

(2014) 06 AP CK 0093

Andhra Pradesh High Court

Case No: Criminal Petition No. 5951 of 2014

Boddu Parvathi

APPELLANT

Vs

Boddu Venkata Narasimha Naga

RESPONDENT

Pulla Rao

Date of Decision: June 16, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 156(3), 200
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2014) 2 ALD(Cri) 269 : (2015) 1 ALT(Cri) 97

Hon'ble Judges: K.G. Shankar, J

Bench: Single Bench

Advocate: T. Pradyumna Kumar Reddy, Advocate for the Appellant

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

Dr. K.G. Shankar, J.

The sole petitioner seeks for the quashment of C.C. No. 90 of 2013 on the file of the II Additional Chief Metropolitan Magistrate, Vijayawada, Krishna District. The 1st respondent filed a complaint against the petitioner for an offence u/s 138 of the Negotiable Instruments Act, 1881 (the N.I. Act, for short). The learned II Additional Chief Metropolitan Magistrate, Vijayawada took cognizance of the case without recording the sworn statement of the 1st respondent. Claiming that taking cognizance of the case without recording the sworn statement is bad, the learned counsel for the petitioner filed the present petition for the quashment.

2. In National Small Industries Corporation Ltd. Vs. State (NCT of Delhi) and Others, a complaint was lodged u/s 138 of the N.I. Act. The complainant was a government company. The complaint was filed by an officer of the company on behalf of the company. The examination of the complainant was dispensed with by the Trial

Magistrate. Inter alia, the Supreme Court observed that when the complainant is not a public servant or a court as provided by Section 200 Cr.P.C proviso, the recording of the sworn statement of the complainant is mandatory.

3. In Suresh Chand Jain Vs. State of Madhya Pradesh and Another, it was observed that when the Court is not invoking Section 156(3) Cr.P.C but intends to take cognizance of a case on a complaint, the Court is bound to record the complainant on oath. Similar view was taken by the Supreme Court in Madhao and Another Vs. State of Maharashtra and Another. I had reached similar conclusion in P. Ravinder Reddy Vs. Nalamalapur Subba Reddy and Another.

4. Where Section 200 Cr.P.C is clear that the statement of the complainant is liable to be recorded on oath, in view of the overwhelming judicial precedent, I hold that the sworn statement of a complainant is liable to be recorded u/s 200 Cr.P.C before a Magistrate takes cognizance of a case. In the present case, admittedly the Trial Court straightaway took cognizance of the case without recording the sworn statement of the complainant. I therefore consider it appropriate to set aside the proceedings from the time of taking cognizance and to direct the Court to follow the procedure.

5. Accordingly, this criminal petition is disposed of setting aside the cognizance of the case against the petitioner by the learned Trial Magistrate. The Trial Magistrate is directed to follow the procedure laid down by Section 200 Cr.P.C., to record the sworn statement of the de facto complainant/1st respondent and apply his judicial mind whether to take cognizance of the case or otherwise and dispose of the matter accordingly in accordance with law. The miscellaneous petitions, if any, pending in this petition shall stand closed.