

**THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY**

**CRIMINAL REVISION CASE No.1306 of 2009**

**ORDER:**

1 This Criminal Revision Case is filed under Section 397 and 401 Cr.P.C. challenging the order dated 25.05.2009 passed in CrI.M.P.No.6184 of 2008 in C.C.No.725 of 2005 on the file of the Court of the Special Judicial First Class Magistrate (Proh.& Excise) at Visakhapatnam.

2 Mr. Chakravarthy, advocate representing Sri K. Chidambaram, the learned counsel for the petitioner strenuously submitted that the trial Court failed to consider that the de-facto complainant has withdrawn the entire money deposited before the District Consumer Forum.. He further submitted that the trial Court failed to consider the documents filed the petitioner while deciding the petition. He further submitted that if the order passed by the trial Court is allowed to stand, it would, certainly, amount to miscarriage of justice.

3 *Per contra*, the learned Additional Public Prosecutor submitted that the trial Court considered the material available on record in right perspective and dismissed the petition. He further submitted that the material placed before the Court is prima facie sufficient to frame the charge against the petitioner.

4 Now the point that arises for consideration in this Criminal Revision is “Whether the trial Court is justified in dismissing the petition filed by the petitioner under section 239 Cr.P.C,?”

5 A perusal of the record reveals that the petitioner is facing trial in C.C.No.725 of 2006 on the file of the Court of the Special Judicial First Class Magistrate (Proh.& Excise) at Visakhapatnam for the offences

punishable under Sections 420 and 120-B r/w 34 of IPC. The case of the prosecution, in nutshell, is that the petitioner had taken away money in C.D.No.839 of 2002 on the file of the District Consumer Forum, Visakhapatnam. It is not in dispute that the petitioner appeared as advocate on behalf of the de-facto complainant. The fact remains that an amount of Rs.75,577/- was deposited to the credit of P.P.No.199 of 2003 in C.D.No.839 of 2002 on the file of the District Consumer Forum, Visakhapatnam. It is the case of the de-facto complainant that the petitioner, without her consent, has withdrawn the amount. The contention of the petitioner is that the de-facto complainant withdrew an amount of Rs.15,000/- by way of D.D. in the year 2004. It is the further case of the petitioner that the remaining amount was also withdrawn by the de-facto complainant only.

6 While the things stood thus, the petitioner filed a petition under Section 239 Cr.P.C seeking discharge. It is a settled principle of law that while framing charge, the Court has to see whether there is any prima facie material to proceed against the petitioner or not. If the Court comes to a conclusion that there is no prima facie material to proceed further, it has no option except to discharge the petitioner. If the finding of the court is otherwise, it has no option except to frame the charge. Along with the petition, the petitioner filed three Demand Drafts to substantiate that the de-facto complainant has withdrawn an amount of Rs.15,000/-. While framing the charge the Court ought not to have given any specific finding with regard to the validity or otherwise of the documents. Whether the de facto complainant has withdrawn an amount of Rs.15,000/- or not has to be decided at the

time of full fledged trial. That aspect was rightly considered by the trial Court.

7 A perusal of the record reveals that no amount is available in PP No.199 of 2003 in CD No.839 of 2002. The other question that falls for consideration is 'who has withdrawn the remaining amount'. This aspect has to be considered after the full fledged trial only. A perusal of the record prima facie reveals that the money deposited was withdrawn by the petitioner. The material available on record is prima facie sufficient to proceed further against the petitioner. The trial Court has considered that aspect and dismissed the petition. I am fully agreeing with the findings recorded by the court below. It is an admitted fact that the petitioner filed CrI.P.No.5703 of 2005 on the file of this Court under Section 482 Cr.P.C and the same was dismissed. The court shall not lose sight of this aspect.

8 The trial Court has not committed any illegality or irregularity while dismissing the petition which warrants interference of this Court while exercising revisional jurisdiction under Section 397 of Cr.P.C.

9 Having regard to the facts and circumstances of the case I am of the considered view that this is not a fit case to allow the Revision Case. This Revision Case is devoid of merits and bonafides. Accordingly, this Criminal Revision Case is dismissed. As a sequel, miscellaneous petitions, if any pending in this Criminal Revision Case, shall stand closed.

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**T. SUNIL CHOWDARY, J.**

**Date: 31.08.2017**  
**Kvsn**