

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.1001 OF 2013

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ORDER:

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Aggrieved by the order dated 13.02.2013 passed in Cri.A.No.430 of 2012 on the file of the III Additional Sessions Judge, Guntur, the present revision is filed under Sections 397 and 401 Cr.P.C. wherein and whereunder the appeal was allowed by setting aside the order passed in C.F.R.No.6503 of 2012 on the file of the V Additional Junior Civil Judge, Guntur and restored the complaint on to the its file.

The facts in issue are as under:

The first respondent herein filed a private complaint against the petitioner for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881. The said complaint was dismissed on 11.10.2012 as there was no representation on behalf of the complainant. It is to be noted that the complaint was not even numbered by then. Challenging the same an appeal came to be filed. After appreciating the rival contentions, the learned III Additional Sessions Judge, Guntur, allowed the appeal and restored the complaint on its file. Aggrieved by the same, the accused preferred the present revision.

It is to be seen that when a complaint is filed before a Magistrate, two courses are left for him. Either he can enquire into the matter or he can order an investigation by the police. In case on hand, since the complaint was filed for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the same has to be enquired by the Magistrate. Accordingly, he posted the same to 08.10.2012 and from that date it was posted to 10.10.2012 and then to 11.10.2012 for recording the sworn statement of the complainant on condition. As the complainant failed to appear before the Court on 11.10.2012,

the complaint was dismissed.

The order of the learned Magistrate is silent as to the provisions under which he dismissed the complainant. The learned III Additional Sessions Judge, Guntur, after appreciating the rival contentions held that dismissal of the complaint by the learned Magistrate without recording reasons is not permissible under the law and accordingly allowed the appeal.

In view of the above, this Court is also of the view that it would be an appropriate if a suitable opportunity is given to both the parties to contest the matter instead of dismissing the same on technicalities at pre-cognizance stage. Apart from that, the record also discloses that the complainant was absent only on one day i.e. on 11.10.2012. It is not the case of the petitioner that the complainant intentionally avoiding to attend the Court. Hence, I see no reason to interfere with the order passed by the learned Sessions Judge.

Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

02.04.2015

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