

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.898 of 2017

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973, is filed by the appellant, challenging the judgment, dated 21.06.2017, passed in C.C.No.371 of 2016 on the file of the learned IV Additional Chief Metropolitan Magistrate, Visakhapatnam.

2. Heard the learned counsel for the appellant and perused the record.

3. The learned counsel for the appellant would submit that the learned Magistrate dismissed the complaint erroneously. There is no need to make personal attendance of the complainant on each and every date of adjournment. The learned Magistrate ought to have adjourned the case to another day. Dismissal of the complaint, on 21.06.2017, is erroneous and ultimately prayed to allow the appeal.

4. There is no representation for the unofficial 2nd respondent/accused.

5. After commencement of dictation of this order, the learned counsel for the appellant requested to withdraw this Criminal Appeal. Since the matter is heard in detail, it is appropriate to dispose of this Criminal appeal on merits.

6. The appellant has not stated any reason for his absence before the Court below on 21.06.2017. As per the material placed on record, the complaint was posted before the Court below on five

occasions, i.e., on 27.02.2017 for examination, on 06.04.2017 for examination, on 01.05.2017 for examination, on 31.05.2017 for examination and on 13.06.2017 for examination. But the matter was not proceeded with. Ultimately, the learned Magistrate dismissed the complaint for default under Section 256 of Cr.P.C., on 21.06.2017. Section 256 of Cr.P.C. empowers the Magistrate to dismiss a complaint in case of default. In the instant case, certainly there is default on the part of the appellant in pursuing the complaint. Therefore, it cannot be said that the order under challenge is erroneous. It is in tune with Section 256 of Cr.P.C. The Criminal Appeal is devoid of merit and is liable to be dismissed.

7. Accordingly, the Criminal Appeal is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Appeal, shall stand closed.

Dr. SHAMEEM AKTHER, J

23rd November, 2017
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