

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.12371 OF 2017

ORDER:

This criminal petition is filed under Section 482 Cr.P.C to quash the proceedings in C.C.No.313 of 2016 on the file of First Additional Judicial Magistrate of First Class, Proddatur, Kadapa, for the offences punishable under Sections 138 & 142 of Negotiable Instrument Act.

The second respondent herein/defacto complainant filed C.C.No.313 of 2016 against the petitioners herein mainly on the ground that the petitioners did not comply with the guidelines in **Priyanka Srivastava and another v. State of Uttar Pradesh and others¹**, where the Apex Court while considering the legality of the order passed under Section 156(3) of Cr.P.C, discussed the scope of various provisions of Cr.P.C and held as follows:

“Regard being had to the aforesaid enunciation of law, it needs to be reiterated that the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind. He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order. The present is a case where the accused persons are serving in high positions in the bank. We are absolutely conscious that the position does not matter, for nobody is above law. But, the learned Magistrate should take note of the allegations in entirety, the date of incident and whether any

¹ (2015) 6 Supreme Court Cases 287

cognizable case is remotely made out. It is also to be noted that when a borrower of the financial institution covered under the SARFAESI Act, invokes the jurisdiction under Section 156(3) Cr.P.C. and also there is a separate procedure under the Recovery of Debts due to Banks and Financial Institutions Act, 1993, an attitude of more care, caution and circumspection has to be adhered to.”

The Apex Court also held in the above judgment that, while exercising power under Section 156(3), the Court must record its satisfaction as to what weighed the Magistrate to pass such an order which reflects the application of mind to the facts of the case in its entirety so as to enable the Higher Court to form an opinion.

But, as seen from the material available on record, it is only a private complaint and an affidavit is filed under Section 145 of the Negotiable Instruments Act, along with complaint, verifying the allegations made in the complaint, so as to make the complainant more responsible. But, it is not known from the record whether such affidavit is filed or not and copy of the cognizance order is also not filed.

Learned counsel for the petitioners requested this Court to dispense with the appearance of the petitioners, as they are cinema producers. But, this Court cannot exercise such power. However, the petitioners are permitted to file appropriate application under Section 205 Cr.P.C or Rule 37 of the Civil Rules of Practice before the Court concerned, and on filing such application, the Magistrate is directed to dispose of the said application, on the same day, in accordance with law.

With the above observation, the criminal petition is disposed of. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.

JUSTICE M. SATYANARAYANA MURTHY

Date:19.12.2017

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