

**THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR**

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**Crl.R.C. No.470 of 2015**

**ORDER**

The present revision is filed by the accused aggrieved by the judgment dated 08.11.2013 passed in Crl.A.No.127 of 2012 on the file of the VI Additional District and Sessions Judge, Godavarikhani, wherein and where-under the appeal was dismissed due to non-prosecution.

2. A perusal of the material on record discloses that the first respondent herein filed a private complaint against the petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. The said case was taken on file as C.C.No.666 of 2006 on the file of Judicial Magistrate of First Class, Godavarikhani. After full-fledged trial, the learned Magistrate, by his judgment dated 29.08.2012, convicted the accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and sentenced him to undergo simple imprisonment for a period of one month and also to pay compensation of Rs.75,000/-to the complainant. Challenging the same, the accused preferred Crl.A.No.127 of 2012. As the appellant was not present on 08.11.2013, the learned Sessions Judge dismissed the appeal due to non-prosecution. Challenging the same, the present revision is filed.

3. It has been held by the Apex Court in a catena of judgments that the appeals cannot be dismissed for non-prosecution. The Court should have gone through the material placed before it and ought to have passed orders on merits of the case. In spite of the same, the learned Sessions Judge

dismissed the appeal due to the absence of the appellant. It is to be noted that there is no provision in the Code of Criminal Procedure, 1973, permitting disposal of criminal appeal on default. In case the appellate Court wants to proceed with the hearing of the appeal in spite of absence of the appellant or his counsel, the same has to be noted and then decide the appeal on merits after perusal of the entire evidence.

4. In view of the above, the Criminal Revision Case is allowed, the order under revision is set aside and the matter is remanded back to the Court below for disposal on merits in accordance with law. Miscellaneous petitions, if any, pending in this revision, shall stand closed.

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**C. PRAVEEN KUMAR, J**

27<sup>th</sup> February, 2015

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