

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL PETITION No.1877 of 2011

ORDER:

This criminal petition is filed under Section 482 of Cr.P.C. to quash the order dated 20.12.2010 in CrI.R.P.No.78 of 2009 passed by the I Additional Sessions Judge, Srikakulam.

The brief facts of the case are that, the petitioner is the *de facto* complainant in C.C.No.247 of 2008 on the file of Special Judicial Magistrate of First Class, Prohibition and Excise, Srikakulam. He filed a complaint under Section 138 of Negotiable Instruments Act, 1881 against accused/2nd respondent for bouncing of a cheque issued by the 2nd respondent. C.C.No.247 of 2008 was dismissed by the Special Judicial Magistrate of First Class by order dated 13.10.2009 on the ground that the complainant was absent and there was no representation on his behalf. Aggrieved by the order dated 13.10.2009, the petitioner filed CrI.R.P.No.78 of 2009 and the same was dismissed by the I Additional Sessions Judge, Srikakulam, by order dated 20.12.2010. Aggrieved by the order passed in the revision petition, this criminal petition has been filed by the petitioner.

Heard learned counsel for the petitioner and the learned Public Prosecutor.

Learned counsel for the petitioner submits that during the relevant period, learned Magistrate was in training at

Hyderabad and the concerned Bench clerk informed the petitioner that the matter was posted on 13.10.2009 but the petitioner had wrongly noted as 14.10.2009, due to which, he failed to appear before the lower Court. Therefore, the complaint was dismissed by the trial Court for his non-appearance. Aggrieved by the same, the petitioner filed CrI.R.P.No.78 of 2009 and the same was also dismissed by the trial Court by order dated 20.12.2010.

Learned Public Prosecutor opposed for quashing of the order dated 20.12.2010.

The order of the trial Court reads as under:

“Complainant called absent. No representation. Accused called present. The complainant though directed to appear before this Court, did not appear and there is no representation on complainant’s behalf from the last two adjournments. As complainant failed to comply conditional order, this complaint is dismissed under Section 256 Cr.P.C. for non appearance of complainant. Hence, accused is acquitted accordingly under Section 256(1) Cr.P.C.”

The above order clearly reveals that on two occasions the petitioner was not present and due to his non-appearance, the petition was dismissed. As per Section 256(1) Cr.P.C. if the complainant is absent, the complaint can be dismissed. There is no sufficient reason for the petitioner for his absence and the reason mentioned by him does not appear to be an appropriate reason for considering his request. Therefore, there are no valid grounds to interfere with the concurrent findings recorded by the Courts below.

In the result, the Criminal Petition is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

GUDISEVA SHYAM PRASAD,J

Date : 09.10.2017
ssp

