

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**CRIMINAL REVISION CASE No.360 of 2004****ORDER:**

This Criminal Revision case, under Sections 397 and 401 Cr.P.C., is filed questioning the propriety and legality of the Order Dt.13-10-2003 in C.C.No.5254 of 2003 in C.C.No.2192 of 2000 passed by Additional Judicial Magistrate of First Class, Hyderabad, East and North, R.R. District, whereby the Court discharged the petitioners for various offences.

The case of the petitioners in brief is that the complainant has issued two notices on them i.e., one Notice Dt.09.11.2000 directly by the complainant and second Notice dt.23.11.2000 got through his counsel. The complainant is a proprietary concern not entitled to take shelter under Section 141 of NI Act. The complaint is not signed by the complainant and it is signed by G.P.A. Holder of the complainant. As per the provisions under Section 200 of Cr.P.C., the Court before taking cognizance shall examine the complainant on oath and the witnesses if any, which is mandatory to take the complaint on file. Hence, the complaint is not maintainable and prayed to discharge the petitioners for various offences in C.C.No.2992 of 2000.

The respondent filed Counter contending that he filed the complaint through valid power of attorney dt. 14.12.2000 executed in favour of Siva Rama Krishna, the employee of the complainant, and the GPA holder is fully aware of the facts of this case, and the Court has rightly taken cognizance of the offences and issued summons to the petitioners and the complaint was filed on single cause of action. Initially, the complainant addressed a Letter Dt. 09.11.2000 calling upon the petitioners to pay the amount covered by the dishonoured

cheque, which was received by them on 11.11.2000, and subsequently within stipulated period, the present complaint is filed. The principal- Sri TKR Nair is ready to appear before the Court as and when required and the GPA holder is authorized to file and prosecute the case on behalf of the Principal. Therefore, there are no merits in the petition and prayed for dismissal of the petition.

The trial Court, upon hearing argument of both the counsel, formulated a point whether the accused are entitled for discharge of the offences in C.C.No.2192 of 2000 and concluded as follows:

“ As per the guidelines of this Court, the complainant being individual ought to have signed on the complaint as payee, but he has not signed on it, and the GPA holder of the complainant has signed on the complaint. Thus, the complaint is not signed by payee and the statement of the complainant was not recorded and the GPA holder is not holder in due course at the time and hence, he cannot file the complaint and the complaint filed by GPA is not maintainable, while allowing the petition filed by the petitioners discharging them for various offences in C.C.No.2192 of 2000.”

As seen from the material available on record, the complaint was filed for the offence punishable under Section 138 r/w 142 of NI Act by Sri TKR Nair, represented by its GPA Holder-P. Shiva Ramakrishna, against the accused. The procedure being followed for trial of the offences under Section 138 NI Act is summons procedure and the question of discharge of the petitioners while exercising power under Section 239 Cr.P.C. does not arise. But, the petitioners filed petitions under Sections 245(2) Cr.P.C. to discharge them for various offences. However, Section 258 Cr.P.C. permits the Court to stop proceedings in certain circumstances. According to Sections 258 Cr.P.C., in any summons case instituted otherwise than upon complaint, a Magistrate of the First Class or, with the previous sanction of the Chief Judicial Magistrate, any other Judicial Magistrate, may, for reasons to be recorded by him, stop the proceedings at any stage without pronouncing any judgment and where such stoppage of

proceedings is made after the evidence of the principal witnesses has been recorded, pronounce a judgment of acquittal, and in any other case, release the accused, and such release shall have the effect of discharge.

But, in the present case, instead of resorting to Section 258 Cr.P.C., the petitioners filed petitions under Sections 245(2) Cr.P.C. Section 245 Cr.P.C. deals with discharge of the accused, after recording evidence by the Magistrate, if he considers, for reasons to be recorded, that no case against the accused has been made out which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. But, Clause (2) of 245 Cr.P.C. further says that nothing prevents the Magistrate from discharging the accused at any stage of the case if, for reasons to be recorded by such Magistrate, he considers the charge to be groundless.

The Chapter consisting of Sections 238 to 250 Cr.P.C. deals with the procedure for trial of warrant cases by the Magistrate. The Chapter consisting of Sections 251 to 259 Cr.P.C. deals with the procedure for trial of summons cases by the Magistrate. Here, the complaint was filed for the offence punishable under Section 138 NI Act, which is triable under summons procedure. Before the trial Court, the respondents filed petitions under Sections 245(2) Cr.P.C. to discharge them and the same has no application to the present facts of the case since the question of framing charges under summons procedure does not arise, except examination under Section 251 Cr.P.C. Therefore, the Order dt.13.10.2003 passed by the trial Court is erroneous on the face of record and the same is liable to be set aside.

Accordingly, this Criminal Revision Case is allowed.

As a sequel to it, miscellaneous petitions, if any pending in this case, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 06.10.2017

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