

(1992) 07 AP CK 0017

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 1157 of 1992

Y. Venkateswara Rao

APPELLANT

Vs

Mahee Handlooms (P.) Ltd. and Others

RESPONDENT

Date of Decision : 21-07-1992

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (1994) 79 CompCas 206 : (1993) CriLJ 2362

Hon'ble Judges : Iyyapu Panduranga Rao, J

Bench : Single Bench

Advocate : B. Adinarayana, for the Appellant; Public Prosecutor, for the Respondent

Judgement

Iyyapu Panduranga Rao, J.—Heard learned counsel for the petitioner and the public prosecutor.

2. This petition is directed u/s 482, Criminal Procedure Code, to call for the records, relating to C.C. No. 184 of 1991 on the file of the VI Metropolitan Magistrate, Hyderabad, and to quash the same and direct the learned Magistrate to proceed further as contemplated under Chapter XV of the Code of Criminal Procedure (in brief "the Code").

3. The petitioner filed a criminal case u/s 200, Criminal Procedure Code, against respondents Nos. 1 and 2 under Sections 138 and 141 of the Negotiable Instruments Act, 1881. The said complaint was filed under date February 19, 1991. On the same day the learned Magistrate referred the case u/s 156(3) of the Code to the police for further enquiry ; on February 20, 1991, on the basis of the said complaint a crime was registered in Cr. No. 40 of 1991 on the file of P. S. Amberpet ; they further enquired into the matter and laid a charge-sheet against respondents Nos. 1 and 2 which was taken cognizance of by the learned Magistrate and while he was proceeding further, alleging that taking cognizance of the case by the Magistrate on a police report is not warranted as per the provisions of Section 142 of the Negotiable Instruments Act, the revision

petitioner-complainant filed the present criminal petition.

4. Section 142 of the Negotiable Instruments Act, in so far as it is relevant, reads as follows :

"142. Cognizance of offences.-Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), (a) no court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee, or, as the case may be, the holder in due course of the cheque :"

5. As evidenced by Section 142(a) of the Negotiable Instruments Act no court shall take cognizance of any offence punishable u/s 138 except upon a complaint in writing made by the payee or, as the case may be, the holder in due course of the cheque; In the present case, the case was taken cognizance of on a police complaint and, consequently, as rightly submitted by learned counsel for the petitioner, the complaint is not taken on file properly. In view of the provisions of Section 142(a) of the Negotiable Instruments Act, the proceedings in C. C. No. 184 of 1991 on the file of the VI Metropolitan Magistrate are quashed on and from referring the case by the learned Magistrate u/s 156(5) of the Code and thereafter. The learned Magistrate shall proceed further with the case in accordance with the provisions of Chapter XV of the Code and dispose of the same in accordance with law.