

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE No.764 OF 2011

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C. assailing the order dated 22.03.2010 in CrI.M.P.No.22 of 2011 in C.C.No.6 of 2009 on the file of the Court of the Chief Judicial Magistrate-cum-Assistant Sessions Judge, Sangareddy.

2. The contention of the learned counsel for the petitioner is that the trial Court has not given any finding so far as the application or non-application of Sections 4 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short, 'the Act') to the facts of the case on hand. He further submitted that if the impugned order is allowed to stand so far as Sections 4 and 6 of the Act are concerned, it would amount to miscarriage of justice.

3. The learned Additional Public Prosecutor submitted that the material available on record is *prima facie* sufficient to proceed further against the petitioner for the offences punishable under Sections 406 and 420 I.P.C. He further submitted that there are no grounds to allow the revision.

4. A perusal of the record reveals that the petitioner-accused No.3 is facing trial in C.C.No.6 of 2009 on the file of the Court of the Chief Judicial Magistrate-cum-Assistant Sessions Judge at Sangareddy for the offences punishable under Sections 406 and 420 I.P.C.; Section 138(b) of the Negotiable Instruments Act; and Sections 4 and 6 of the Act. While things stood thus, the petitioner filed CrI.M.P.No.22 of 2011 in C.C.No.6 of 2009, under Section 227

Cr.P.C., for discharge. The trial Court in paragraph No.14 of the impugned order, made an observation that no case is made out against the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act. However, the petition is dismissed in toto. A perusal of the record reveals that there is *prima facie* material against the petitioner for the offences punishable under Sections 406 and 420 I.P.C. I am fully agreeing with the findings recorded by the trial Court that there is *prima facie* material against the petitioner for the offences punishable under Sections 406 and 420 I.P.C. While deciding the discharge petition, the Court cannot conduct a roving enquiry. The Court has to consider whether there is any *prima facie* material to proceed further against the petitioner or not. The material placed before the Court is *prima facie* sufficient to proceed further against the petitioner so far as the offences under Sections 406 and 420 I.P.C. are concerned.

5. The trial Court has not given any specific finding with regard to Sections 4 and 6 of the Act. While deciding the discharge petition, the Court has to give a specific finding on each and every provision of law. The trial Court simply dismissed the petition without giving any specific finding with regard to the application or non-application of Sections 4 and 6 of the Act to the facts of the case on hand. If this Court decided this aspect, the petitioner may lose one opportunity.

6. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to remand the matter to the trial Court to consider whether Sections

4 and 6 of the Act are applicable to the facts of the case on hand or not.

7. In the result, the Criminal Revision Case is allowed in part discharging the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and remanding the matter to the trial Court to consider whether Sections 4 and 6 of the Act are applicable to the facts of the case on hand or not. However, the order of the trial Court is confirmed to the extent of dismissal of the petition so far as Sections 406 and 420 I.P.C. are concerned.

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

