

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

TUESDAY THE TWENTY NINTH DAY OF AUGUST
TWO THOUSAND AND SEVENTEEN

PRESENT

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE NO. 2348 OF 2013

Between:

M.A. Majeed ... Petitioner

V/s.

M.A. Shabbir,
Managing Director,
Silverline Infrastructure Pvt.Ltd,
Hyderabad & Ors. ... Respondents



Counsel for the Petitioner: Sri Mirza Nisar Ahmed Baig Nizami

Counsel for the Respondents: Public Prosecutor [TG]

The court made the following: [order follows]

HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHYCRIMINAL REVISION CASE NO. 2348 OF 2013O R D E R :

This Criminal Revision Case is filed under section 397 and 401 of Cr.P.C., questioning the propriety and legality of the order passed by the Special Judicial Magistrate of First Class for trial of Prohibition and Excise Offences, Nizamabad in CC.No. 302 of 2010, dated 23/08/2013, whereby the Magistrate dismissed the complaint for non-payment of process to issue NBW against the respondent.

2. The petitioner filed a private complaint under section 200 of Cr.P.C. against the respondent/accused for the offence punishable under section 138 of Negotiable Instruments Act and the Court took the case on file and following necessary procedure under section 200 of Cr.P.C. issued summons to the accused and summon was served on the accused but he did not appear before the Court. Thereafter, the Magistrate ordered Non-bailable warrant subject to payment of process fee. Accordingly

clause [4] of Section 204 of Cr.P.C., when by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

3. In fact, it is clear from the order of trial Court the complainant was absent on the date of passing the order. Nothing prevented the petitioner from payment of process-fee for issuing Non-bailable warrant but obviously for reasons best known to the petitioner he did not pay the process-fee to issue Non-bailable warrant and to proceed further against the respondent/accused.

4. But the counsel for the petitioner contended that when no process-fee is paid the Court can set aside the order and one more opportunity can be granted by exercising the power under section 397 Cr.P.C. The counsel for the petitioner drawn attention of this Court to a un-reported judgment of Madras High Court in **T.N. ANGAMUTHU V/s. AANOOR**

BALASIVASUBRAMANIAM [CRL.RC.No. 266 of 2009, dated 26/6/2015], where the Madras High Court referring the Supreme Court Judgment in **K.S.PANDURANGA V/s. STATE OF KARNATAKA** ¹, held that opportunity should be afforded to the complainant to pay the process-fee once again. But the Apex Court Judgment is on different facts, where the appeal was dismissed for non-appearance of the counsel. The judgment of Madras High Court is not a binding precedent but having its persuasive value. However, taking into consideration of the facts and circumstances of the case, as to how he was prevented from payment of process fee, I deem it appropriate to restore the complaint and afford opportunity to the petitioner to pay process-fee for issuing Non-bailable warrant within ten days from the date of receipt of a copy of the order, by the trial Court persuaded by the judgment of the Madras High Court. Since dismissal of complaint for non-complying any of the provisions of Cr.P.C. except under section 204 [4] of Cr.P.C. therefore, by exercising supervisory jurisdiction under section 397 Cr.P.C.,

¹) [2013] 3 SCC-721

the order passed by the Magistrate in C.C.No. 302 of 2010 dated 23/8/2013 is hereby set aside, restoring the complaint to the file of Special Judicial Magistrate of First Class for trial of Prohibition and Excise Offences, Nizamabad, to its original file and restore the complaint, permitting the petitioner to pay the process-fee for issuing Non-bailable warrant.

5. With the above direction, the Criminal Revision Case is disposed of.

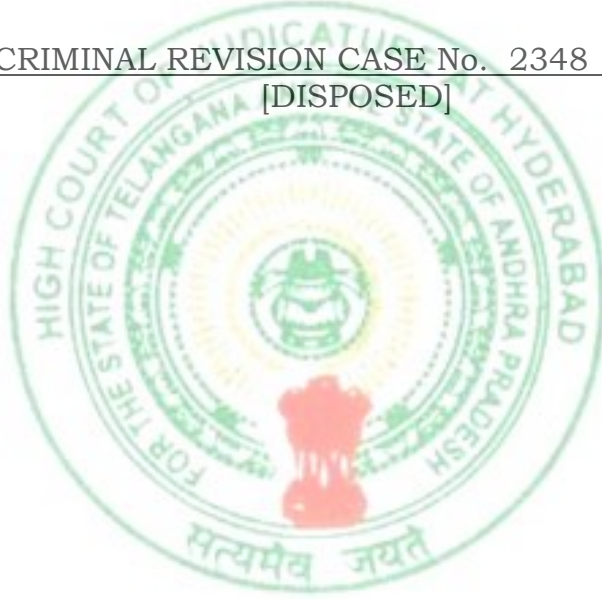
6. As a sequel, miscellaneous petitions if any, pending in this Criminal Revision Case shall stand closed.



JUSTICE SATYANARAYANA MURTHY.

HONOURABLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No. 2348 OF 2013
[DISPOSED]



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