

IN THE HIGH COURT OF JUDICATURE ANDHRA PRADESH AT HYDERABAD

Present
The Hon'ble Mr. Justice
K.G.Shankar

Crl.P.No.5557/2010 – Decided on 21-03-2013

P.Ravinder Reddy

---Petitioner

Vs.

Nalamalapur Subba Reddy & another

---Respondents

NEGOTIABLE INSTRUMENTS ACT Sec.138 - CRIMINAL PROCEDURE CODE SEC.200 & 482 - Petitioner is sole Accused in C.C., on file of Magistrate for offence under Sec.138 of N.I.Act -Magistrate receiving sworn statement of defacto-complainant and taking case on file U/Sec.138 of N.I.Act docket order shows that sworn statement of defaco-complainant not recorded.

Sec.200 envisages that before Magistrate takes cognizance of offence on complaint he shall examine complaint on oath - Examination of complainant is *sine quo non* for taking a private complaint on file - Admittedly Magistrate did not do so, but accepted sworn affidavit of defacto-complainant and had taken case on file.

Petitioner contends that taking case on file by Magistrate without recording sworn statement of complainant was violative of Sec-200 Cr.P.C and is unsustainable - C.C on file of Magistrate against petitioner quashed on ground that sworn statement of defacto-complainant had not been recorded by trial court and as such criminal case is liable to be quashed - Criminal petition, allowed.

Mr.K.Maheswara Rao, Advocate for the petitioner

Mr.P.Veera Reddy Advocate for the Respondent No.1

The Public Prosecutor, Advocate for the Respondent No.2

ORDER

There is not representation for the first respondent, although the first respondent entered appearance. The learned counsel for the petitioner contended that as the case offends Section 200 Cr.P.C the petitioner is entitled to acquittal.

2. The petitioner is the sole Accused in C.C.No.460 of 2009 on the file of the learned II Additional Judicial First Class Magistrate, Ongole for the offence under Section 138 of the Negotiable Instrument Act, 1881 (for brevity the act) the docket order dated:04-12-2009 shows that the sworn statement of the defacto-complainant was received and the case was taken on the file under section 138 of the Act. The docket thus evidently shows that the sworn statement of the defacto-complainant was not recorded.

3. Section 200 Cr.P.C envisages that before a Magistrate take cognizance of the offence on complaint, he shall examine the complainant on oath. Thus, examination of the complainant is *sine quo non* for taking a private complaint on file. Admittedly the learned Judicial First Class Magistrate did not do so, but accepted the sworn affidavit of the defacto-complainant and has taken the case on file. As rightly submitted by Sri.E.Satish Kumar learned Counsel for the petitioner taking the case on file by the learned Magistrate without recording the sworn statement of the complainant was violative of Section 200 Cr.P.C and is not sustainable.

4. In that view of the matter the criminal case is liable to be quashed. Accordingly, this criminal petition is allowed. C.C.No.460 of 2009 on the file of the learned II Additional Judicial First Class Magistrate, Ongole against the petitioner herein is quashed on the ground that the sworn statement of the defacto-complainant/first petitioner had not been recorded by the trial court. The miscellaneous petitions pending if any, shall stand closed.

Reported in 2013(1) L.S P-371

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