

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2190 of 2016

ORDER:

The complainant is the revision petitioner. Impugning the order dated 24.05.2016 passed in CrI.M.P.No.5252 of 2015 in C.C.No.378 of 2013 by the learned Judicial Magistrate of First Class, Kodad, maintained the revision. The 2nd respondent to the revision is the accused.

Heard learned counsel for the revision petitioner and learned Additional Public Prosecutor appearing for the State and the accused even served failed to attend.

In said case numbered as summons case based on private complaint taken cognizance for the offence under Section 138 of Negotiable Instruments Act, (for short 'the Act') in the year 2013 and during its pendency, from the expression of the Apex Court in **Dashrath Roopsing Rathod Vs. State of Maharashtra**¹ dated 01.08.2014, at the stage after appearance of the accused, for trial not commenced and from the guidelines from the Para 20 therein, the learned Magistrate returned the complaint case for presentation in proper Court having jurisdiction pursuant to the expression. However, the complainant having not taken the return, filed the application saying by virtue of the amended Act No.26 of 2015 with effect from 15.06.2015 giving retrospective effect the returned complaint is to be taken back to the file, though loosely worded as restoration for there is no dismissal of the complaint to restore as same is still pending even Court returned

¹ (2013) 9 SCC 129

either before numbering or after numbering for any objection it is deemed pending and for all purposes, the Court is not functus officio, that too when ordinance is given retrospective effect conferring jurisdiction. The scope is not properly considered by the Court in observing in the impugned order that if necessary the complainant can file a fresh complaint before it with delay condonation as contemplated by filing application under Section 142 read with amended Section 142-A of the Act. There is in fact a difference between a complaint once dismissed is not entitled to restore and the complaint returned on representation to take to the file. That distinction is necessary to say in the case of return the Court is not functus officio if at all properly represented showing the objection is not tenable so as to take on file and thereby it is deemed pending for all purposes with the Court. What is the observation saying by the time of ordinance there is no complaint pending from the so called return on 18.09.2014 is thus not correct. Otherwise once Court got right to take a fresh complaint with delay condonation from the amended Act confess jurisdiction it should have taken the same by asking to file application to condone the delay in representation at best under Section 5 of the Limitation Act read with Section 14 of the Act. Here once it is explained the return complaint can be ordered to be taken on file, for the impugned order of the lower court contra to it is unsustainable.

Having regard to the above, the criminal revision case is allowed and the impugned order is set aside and the learned Magistrate is directed to take the return complaint to the file by receiving the representation and proceed in accordance with law if

got jurisdiction pursuant to the amended Act and if not to return afresh by fixing time for presentation in proper Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.01.2017
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