

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.13214 OF 2015

ORDER:

This criminal petition is filed under Section 482 Cr.P.C seeking a clarification of the order passed in CrI.A.No.811 of 2015 dated 15.10.2012 as per the docket order dated 04.09.2015 in CrI.M.P.No.3961 of 2015 in C.C.No.562 of 2001 and also to direct the XI Additional Chief Metropolitan Magistrate at Secunderabad to proceed under Section 21 of Cr.P.C for recovery of amount in case of default.

The petitioner filed a private complaint under Section 200 Cr.P.C and the same was referred to the police by Magistrate under Section 156(3) Cr.P.C. After reference, police filed charge sheet and the same was registered as C.C.No.562 of 2001 on the file of XI Metropolitan Magistrate, Secunderabad against the second respondent for the offence punishable under Section 138 of Negotiable Instruments Act (for short 'N.I. Act'), which ended in dismissal, acquitting the accused finding him not guilty. Later, CrI.A.No.811 of 2015 was preferred against the acquittal and in the appeal, this Court by order 15.10.2012, allowed the appeal setting aside the calendar and judgment, finding the second respondent guilty for the offence punishable under Section 138 of N.I. Act and held that the complainant is entitled to receive double the amount covered by the dishonoured cheques Exs.P-1 and P-2, directed the accused to pay the same.

As the second respondent/accused did not comply with the above direction, the petitioner filed CrI.M.P.No.3961 of 2015 in

C.C.No.542 of 2001 before the XI Additional Chief Metropolitan Magistrate at Secunderabad for committing the second respondent to jail till payment of compensation amount of Rs.7,60,000/-. The Court below adjourned the matter on the ground that there was no default sentence in the judgment passed by this Court in Crl.A.No.811 of 2015 and observed that it is not proper to detain the accused till payment of the amount to the complainant and directed to obtain clarification from this Court.

The present criminal petition is filed seeking the relief stated supra, on the ground that the Magistrate did not consider the order in proper perspective and directed to obtain clarification from this Court and that the Magistrate can pass an order under section 421 Cr.P.C for realization of the amount in the event of failure to pay the amount within the fixed time and sought to set-aside the order.

As seen, the **first relief** claimed in the petition filed under Section 482 Cr.P.C, it is clear from the above claim that the petitioner is seeking clarification of the judgment in Crl.A.No.811 of 2005 dated 15.10.2012.

The **second relief** is to direct the XI Additional Chief Metropolitan Magistrate, Secunderabad to proceed under Section 421 Cr.P.C for recovery of amount in case of default.

So far as first part of relief is concerned, the judgment is clear that the petitioner is entitled to receive double the amount covered under the cheques Exs.P-1 and P-2. But, this Court cannot exercise power under Section 482 Cr.P.C to clarify the judgment of this Court as there is a clear bar under Section 362 Cr.P.C to review the judgment of this Court, except as otherwise

provided by the Act or any other law for the time being in force. Thus, this Court can rectify the clerical or arithmetical errors, but cannot review the judgment. However, when no time is fixed for payment, it is implied that the accused shall pay forthwith. Therefore, this Court cannot clarify the judgment passed in Crl.A.No.811 of 2015 dated 15.10.2012. Hence, the first part of the relief claimed is rejected.

The other relief claimed by the petitioner is to direct the XI Additional Chief Metropolitan Magistrate at Secunderabad to proceed under Section 421 Cr.P.C for recovery of amount. In fact, the Magistrate passed the docket order in Crl.M.P.No.3961 of 2015 in C.C.No.542 of 2001 on 04.09.2015. But, this order was not challenged in this petition seeking any relief to set-aside the order. In the absence of any challenge to the order in Crl.M.P.No.3961 of 2015, this Court cannot direct the XI Additional Chief Metropolitan Magistrate at Secunderabad to proceed further under Section 421 Cr.P.C as the order passed by the Magistrate has attained finality. Therefore, while exercising power under Section 482 Cr.P.C, this Court cannot grant any relief, as it is devoid of merits.

In the result, criminal petition is dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:02.07.2018

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