

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2129 of 2017

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the order, dated 11.04.2017 in C.C.No.531 of 2009 passed by the Additional Judicial First Class Magistrate, Nirmal dismissing the complaint for non-prosecution.

2. The complaint was filed against respondents 2 and 3 herein for the offences punishable under Section 323, 504 and 420 of IPC and the procedure followed by the Court below is warrant procedure. Therefore, Section 249 Cr.P.C is relevant, which deals with procedure to be followed for absence of complainant. According to Section 249 Cr.P.C, when the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

3. Therefore, when the complainant was absent and failed to prosecute the case and that if charges were not framed, the Court may discharge the accused under Section 249 Cr.P.C. In the order, the trial Court made it clear that the complainant was present, no representation by the counsel and the complainant did not take any steps to adduce evidence or file any documents etc. Since, it is an identified case, the Court dismissed the same for non-prosecution. The said dismissal is contrary to Section 249 Cr.P.C., hence, the order is liable to be set aside by exercising power under Sections 397 and 401 Cr.P.C.

4. Accordingly, the Criminal Revision Case is allowed setting aside the order dated 11.04.2017 in C.C.No.531 of 2009 passed by the

Additional Judicial First Class Magistrate, Nirmal and C.C is restored to its file. The trial Court is directed to decide C.C. in accordance with law and in case, the complainant did not prosecute the proceedings, the trial Court may pass appropriate orders in accordance with law.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 24.08.2017
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