

**HON'BLE SRI JUSTICE A. SHANKAR NARAYANA**

**CRIMINAL PETITION No.174 OF 2017**

**ORDER:**

The present Criminal Petition is filed under Section 482 of the Criminal Procedure Code, 1973 (for short, 'the Code') requesting to quash the Docket Order dated 22.6.2016 in C.C. No.117 of 2015 on the file of I-Special Magistrate, Hyderabad.

2. The aforesaid order was passed by the learned Magistrate expressing that the petitioner herein has deposited the process with delay and, therefore, that notice could not be served on P.W.2, and even the same was repeated on the next date of hearing held that the orders passed in Crl. M.P. No.670 of 2016, dated 27.4.2016, stands *nonest*. The docket order, which is under challenge, in the criminal petition reads us:

“Both parties present. Process was deposited on 17.6.2016 though ordered to be deposited on 1.6.2016. It was dispatched by office on 20.6.2016. Since process is deposited very late by the accused, it could not be sent immediately. On last adjournment also the process was deposited very late. As such the orders passed in Crl.M.P.No.670 of 2016, dated 27.4.2016 stands nonest.

Since petition to further cross-examine was allowed on 3.3.2016, call on 1.7.2016 for further cross-examination of P.W.1. Both parties are informed of the same.”

3. Learned counsel for the petitioner would submit that process was immediately made after an order was passed, but P.w.2 deliberately avoided to receive the notices on more than two

occasions, as P.W.2 is close friend of the 2<sup>nd</sup> respondent herein and well aware of the proceedings and deliberately avoided to receive the notice, and therefore, requests to set aside the order.

4. Learned counsel for the 2<sup>nd</sup> respondent, of course, supports the order passed by the learned Special Magistrate.

5. There appears to be somewhat wrong mentioning in the petition that the process was paid within time. The learned Magistrate was clear in his order that though, notice was ordered on 1.6.2016, while allowing the petition to recall P.Ws.1 & 2 for further cross-examination, process was deposited on 17.6.2016, though, the matter was posted to 20.6.2016 and it was dispatched on 16.8.2016 and thus the process was deposited was very late by the petitioner herein, therefore could not be served immediately. Even earlier also process was deposited very late and, therefore, the order passed in Criminal M.P. No.670 of 2016, dated 27.4.2016 to be treated as *nonest*.

6. It is no doubt true there was delay on the part of the petitioner in depositing the process, but the same can be condoned by affording one chance now directing the petitioner to deposit the process immediately on the next date of adjournment for recalling P.W.2 for further cross-examination keeping in view, the ends of justice.

7. Hence, the order under challenge is liable to be set aside and accordingly set aside. However, observing that only one chance is given to the petitioner herein to cross-examine P.W.2 directing the

petitioner to deposit process within the time provided or prescribed by the relevant Code and Rule.

7. Accordingly, the present Criminal Petition is allowed with the aforesaid observation.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition shall stand closed.

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A. SHANKAR NARAYANA, J

Dt. 04.04.2017

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