THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.838 OF 2008

ORDER:

This Criminal Revision Case is filed by the petitioner/de facto complainant under Sections 397 and 401 Cr.P.C. challenging the order, dated 21-03-2007 in Crl.M.P.No.436 of 2007 in C.C.No.464 of 2006 on the file of the Chief Metropolitan Magistrate, Vijayawada.

2. Learned counsel for the petitioner strenuously submitted that the trial Court without giving notice to the de facto complainant allowed the petition. He further submitted that the trial Court having arrived at a conclusion that the oral allegations are made against A2, ought not to have allowed the discharge petition. He further submitted that the order of the trial Court is allowed to stand, it would amount of miscarriage of justice; therefore, it is a fit case to allow the revision.

3. Learned counsel for the 1st respondent-A2 submitted that the scope of revision is very limited and the trial Court has considered the material available on record in right perspective and allowed the petition. He further submitted that there are no grounds, much less, valid grounds to interfere with the well reasoned order.

4. Learned Public Prosecutor representing the State submitted that the trial Court allowed the petition ignoring Section 161 Cr.P.C. statement of witnesses. He further submitted that the trial Court having arrived at a conclusion that the allegations are made against the petitioner, ought not to have allowed the petition.

5. The facts, leading to filing of the present revision are briefly as follows:

Basing on the complaint lodged by the de facto complainant, the Station House Officer, Law and Order, Suryaraopet Police Station, Vijayawada City, registered a case in Cr.No.166 of 2006 under Section 420 IPC and 3,4 and 5 of Prize Chits and Money Circulation Banning Act, 1978. After completion of investigation, the Investigating Agency laid charge sheet before the concerned Court against A1 to A3. In the charge sheet, it is clearly mentioned that A2 was absconding. The learned Magistrate, after satisfying himself with the material placed before him, has taken the case on file under the above offences and numbered it as C.C.No.464 of 2006. While things stood thus, petitioner-A2 filed the petition under Section 239 Cr.P.C. to discharge him and the same was allowed. Hence, this revision.

6. Now, the point that arises for consideration is whether the trial Court is justified in discharging the petitioner-A2 or not?

7. As per the allegations made in the complaint, A1 and A3 collected money in the name of V Con Net Work Pvt. Ltd., A1 and A3 are the agents of the said company in the erstwhile State of Andhra Pradesh. A perusal of the record clearly reveals that A1 and A3 collected an amount of Rs.75,000/- from each of the victims in the name of the company assuring that they will supply different articles. A perusal of the record *prima facie* reveals that the money was deposited in the name of the company. As per the allegations made in the complaint, the petitioner along with other accused cheated number of victims.

8. The petitioner-A2 has categorically mentioned in the above Crl.M.P. that he is the Managing Director of the V Con Net Work Pvt., Ltd., A perusal of the record reveals that A1 and A3 collected money in the name of V Con Net Work Pvt., Ltd., For better appreciation of the rival contentions, it is not out of place to extract herein the relevant portion of the order passed by the trial Court, which is as follows:

> "After carefully perusing the entire material on record it is clear that except the above oral allegations, A2 found to be no way connected with commission of offences as alleged in charge sheet and case diaries referred to, in record also not showing iota of evidence against the said petitioner/A2".

9. Learned Addl. Public Prosecutor has drawn attention of this Court to the statement of witnesses. The witnesses categorically stated that the money was collected in the name of the company. I am unable to understand as to how the trial Court has lost its sight on this aspect. It appears that the trial Court has not properly considered Section 161 Cr.P.C. statement of the witnesses. On one hand, the trial Court made an observation that oral allegations are made against A2. The trial Court having come to a conclusion that some allegations are made against A2, it ought not to have allowed the petition. While deciding the petition filed under Section 239 Cr.P.C., the Court has to consider whether the allegations made in the complaint are *prima facie* sufficient to proceed further or not. The trial Court has not given any specific finding that the material placed before it is *prima facie* not sufficient to proceed further against the accused. On the other hand, the material placed before the trial Court is *prima facie* sufficient to proceed further against the accused. It is not in dispute that at the relevant point of time, the petitioner-A2 was the Managing Director of the company, on whose behalf A1 and A3 collected money. Having received

the money, they failed to supply the articles as promised by them. A perusal of the record reveals that the petitioner failed to fulfill the promise made by him and that itself is sufficient to proceed further against the petitioner-A2.

10. Having regard to the facts and circumstances of the case, I am of the considered view that the order passed by the trial Court is not sustainable either on facts or in law. Therefore, this revision is liable to be allowed.

11. Accordingly, the Criminal Revision Case is allowed setting aside the order, dated 21-03-2007 in Crl.M.P.No.436 of 2007 in C.C.No.464 of 2006 on the file of the Chief Metropolitan Magistrate, Vijayawada. However, the trial Court is directed to dispose of the matter as expeditiously as possible. Miscellaneous petitions, if any pending, in this revision shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 03-08-2017.
Hsd