

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.15916 of 2016

ORDER :

The present Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner-Accused seeking to quash the proceedings in C.C.No.185 of 2016 on the file of the Special Magistrate Court-V, Visakhapatnam, for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for brevity "the Act").

2. Heard learned counsel for the petitioner-Accused as well as the learned Assistant Public Prosecutor appearing for the 1st respondent - State. Though, one Sri G. Ramesh Babu, Advocate, filed vakalat for the 2nd respondent – Complainant, none appears on his behalf. Perused the material on record.

3. Learned counsel for the petitioner submits that the learned Magistrate without ordering issue of notice and without there being service of notice on the petitioner-Accused, allowed CrI.P.MP.No.3589 of 2015, where there is a delay of 1,039 days in filing the complaint, initial process was ordered and cognizance was also taken simultaneously. The relevant portion of the order reads as follows:

"Suo-mato advance to this day. Petition filed by the complainant and U/sec.142(b) of NI Act is allowed.

As seen from the recored the complainant already filed his sworn affidavit. Perused the contents of the sworn affidavit of the complainant and documents filed along with complaint. Prima-facie case is made out against accused. Hence cognizance is taken against accused for the offence U/sec.138 NI Act. Issue summons to accused on payment of process. Call on 26.03.2016.”

4. From a perusal of the sequence of events that have followed, more particularly, where the complaint was advanced suo-motu without calling it on the appointed date, *exfacie*, this Court finds that there is no application of mind by the learned Magistrate in ordering the delay condonation application and taking cognizance of offence. Therefore, the order condoning the delay is liable to be set aside and so also taking cognizance.

5. Accordingly, this Criminal Petition is allowed, quashing the proceedings in C.C.No.185 of 2016 and the matter is remanded to the Court of Special Magistrate – V, Visakhapatnam, with a direction to the learned Magistrate to dispose of the delay condonation application by inviting counter from the petitioner-Accused and adjudicate upon the same in accordance with law, after affording an opportunity of being heard to the parties. Even the cognizance taken by the learned Magistrate stands set aside. The petitioner-Accused is directed to appear before the learned Special Magistrate Court-V, Visakhapatnam, on 05.05.2017. Registry is directed to dispatch the copy of this order within three days.

6. As a sequel, miscellaneous petitions pending, if any, shall stand closed.

JUSTICE A. SHANKAR NARAYANA

13.04.2017.
Msr



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