

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 9927 OF 2017

ORDER:

This petition is filed under Section 482 of Cr.P.C. to quash order dated 11-09-2017 in CrI.M.P.No. 2498 of 2017 in C.C.No. 288 of 2016 on the file of the Court of X Special Magistrate, Hyderabad (for short, 'the Court below').

2. The petitioner filed a petition under Section 251 Cr.P.C. before the Court below questioning the sustainability of prosecution for the offence under Section 138 of the Negotiable Instruments Act and contended that there is no material to proceed against this petitioner and therefore requested to discharge him.

3. In fact, question of discharge under Section 239 Cr.P.C. does not arise since the procedure being followed for trial of the case for the offence under Section 138 N.I. Act is summons procedure and at best the Court below is competent to exercise power under Section 251 Cr.P.C. or 258 Cr.P.C. and pass appropriate order for stoppage of all further proceedings. When an order is passed under Section 251 Cr.P.C., which is now under challenge, it is not amenable to the jurisdiction of this Court under Section 482 Cr.P.C. and a revision lies against such an order under Section 397 Cr.P.C. Therefore, when an alternative statutory remedy is available to the petitioner, this Court cannot exercise inherent jurisdiction under Section 482 Cr.P.C. in view of the law declared by the Apex Court in ***Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others***¹, wherein it was held that

"It is well settled that the inherent powers under Section 482 Cr.P.C. can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. Further, the power being an

¹ AIR 1983 SC 67

extraordinary one, it has to be exercised sparingly. If these considerations are kept in mind, there will no inconsistency between Sections 482 and 397 (2) Cr.P.C."

By applying the principle laid down in the above judgment, I hold that the present petition under Section 482 Cr.P.C. is not maintainable. However, the petitioner is at liberty to file appropriate application in accordance with law. The Registry is accordingly directed to return the file to learned counsel for the petitioner under proper acknowledgement.

4. Subject to the liberty given to the petitioner as above, the criminal petition is dismissed. Pending miscellaneous petitions, if any, in this petition shall stand dismissed in consequence.

Date: 02-11-2017.

Note:

Issue C.C. tomorrow.

B/O

JSK

M.SATYANARAYANA MURTHY, J.

