

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL REVISION CASE No.756 of 2018

ORDER:

This Criminal Revision Case is disposed of at the admission stage as this court finds no reason to order notice to the respondents in view of the facts are involved in this case..

This Criminal Revision Case is filed by the petitioner/complainant aggrieved by the judgment dated 22-11-2017 in Criminal Appeal No.400 of 2012 passed by the learned VII Additional Sessions Judge, Kakinada dismissing the Criminal Appeal holding that in view of the judgment of the Division Bench of this Court in Criminal Petition No.16742 of 2016 in *Smt.P.VIJAYA LAXMI v. SMT.S.P.SRAVANA AND ANOTHER*, the appeal is not maintainable under Section 372 Cr.P.C.

The grievance of the petitioner/complainant is that while holding that the Criminal Appeal is not maintainable before the Sessions Court and the same is maintainable only before High Court under Section 378 (4) Cr.P.C., the Sessions Court ought to have returned the appeal instead of dismissing the same. This Court finds force in the said submission.

A perusal of the judgment of the Division Bench of this Court would show that the Division Bench held therein that the complainant in cheque dishonour cases under Section 138 of the Negotiable Instruments Act cannot be categorized as victim in terms of definition under Section 2 (wa) of the Criminal Procedure Code.

Excluded from the ambit of Section 2(wa) of the Code, such complainant would not be entitled to avail remedy of appeal under proviso to Section 372 of the Code and must continue to avail the said remedy of appeal provided under Section 378 (4) of the Code after obtaining Special Leave.

In view of the said observation, though the lower appellate court was right in holding that the appeal was not maintainable before it, ought to have directed the office to return the file for presenting before this court. Instead the appellate court simply dismissed the appeal. Hence, the judgment impugned is set aside and the lower appellate court is directed to return the file to the appellant/complainant to be presented before the appropriate court under Section 378 (4) of Criminal Procedure Code after obtaining permission subject to law of Limitation.

This Criminal Revision Case is disposed of accordingly.

As a sequel, miscellaneous applications pending if any, shall stand closed.

JUSTICE U.DURGA PRASAD RAO

Dated 16th March, 2018.

Dvs

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