

**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.9222 of 2018**

**ORDER:**

This Criminal Petition, under Section 482 Cr.P.C., is filed questioning the Order dt.02.07.2018 in Cr.M.P.No.5523 of 2018 in C.C.No.358 of 2016 passed by II Additional Judicial First Class Magistrate, Machilipatnam, whereby the trial Court dismissed the petition filed under Section 243 Cr.P.C. to send the documents listed in the petition from O.S.No.89 of 2015 on the file of I Additional District Judge, Machilipatnam to C.C.No.358 of 2016.

The petitioner is the accused in C.C.No.359 of 2016. He filed an application under Section 243 Cr.P.C. to send for the documents listed in the petition from O.S.No.89 of 2015 pending on the file of I Additional District, Machilipatnam to C.C.No.358 of 2016 pending on the file of II Additional Judicial First Class Magistrate, Machilipatnam. After hearing both sides, the Trial Court dismissed the petition on various grounds.

Aggrieved by the Order dt. 02.07.2018, the present Criminal Petition is filed.

Undisputedly, C.C.No.359 of 2016 is for the offence under Section 138 of NI Act, which is being tried following the procedure for trial of summons cases covered by Chapter No.XX of Cr.P.C., but the petition is filed under Section 243 Cr.P.C. which can be invoked only for trial of cases by the Magistrate under Chapter No. XIX. When summons case is pending, the petitioner ought to have filed an application under appropriate provision, but not under Section 243 Cr.P.C., which applies to the warrant cases. Hence, the present petition is liable to be dismissed on this ground alone irrespective of the reasons assigned by the trial Court,

while giving liberty to the petitioner to file appropriate application before the Magistrate concerned.

Accordingly, this Criminal Petition is dismissed. However, liberty is given to the petitioner to file appropriate application before the Magistrate concerned.

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

---

**M. SATYANARAYANA MURTHY, J**

Date: 20-09-2018  
eha



**THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**

**CRIMINAL PETITION No.9222 of 2018**

Dt. 20-09-2018

eha

