doctrine of *actus curiae neminem gravabit*, which means that the act of the Court shall not prejudice any one, for its mistake and the party cannot be penalised and the case of the complainant cannot be thrown out at the threshold. The same principle is laid down in

Amarjeet Singh & Ors vs Devi Ratan and others⁷ as follows:

No litigant can derive any benefit from mere pendency of case in a Court of Law, as the interim order always merges in the final order to be passed in the case and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of his own wrongs by getting interim order and thereafter blame the Court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim "Actus Curiae neminem gravabit", which means that the act of the Court shall prejudice no-one, becomes applicable in such a case. In such a fact situation the Court is under an obligation to undo the wrong done to a party by the act of the Court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralised, as institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the Court. (Vide Shiv Shankar & Ors. Vs. Board of Directors, Uttar Pradesh State Road Transport Corporation & Anr., 1995 Suppl. (2) SCC 726; M/s. GTC Industries Ltd. Vs. Union of India & Ors., AIR 1998 SC 1566; and Jaipur Municipal Corporation Vs. C.L. Mishra, (2005) 8 SCC

⁷ AIR 2010 SC 3676

In Ram Krishna Verma & Ors. Vs. State of U.P. & Ors., AIR 1992 SC 1888 this Court examined the similar issue while placing reliance upon its earlier judgment in Grindlays Bank Limited Vs. Income Tax Officer, Calcutta & Ors., AIR 1980 SC 656 and held that no person can suffer from the act of the Court and in case an interim order has been passed and petitioner takes advantage thereof and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the Court must be neutralized.

11. In **Neeraj Kumar Sainy and others v state of Utter Pradesh and others** (S.L.P.No.27906 of 2016) at para 24 the Apex Court reiterated the same principle while holding that no one should suffer any prejudice because of the act of the Court. In later judgment in **Uday Shankar Triyar vs Ram Kalewar Prasad Singh & Another**⁸ at para 12 placing reliance on **Shastri Yagnapurushdasji & Ors. V. Muldas Bhundardas Vaishya & Anr**⁹, the Apex Court held that it is an elementary rule of justice that no party should suffer for the mistake of the Court or its office. While expressing the similar view in **Jayalakshmi Coelho vs Oswald Joseph Coelho**¹⁰, the Apex Court held that the principle behind the provision is that no party should suffer due to mistake of the Court and whatever is intended by the Court while passing the order or decree must be properly reflected therein, otherwise it would only be destructive to the principle of advancing the cause of justice.

12. Thus, from the settled law laid down by the Apex Court no prejudice should be caused to any one of the parties on account of the mistake of the Court or its registry or its staff. But, here in this case, the Magistrate before taking cognizance of offence

⁸ AIR 2006 SC 269

⁹ AIR 1966 SC 1119

¹⁰ AIR 2001 SC 1084

against the petitioner/accused, as required under Section 200 Cr.P.C. recorded statement of the complainant/2nd respondent on 24.04.2012 and thereafter, ordered issue of summons. Therefore, the Magistrate strictly adhering to the mandatory requirement under Section 200 Cr.P.C. took cognizance of offence and that taking cognizance does not vitiate on account of non appearance of the complainant on the date of filing complaint. Section 200 Cr.P.C. did not state that the sworn statement of the complainant shall be recorded on the day when the complaint is made, but it mandates that sworn statement of complainant on oath shall be recorded before taking cognizance. Therefore, I find no ground to quash the proceedings at this stage on the ground that the Magistrate did not record sworn statement on the date of presentation of the complaint, which is not mandatory under Section 200 Cr.P.C. and consequently, the petition is liable to be dismissed as it lacks merits.

13. Accordingly, the criminal petition is dismissed.

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

M. SATYANARAYANA MURTHY,J

12.12.2017

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