

THE HONOURABLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL APPEAL No.610 OF 2017

JUDGMENT:

This appeal is preferred by the appellant-complainant assailing the docket order dated 02.05.2017 on the file of the XI Special Magistrate, Cyberabad, at Hasthinapuram.

2. Heard the learned counsel for the appellant and the learned counsel for the second respondent.

3. A perusal of the record reveals that the appellant filed a complaint against the second respondent under Section 200 Cr.P.C. for the offence punishable under Sections 138, 141 and 142 of Negotiable Instruments Act. The learned Magistrate after taking the case on file, numbered it as C.C.No.93 of 2017. A perusal of the record reveals that the matter was posted on 18.04.2017. On that day, complainant was present but the accused was not present. A perusal of the record reveals that the second respondent filed a petition under Section 317 Cr.P.C. and the matter was posted to 20.04.2017. As per the docket sheet, the complainant was not present on 20.04.2017, 24.04.2017, 27.04.2017 and 02.05.2017. On 02.05.2017, the trial Court dismissed the complaint and acquitted the accused under Section 256 Cr.P.C.

4. A perusal of the record reveals that originally the trial Court posted the matter to 12.05.2017. Thereafter, the date

was strike out and the matter was called on 20.04.2017, 24.04.2017, 27.04.2017 and 02.05.2017. It appears that the complainant did not attend the Court under the *bonafide* impression that the trial Court posted the matter to 12.05.2017. The trial Court dismissed the appeal as if the complainant was not present before the Court on the above referred dates. In such circumstances, if the appeal is not allowed, it may not be possible for the complainant to put forth his case. Even if the appeal is allowed, the same would not cause any prejudice to the second respondent.

5. Taking into consideration the facts and circumstances of the case, this Court is of the considered view that it is a fit case to allow the appeal.

6. In the result, the appeal is allowed, setting aside the docket order dated 02.05.2017 in C.C.No.93 of 2017 dismissing the complaint and acquitting the accused under Section 256 of Cr.P.C. Consequently, C.C.No.93 of 2017 is restored to file and the trial Court is hereby directed to dispose of C.C.No.93 of 2017, afresh, in accordance with law.

T.SUNIL CHOWDARY, J

25th October, 2017,
Rns