

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.801 of 2015

ORDER:

1) The present Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. against the docket order dated 20.04.2015 passed in C.C.No.118 of 2015 on the file of 1<sup>st</sup> Special Magistrate, Kukatpally, Miyapr, wherein the learned Magistrate dismissed the complaint for default.

2) The facts which lead to filing of the present Criminal Revision Case are as under:

3) The second respondent herein borrowed an amount of Rs.2,00,000/- from the petitioner to meet his family necessities. In order to discharge the said loan amount the second respondent issued two cheques bearing Nos.772218 and 772219 dated 16.04.2014 drawn on State Bank of Hyderabad, Kukatpally Branch, for Rs.1,00,000/- each. When the said cheques were presented for collection the same were returned un-paid as "funds insufficient" in the account of the second respondent. After complying with the mandatory requirements, the complainant filed a private complaint against the second respondent for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881. By an order dated 20.04.2015 the learned I Special Magistrate, Kukatpally, dismissed the complaint for default as the complainant was not present and there was no representation on her behalf. Challenging the same, the present Criminal Revision Case is filed.

4) Heard counsel for the petitioner. As the notice sent to the second respondent was returned as un-claimed, the same is taken as deemed service in view of Section 27 of General Clauses Act.

5) Learned counsel for the petitioner mainly submits that the petitioner was not aware about the posting of the case to that date as it was transferred from Mahaboobnagar to Miyapur and as such she could not appear before the said Court. He submits that the non-appearance of the petitioner on the said date is neither willful nor wanton. He thus submits that the order passed by the trial Court in dismissing the complaint on default for non-appearance of the petitioner warrants interference.

6) A perusal of the material placed before the Court would show that initially the petitioner filed a private complaint against the second respondent before the Court of Judicial Magistrate of First Class, Mahaboobnagar. The said complaint was taken on file as C.C.No.566 of 2014. Subsequently, in view of the judgment of the Apex Court in *Dasarath Roop Singh Rathod v. State of Maharashtra*<sup>1</sup>, the Judicial Magistrate of First Class, Mahaboobnagar transferred the case to the Court of the IX Metropolitan Magistrate, Cyberabad, Kukatpally at Miyapur on the point of jurisdiction, wherein it came to be renumbered as C.C.No.118 of 2015. On 20.04.2015 the complainant could not appear before the said Court as she was not aware about the date of posting of the case. As there was no representation on behalf of the complainant, the learned Magistrate dismissed the said complaint for default. The stand of complainant was not challenged by the accused as there is no representation on his behalf in spite of service of notice.

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<sup>1</sup> (2014) 2 ALD (CrI.) 190

7) Having regard to the circumstances under which the complaint was dismissed, the order under challenge is set aside and the complaint in C.C.No.118 of 2015 on the file of the I Special Magistrate, Kukatpally, Hyderabad, is restored to its file.

8) Consequently, Miscellaneous Petitions, if any, pending in this Criminal Appeal shall stand closed.

JUSTICE C. PRAVEEN KUMAR

22.09.2016

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