

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 11033 OF 2017

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure (for short, "Cr.P.C.") to quash the order dated 25-09-2017 in Criminal Revision Petition No. 39 of 2016 on the file of the Court of VIII Additional District & Sessions Judge, Vijayawada (for short, 'the Court below'), whereby it set aside the calendar and judgment dated 25-04-2016 in C.C.No. 564 of 2015 on the file of the Court of III Additional Chief Metropolitan Magistrate at Vijayawada (for short, 'the trial Court') acquitting the petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. It is the case of the petitioner that as he and respondent No. 2 were called absent on the date of posting before the trial Court, it dismissed the complaint filed by the latter and acquitted him, against which appeal lies to this Court under Section 378 (4) Cr.P.C. with special leave and not a revision. In ***P.Vijaya Laxmi Vs. S.P.Sravana and another***¹, a Division Bench of this Court, after elaborate consideration of the legal position laid down by various High Courts, concluded that appeal lies to this Court under Section 378 (4) Cr.P.C. and not to the District Court. Therefore, exercising jurisdiction by the Court below under Section 397 Cr.P.C. setting aside the acquittal of the petitioner is contrary to the law declared by this Court in ***P.Vijaya Laxmi*** (*supra*). In this view of the matter, the Court below lacked jurisdiction to pass the impugned order and therefore the same is liable to be set aside.

¹ 2017 Law Suit (Hyd) 494

3. The criminal petition is accordingly allowed setting aside the order dated 25-09-2017 in Criminal Revision Petition No. 39 of 2016 on the file of the Court of VIII Additional District & Sessions Judge, Vijayawada. However, respondent No. 2 is entitled to file appropriate appeal if advised subject to permissibility under law. Pending miscellaneous petitions, if any, in this criminal petition shall stand closed in consequence.

Date: 19-12-2017.

M.SATYANARAYANA MURTHY, J.

JSK

