

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.225 of 2014

ORDER:

Heard the learned counsel for the petitioner.

The present criminal revision case is filed against the orders passed in C.C.No.678 of 2007 dated 30.9.2011 on the file of the Court of II Additional Judicial First Class Magistrate, Rajahmundry, dismissing the complaint filed under Section 138 of the Negotiable Instruments Act.

Though notice is served on the 2nd respondent vide proof of service No.329 of 2013, none appeared for him.

The facts in brief are that the petitioner herein filed CC.No.678 of 2007 against the 2nd respondent for the offence under Section 138 of the Negotiable Instruments Act. It is his specific case that the 2nd respondent borrowed a sum of Rs.3,00,000/- for the purpose of business. In that connection, the subject cheque was issued. On presentation of the said cheque on three different occasions at the request of the 2nd respondent, was returned with an endorsement 'payment stopped by drawer' and on other occasion, 'account closed'. Therefore, after complying with the mandatory procedure under the provisions of Negotiable Instruments Act such as issuance of legal notice etc., the above said complaint was filed. During the pendency of the above calendar case, the petitioner failed to deposit process in compliance with Rule 235(3)(2) of the Criminal Rules of Practice. Therefore, the said calendar Case was dismissed on 30.9.2011. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel for the petitioner, submitted that the order passed by the learned Magistrate is against the law and material on record. He contended that the learned Magistrate failed to see that no report was available or communicated to the petitioner to deposit or pay fresh process under the provisions of the Criminal Rules of Practice. In the absence of the report as to the previous process, the petitioner is not under obligation to deposit the process for every 15 days. The order of the learned Magistrate defeated the very object of the Negotiable Instruments Act with regard to the commission of the offence under Section 138 of the Negotiable Instruments Act by the 2nd respondent. In fact, the subject matter of the calendar case is six lakhs and in the event of the complaint dismissed, the petitioner would be put to great hardship

For the purpose of appreciating the matter, it is relevant to extract Rule 235 (3)(2) of Criminal Rules of Practice:

“(2) when a warrant remains unexecuted for 15 days after its delivery to the Officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every 15 days or part thereof until return is made, provided that the delay in executing the said warrant is not attributable to the Officer of the court.”

Chapter XII of the Criminal Rules of Practice contemplates collection of process fee and payment of batta to complainants and witnesses. As per rule 235(3)(2) of the Criminal Rules of Practice, when a warrant remains unexecuted for 15 days after its delivery to the officer entrusted with its execution, an additional fee at the same rate shall be levied from the party at whose instance the warrant was issued for every 15 days or part thereof until it is returned, provided that the delay in executing the said warrant is not attributable to the officer of the

Court. In the case on hand, from the impugned order, it is revealed that the process was paid after 18.2.2009 i.e. with a delay of 2 ½ years. But rule 235(3)(2) of the Criminal Rules of Practice pertains to payment of additional fee for every 15 days until the warrant is executed or returned. The first limb of the order indicates that the process itself was paid after abnormal delay of 2 ½ years. So, unless and until the process is paid and pending execution, Rule 235(3)(2) of the Criminal Rules of Practice is not applicable. Therefore, the impugned order in the present criminal revision case does not fall within the ambit of Rule 235(3)(2) of the Criminal Rules of Practice. Accordingly, the order passed on 30.9.2011 dismissing the complaint, is set aside. Learned II Additional Judicial First Class Magistrate, Rajahmundry, is directed to look into the factual position and pass appropriate orders after giving reasonable opportunity to the petitioner to explain for the delay.

Accordingly, the Criminal Revision Case is allowed.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE P.KESHA RAO

Date: 07/09/2018

lkv