

HONOURABLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2496 OF 2017

ORDER:

The present Criminal Petition, under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed requesting to quash the order, dated 27.02.2017, passed in CrI.R.P.No.110 of 2016 on the file of V Additional Sessions Judge, Tirupati, whereby and whereunder, the learned Sessions Judge has dismissed the revision petition, arising out of the order, dated 22.08.2016, passed in CrI.M.P.No.3041 of 2016 in S.T.C.No.71 of 2013 on the file of IV Additional Judicial Magistrate of First Class, Tirupati, dismissing the petition filed by the petitioner requesting to issue summons to the witnesses, whose particulars were mentioned in the petition.

2. S.T.C.No.71 of 2013 is filed by respondent No.1 – *de facto* complainant against the petitioner – accused for the offence punishable under Section 138 read with 142 of the Negotiable Instruments Act. In the said S.T.C., after completion of evidence on behalf of respondent No.1, at the stage, when the petitioner - accused was supposed to lead evidence, the petitioner filed CrI.M.P.No.3041 of 2016, under Section 243(2) of the Code, requesting to issue summons to two of the witnesses, namely, G. Sreenivasulu Reddy and P. Reddeppa Reddy. The learned Magistrate, mainly on the ground that the petitioner never confronted PWs.1 and 2, when they were cross-examined, referring to the names of G. Srinivasulu Reddy

and P. Reddeppa Reddy, against whom summons were sought, and even in the petition, the petitioner has nowhere mentioned as to the relevancy for examining both of them as witnesses and, since, the case was not for recovery of amount based on promissory note and it was registered for the offence punishable under Section 138 of the Negotiable Instruments Act, which is nothing but a technical offence, dismissed the petition, on merits, by order, dated 22.08.2016.

3. Questioning the aforesaid order, the petitioner filed Crl.R.P.No.110 of 2016 before the V Additional Sessions Judge, Triupati. The learned Judge, by the order under challenge, placing reliance on the ruling of the Honourable Supreme Court in **Sethuraman v. Rajamanickam**¹ and the ruling in **Bhongir Kiran Kumar and another v. State of Andhra Pradesh**², rendered by a learned Single Judge of this Court, dismissed the revision, holding that revision is not maintainable against an order passed under Section 243 (2) of the Code to issue summons to the witnesses and the revisional Court cannot exercise the power under Section 397 (2) of the Code.

4. Sri Pasala Ponna Rao, learned counsel for the petitioner, would question the said order on behalf of the petitioner, mainly placing reliance on the decision of the Honourable Supreme Court in **Urmila Devi v. Yudhvir Singh**³. Of course, the learned counsel has

¹ 2009 C.J. (SC) 1415

² 2000 (2) ALT (Criminal) 318 (A.P.)

³ (2013) 15 SCC 624

referred to paragraph Nos.21 to 23 therein, instead of deliberating on what the Honourable Supreme Court has expressed. It would be useful to extract paragraph Nos.21 to 23, thus:

“21. Having regard to the said categorical position stated by this Court in innumerable decisions resting with the decision in *Rajendra Kumar Sitaram Pande*, as well as the decision in *K.K. Patel*, it will be in order to state and declare the legal position as under:

21.1. The order issued by the Magistrate deciding to summon an accused in exercise of his power under Sections 200 to 204 CrPC would be an order of intermediary or quasi-final in nature and not interlocutory in nature.

21.2. Since the said position viz. such an order is intermediary order or quasi-final order, the revisionary jurisdiction provided under Section 397, either with the District Court or with the High Court can be worked out by the aggrieved party.

21.3. Such an order of a Magistrate deciding to issue process or summons to an accused in exercise of his power under Sections 200 to 204 CrPC, can always be subject-matter of challenge under the inherent jurisdiction of the High Court under Section 482 CrPC.

22. When we declare the above legal position without any ambiguity, we also wish to draw support to our above conclusion by referring to some of the subsequent decisions. In a recent decision of this Court in *Om Kumar Dhankar v. State of Haryana*, the decisions in *Madhu Limaye*, *V.C. Shukla*, *K.M. Mathew*, *Rakesh Kumar Mishra v. State of Bihar* ending with *Rajendra Kumar Sitaram Pande*, was considered and by

making specific reference to para 6 of the judgment in *Rajendra Kumar Sitaram Pande*, this Court has held as under in para 10: (*Om Kumar Dhankar case*, SCC P. 255)

“10. In view of the above legal position, we hold, as it must be, that revisional jurisdiction under Section 397 CrPC was available to Respondent 2 in challenging the order of the Magistrate directing issuance of summons. The first question is answered against the appellant accordingly.”

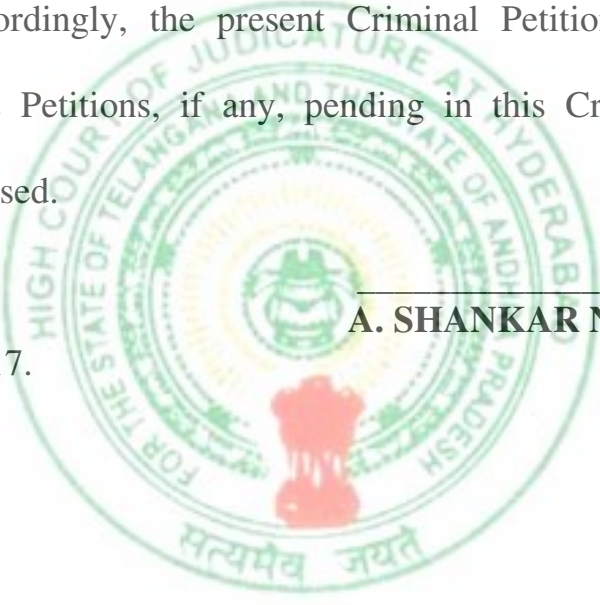
23. Therefore, the position has now come to rest to the effect that the revisional jurisdiction under Section 397 CrPC is available to the aggrieved party in challenging the order of the Magistrate, directing issuance of summons.”

5. Learned counsel for the petitioner has made emphasis on what has been observed by the Honourable Supreme Court in paragraph No.23 of the aforesaid decision. The Honourable Supreme Court, having referred to various authorities in paragraph No.22, held that the revisional jurisdiction under Section 397 of the Code is available to the aggrieved party in challenging the order of the Magistrate directing issuance of summons. But, the said decision would not render any assistance to the petitioner, since the fact-situation occurring therein is altogether different from the fact-situation occurring herein. In the said case, summons was ordered to accused, whereas in the present case, summons are sought to be taken out to witnesses.

6. Even looking at the merits, in the present case, the order passed by the learned Magistrate does not appear to be patently illegal. In fact, the learned Magistrate has passed the order on merits. The very fact that there was no reference to the names of witnesses and the context in which their examination becomes relevant is not mentioned either in the petition or elicited in the cross-examination of PW.1, is sufficient to reject the request. Hence, for want of merit, the present Criminal Petition is liable to be dismissed.

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

March 27, 2017.
MD

**A. SHANKAR NARAYANA, J**