HON'BLE SRI JUSTICE M.S.K.JAISWAL

Criminal Petition No.7126 of 2009

ORDER:-

The Criminal Petition is filed under Section 482 Cr.P.C., to quash the orders of the learned Metropolitan Sessions Judge, Hyderabad, dated 08-05-2009, in R.P.No.59 of 2009.

2. The facts are as under:-

The petitioner is the complainant and it is a company having its Registered Office at Mumbai with the Regional Office at Secunderabad. The respondent/accused is a proprietory concern. There were some bus

iness transactions in between the petitioner/complainant and the respondent/accused. Amounts were settled and the respondent/accused was found to be due a total sum of Rs.5,59,028/-. For this amount, the respondent/accused issued cheques, one cheque bearing No.663729, dated 06-07-2003, for Rs.47,140/- and another cheque bearing No.663730, dated 09-07-2003, for Rs.5,11,888/-On being presented, the cheques were dishonoured. Statutory notice was issued. It was returned unclaimed. Two private complaints were filed on the file of the XI-Metropolitan Magistrate, Secunderabad. They were taken on file as C.C.Nos.492/2004 and 493 of 2004. The respondent/accused was abstaining. Therefore, arrest warrants were issued against the respondent/accused. On 21-01-2009, the complainant was absent and since there was no representation and the process was not paid for execution of the warrant, the learned Magistrate dismissed both the Calendar Cases under Section 204 Cr.P.C.

3. Aggrieved by the said dismissal of the complaint, the petitioner/complainant filed R.P.No.58 of 2009 and R.P.No.59 of 2009. By order, dated 08-05-2009, the learned Metropolitan Sessions Judge dismissed both the revision petitions holding that since the

petitioner/complainant was absent and no steps were taken for depositing the process for issuing the warrants, the dismissal of the complaint was justified.

4. The petitioner/complainant filed the present petition contending that the learned Metropolitan Sessions Judge erred in dismissing the revisions even though material was placed before it to show that the process for issuing the warrant was deposited on 22-10-2008 under S.R.Nos.9066, 9067, 9069 and 9070 of 2008. It is further submitted that during the call-work, the learned Magistrate even without verifying the record, dismissed the complaints holding that process is not paid for execution of the warrant. Learned Counsel submits that the respondent/accused has issued cheques for the amount due and she has not even received the statutory notice under the provisions of the Negotiable Instruments Act. Even the summons sent in the private complaint could not be served on her and hence warrants were issued. Even during the pendency of the present petition before the High Court, notice is sent to the respondent/accused by Registered Post and the same is returned in November, 2014 with an endorsement that *the addressee left the address*. Learned Counsel submits that the dismissal of both the private complaints is erroneous and hence the petition.

5. In **ASSOCIATED CEMENT CO.LTD., v. KESHVANAND (1998) 1 SCC 687)**, the Apex Court held as under:-

> "Section 247 of the Criminal Procedure Code, 1898 (Section 256 of new Code) affords some deterrence against dilatory tactics on the part of a complainant who set the law in motion through his complaint. An accused who is per force to attend the Court on all posting days can be put to much harassment by a complainant if he does not turn up to the Court on occasions when his presence is necessary. The Section, therefore, affords protection to an accused against such tactics of the complainant. But that does not mean if the complainant is absent, the Court has a duty to acquit the

accused in invitum.

> Reading Section 247 Cr.P.C., (Section 256 of new Code) in its entirety would reveal that two constrains are imposed on the Court for exercising the power under the Section. The first is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. The second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day, the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the Section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice."

6. Applying the above dicta to the facts of the presence case, it is a fit case where the dismissal order need to be set aside and the Calendar Case be restored to its original file. The petitioner/complainant is a Company. On 21-01-2009, C.C.No.493 of 2004 came to be dismissed as there was no representation and even the process for issuing the NBW was not filed. As a matter of fact, the process for issuance of warrants was deposited in October, 2008 itself and the same was pending execution. On the date when the complaint was called, the presence of the complainant was not required for any specific purpose. As observed by the Supreme Court, it is not obligatory on the part of the Court to dismiss the complaint merely because the complainant is absent. Therefore, firstly the learned Magistrate erred in dismissing the complaint and

acquitting the accused on 21-1-2009 for the absence of the complainant and non-deposit of process for issuance of the warrant and the learned Metropolitan Sessions Judge in not taking into consideration the fact that the dismissal of C.C.No.493 of 2004 is not justified.

7. Taking into consideration the above facts and circumstances and the conduct of the respondent/accused, I feel that C.C.No.493 of 2004 needs be restored to its original file subject to condition that the petitioner/complainant should deposit costs of Rs.2,500/- (Rupees Two thousand five hundred only) before the Metropolitan Legal Services Authority, Nampally, Hyderabad, and produce proof thereof before the trial Court and once that is produced, the learned Magistrate shall restore the file to its original number and the petitioner/complainant shall deposit fresh process for issuance of warrant whereupon the learned Magistrate shall issue the same in accordance with law.

8. In the result, the Criminal Petition is allowed subject to the above directions.

Miscellaneous petitions, if any, pending in this Criminal Petition shall stand closed.

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M.S.K.Jaiswal, J

September, 2015

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