

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

Crl.P. No.6501 OF 2018

ORDER:

This criminal petition is filed under Section 482 Cr.P.C. challenging the order dated 12.04.2018 passed by the XV Additional Sessions Judge, Ranga Reddy District, Kukatpally in Crl.R.P.No.9 of 2018 setting aside the order dated 09.01.2018 passed by the Special Magistrate Court, Cyberabad at Kukatpally in Crl.M.P.No.8207 of 2017 in C.C.No.326 of 2017 filed under Section 311 Cr.P.C. to recall PWs.1 and 2 for further cross examination raising specific ground.

The petitioner filed private complaint for the offence punishable under Section 138 of the Negotiable Instruments Act before the Special Magistrate and during trial PWs.1 and 2 and other witnesses were examined. When the matter was posted for examination of accused under Section 313 Cr.P.C., the respondents came up with a petition to recall PWs.1 and 2 for further cross examination raising several grounds. But the Special Magistrate dismissed the said petition.

Aggrieved by the order passed by the Special Magistrate, the 2nd respondent filed Criminal Revision Petition No.9 of 2018 before the Sessions Judge and the Sessions Judge, upon hearing arguments of both counsel allowed the petition filed under Section 397(1) Cr.P.C. and permitted the 2nd respondent to cross examine PWs.1 and 2.

Aggrieved by the order passed by the Sessions Judge, the present criminal petition is filed mainly on the ground that the revision petition is not maintainable as the order under challenge before the revisional Court is interlocutory in nature. Therefore, the order passed by the Sessions Judge is without jurisdiction and prayed to set aside the same.

During hearing, learned counsel for the petitioner reiterated the same at the stage of admission.

Since the order under challenge is interlocutory in nature, no revision is maintainable against such an order, in view of the law laid down by the Apex Court in **Sethuraman Vs. Rajamanickam**¹, wherein the Apex Court in paragraph 4 held as follows:

"4. Secondly, what was not realized was that the order passed by the Trial Court refusing to call the documents and rejecting the application under Section 311 Cr.P.C., were interlocutory orders and as such, the revision against those orders was clearly barred under Section 397(2) Cr.P.C. The Trial Court, in its common order, had clearly mentioned that the cheque was admittedly signed by the respondent/accused and the only defence that was raised, was that his signed cheques were lost and that the appellant/complainant had falsely used one such cheque. The Trial Court also recorded a finding that the documents were not necessary. This order did not, in any manner, decide anything finally. Therefore, both the orders, i.e., one on the application under Section 91 Cr.P.C. for production of documents and other on the application under Section 311 Cr.P.C. for recalling the witness, were the orders of interlocutory nature, in which case, under Section 397(2), revision was clearly not maintainable. Under such circumstances, the learned Judge could not have interfered in his revisional jurisdiction. The impugned judgment is clearly incorrect in law and would have to be set aside. It is accordingly set aside. The appeals are allowed."

In view of the law declared by the Apex Court, Sessions Court cannot exercise jurisdiction under Section 397(1) Cr.P.C. as revision is barred under Section 397(2) Cr.P.C. and such exercise of power under Section 397(1) Cr.P.C. would amount to circumventing the law and consequently, the order dated 12.04.2018 passed by the XV Additional

¹ 2009 CriLJ 2247

Sessions Judge, Ranga Reddy District, Kukatpally in Crl.R.P.No.9 of 2018 is hereby set aside.

Accordingly, the criminal petition is allowed setting aside the order dated 12.04.2018 passed by the XV Additional Sessions Judge, Ranga Reddy District, Kukatpally in Crl.R.P.No.9 of 2018.

Pending miscellaneous petitions in the petition, if any, shall stand closed.

M.SATYANARAYANA MURTHY,J

22.06.2018
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