

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No. 8885 OF 2018

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure by the petitioners-accused Nos. 1 and 2 to quash the proceedings against them in C.C.No. 167 of 2018 on the file of the Court of III Special Magistrate, Malkajgiri, R.R. District (for short, 'the Court below').

2. Respondent No. 2 filed the abovementioned C.C. against the petitioners for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the Act'). The present petition is filed mainly on the ground that respondent No. 2 failed to comply with the statutory requirement under Section 138 proviso (b) of the Act *i.e.* issue of notice as respondent No. 2 himself admitted that the notice sent was un-served and therefore the proceedings against the petitioners are liable to be quashed.

3. Proviso (b) to Section 138 of the Act mandates that a notice to be issued to the drawer of the cheque on return of the same after presentation for collection calling upon him to pay the amount covered under the dishonoured cheque. Admittedly, respondent No. 2 sent notice on 28-02-2018 to the registered address of the petitioners by registered post which was returned un-served on 07-03-2018. When notice is sent to the correct address, a presumption under Section 27 of the General Clauses Act shall be drawn by Court that the notice is deemed to have been served. By drawing presumption under Section 27 of the General Clauses Act, the complaint cannot be quashed on the ground of non-compliance of proviso (b) to Section 138 of the Act. I, therefore, find no merit in the petition and the petition deserves to be dismissed.

4. The criminal petition is accordingly dismissed. Pending miscellaneous petitions, if any, in this criminal petition shall stand dismissed in consequence.

Date: 23-08-2018.

JSK

M.SATYANARAYANA MURTHY, J.

