

**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL No. 3296 of 2018**

**O R D E R:**

This criminal appeal is arising out of the order dated 16.3.2016 passed in CC No.81 of 2016 by First Additional Judicial First Class Magistrate, Kadapa.

The appellant is the complainant, who filed a private complaint against respondent No.2/accused for the offence punishable under Section 138 r/w.142 of Negotiable Instruments Act. Since the complainant called absent and there is no representation till 5.00 p.m. and batta is not paid, the said CC was dismissed for default by the trial court vide impugned order dated 16.3.2016. Aggrieved by the same, appellant filed Crl.A.No.191 of 2017 under Section 372 Cr.P.C before the court of Sessions Judge, Kadapa, wherein, the appellant was directed to prefer appeal before this Court under Section 378(4) Cr.P.C. and accordingly, the appellant preferred this appeal.

Heard learned counsel for appellant and learned counsel for respondent No.2.

Learned counsel for appellant would submit that the counsel, who was engaged by the appellant to represent his case, was not present on the date of adjournment and batta was not paid due to which, the complaint was dismissed by the trial court. The appellant was under the impression that the counsel had paid the batta. Therefore, prayed to afford an opportunity to contest the case on merits.

On the other hand, learned counsel for respondent would submit that the lower appellate court had condoned the delay in filing the appeal. However, there is a delay even in filing the present revision. The lower appellate court returned the appeal on 14.2.2018 and the revision was filed before this Court on 27.3.2018 which is well within the time.

The submissions made by learned counsel for respondent No.2 that there is delay in filing the revision does not appear to be correct.

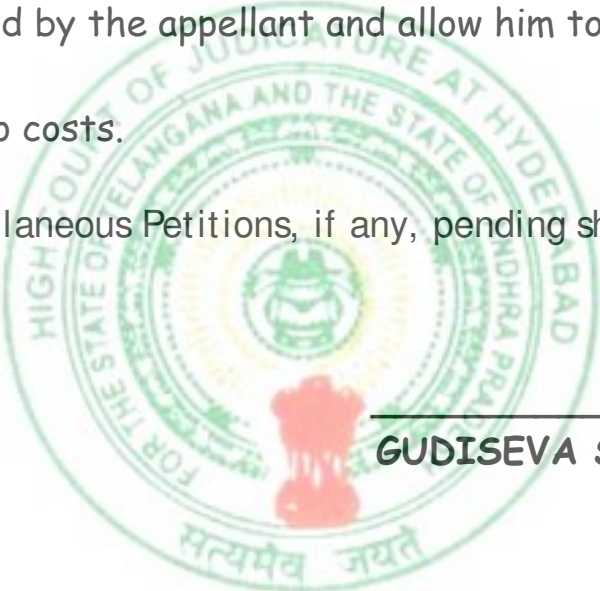
Having regard to the facts and circumstances of the case that the appellant engaged an advocate to represent his case before the trial court, but the counsel was not present on that date, which clearly shows that there is negligence on the part of

the counsel. Otherwise, the appellant would have paid the patta and would have prosecuted the case for dishonor of cheque. Therefore, the impugned order is liable to be set aside.

Accordingly, the civil revision case is allowed and the order dated 16.3.2018 passed in CC No.81 of 2016 on the file of the Court of I Additional Judicial First Class Magistrate, Kadapa, is set aside. The trial court is directed to receive batta in CC No.81 of 2016 paid by the appellant and allow him to contest the case on merits. No costs.

Miscellaneous Petitions, if any, pending shall stand closed.

26.12.2018  
Mjl



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**GUDISEVA SHYAM PRASAD, J**