

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.16357 OF 2016

ORDER:

This Criminal Petition is filed by the petitioner under Section 482 of Cr.P.C. to quash the order in Crl.R.P.No.17 of 2016 dated 29-8-2016 passed by the IV Additional Metropolitan Sessions Judge, Ranga Reddy District at L.B.Nagar confirming the order passed by the learned VIII Special Magistrate, Hastinapuram, Ranga Reddy District in Crl.M.P.No.850 of 2015 in C.C.No.297 of 2013 dated 28-9-2015.

Few facts that require for the purpose of deciding the present Criminal Petition are as follows:

Petitioner herein is the accused and respondents are complaints before the trial court and they are wife and husband respectively.

The 1st respondent filed a complaint before VIII Special Metropolitan Magistrate, Ranga Reddy District, at L.B.Nagar, for the offence punishable under Section 138 of the Negotiable Instruments Act which is registered as C.C.No.1552 of 2013. On receipt of summons, petitioner appeared before the court but on the dates of adjournments, the respondent did not appear and the matter underwent several adjournments. Even without insisting the presence of complainant, the trial court adjourned the matter without any cause on the several dates of adjournments when the complainant was absent and that was mentioned in para No.7 of the petition filed by the petitioner. As the respondent has not attended

the court, petitioner filed a petition under Section 256 of Cr.P.C. to acquit the petitioner-accused for the absence of the respondent-complainant.

During hearing, learned counsel for the petitioner Sri A.Ushi Reddy vehemently contended that as per several judgments of Bombay High Court and the other High courts, the learned Magistrate court though referred in the petition itself in various paras commencing from 6 and 8 to 11, did not follow the law laid down therein and drawn the attention of this court to Article 141 of the Constitution of India and judgments reported in Sri *VEERAYYA MAHANTAYYA KOPPAD, Vs. SMT. GEETHA* ⁽¹⁾, *BHOPAL SUGAR INDUSTRIES LTD. V. INCOME TAX OFFICER* ⁽²⁾, *LAXMIBAI V. NAGURAM KHILAWANDAS* ⁽³⁾ to contend that the law declared by Bombay High Court is binding on the courts within the State of Andhra Pradesh. He further contended that since the complainant was absent and failed to appear before the court, the petitioner is entitled for acquittal under Section 256 of Cr.P.C.

In view of the specific contentions raised before this court, it is relevant to advert to Section 256 of Cr.P.C. initially.

Section 256 of Cr.P.C. deals with consequences of non-appearance or death of complainant.

¹ ILR 2008 KAR 1773, 2008 (2) KarLJ 317

² A.I.R. 1961 SC 182 Bhopal 18

³ 1992 JIJ 458

It reads as follows:

(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything herein before contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.

Section 256 of Cr.P.C. deals with two situations where the complainant is not represented by any advocate or prosecuting Officer or where the complainant is represented by a pleader or a officer conducting prosecution i.e conducting prosecution by Public Prosecutor.

Before the Magistrate, the complainant was represented by an advocate before the Magistrate and thereby proviso to Section 256 of Cr.P.C. alone is applicable to such cases. Even assuming for a moment, if it is not represented by an advocate, it is the obligation of the court to issue summons to the complainant calling upon him to appear before the court on the date fixed by the court, and if for any reason, on receipt of summons, if the complainant failed to appear before the court, the petitioner is entitled for acquittal under Section 256 Cr.P.C.

Here, the respondent was represented by an advocate by name Damodar Mundra, advocate before the trial court and therefore, proviso to Section 256 (1) alone is applicable. When the complainant is represented by an advocate, the attendance of the complainant is not necessary and the Magistrate can proceed with the case even in the absence of complainant.

In the present case, the contention of the petitioner is that the complainant did not appear before the court on any date of adjournment and therefore, proviso to Section 256 (1) is applicable. But this contention is not substantiated by any material since the respondent/complainant is represented by advocate Damodar Mundra. Therefore, since there is absence of complainant on various dates before the learned Magistrate court, the complaint for the offence punishable under Section 138 of Negotiable Instruments Act is not a ground to acquit the petitioner. In any view of the matter, either under sub-clause 1 or proviso thereto, or the requirement contemplated under sub-section (1) of 256 Cr.P.C., summons were not issued and in such a case, the petitioner is not entitled for acquittal.

Learned counsel for the petitioner has drawn the attention of this court to judgment of Supreme Court reported in *VINAY KUMAR MALIWAL v. RAMESH SABOO* ⁽⁴⁾.

There is no dispute regarding law declared by Bombay High Court (4th cited), but it is not a binding precedent within the

⁴ A.I.R.2008 (NOC).1756 (Bombay)

meaning of Article 141 of Constitution of India since Article 141 says that law declared by the Highest Court of the country is binding on all high courts and subordinate courts. Bombay High Court is not a highest court and judgment has got only persuasive value and do not bind the subordinate courts in the state of Andhra Pradesh. Therefore, failure to follow the law declared by Bombay High Court (4th cited) is not a ground to acquit the petitioner by exercising jurisdiction under Section 256 (1) Cr.P.C.

He also drawn the judgment of other High Courts reported in *VINAY KUMAR MALIWAL v. RAMESH SABOO* (4th cited), *VINAY KUMAR v. STATE OF UTTER PRADESH AND ANOTHER* (5), *TRAVEL AGENT ASSOCIATION OF INDIA, CHENNAI v. EASTMAN TRAVEL AND TOURS (M) PVT. LTD.*, (6) and *Y.VIJAYALAKSHMI @ RAMBHA v. MANICKAM NARAYANAM* (7).

On the strength of these judgments, he contended that law declared by Bombay High Court and Allahabad High Court is binding on the courts in Andhra Pradesh.

But I am unable to accept this contention since the Bombay, Madras and Alahabad High courts are not the highest courts of the country.

Learned counsel drawn the attention of this court to decisions reported in *Sri VEERAYYA MAHANTAYYA KOPPAD, Vs. SMT.*

⁵ 2007(4) of Civil Court cases 0062 (Allahabad)

⁶ (2004) 4 Cur Cri R.310

⁷ 2005(3) R.C.R.(Criminal) 693

GEETHA, BHOPAL SUGAR INDUSTRIES LTD. V. INCOME TAX OFFICER (1st and 2nd cited) where the courts held that law declared by the highest court of the territory is binding on the subordinate courts and tribunals. There is no quarrel about the law declared by the courts in the above judgments but in the present case the counsel Sri A.Ushireddy insisted this court to follow the law laid down by the Bombay, Alahabad and Madras (*Sri VEERAYYA MAHANTAYYA KOPPAD, Vs. SMT. GEETHA, BHOPAL SUGAR INDUSTRIES LTD. V. INCOME TAX OFFICER (1st and 2nd and) and TRAVEL AGENT ASSOCIATIO OF INDIA, CHENNAI v. EASTMAN TRAVEL AND TOURS (M) PVT. LTD., (6th cited)*) and those judgments are not binding on this court and they have only persuasive value and therefore, I am unable to agree with the contention of learned counsel Sri Ushireddy.

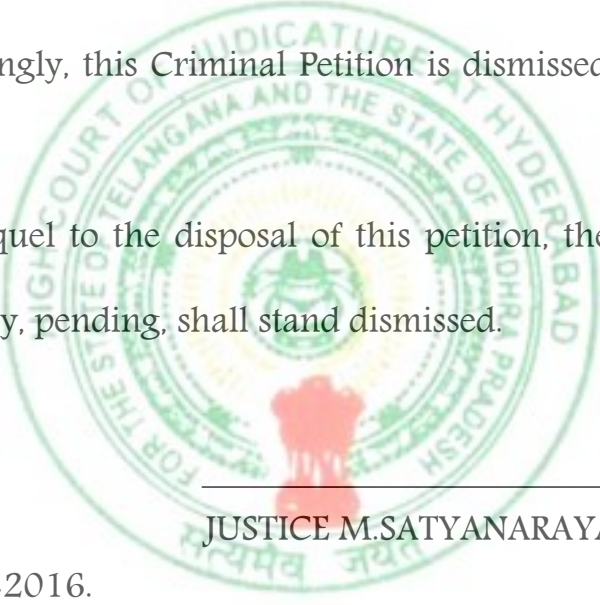
Even applying the law in the above decisions, the Supreme Court never held that the judgments of other High Courts are binding precedent on the courts in the other states.

Of course, trial court recorded a finding that the petition in Crl.M.P.No.1818 of 2013 was filed before the trial judge to permit the 1st complainant to represent the complainant No.2 as his GPA Holder and though the learned trial judge mentioned in the orders that the said petition has been allowed and the complainant No.1 was permitted to represent the complainant No.2 as his GPA, in the arguments made across the bar before the learned Metropolitan Sessions Judge i.e. revisional court, it is stated that the said petition is

not allowed and that is wrongly mentioned but the revisional court did not accept this contention. But, this has no relevancy at all for deciding the present issue for the reason that respondent was represented by an advocate, it falls under provision of 256 (1) Cr.P.C. and therefore, I find no substance in the contentions raised by Sri A. Ushi Reddy. learned counsel for the petitioner to acquit the petitioner at this stage and as such, the orders passed by both the courts below are on sound reasoning and hence, this Criminal Petition is liable to be dismissed.

Accordingly, this Criminal Petition is dismissed at the stage of admission.

As a sequel to the disposal of this petition, the Miscellaneous Petitions, if any, pending, shall stand dismissed.



JUSTICE M.SATYANARAYANA MURTHY

Dated 29-11-2016.

Dvs.

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY



CRIMINAL PETITION No.16357 OF 2016

Dated 29-11-2016.

Dvs