

THE HON'BLE DR.JUSTICE SHAMEEM AKTHER

CRIMINAL APPEAL No.1014 of 2011

JUDGMENT:

This Criminal Appeal, under Section 378(4) of the Code of Criminal Procedure, 1973, is filed by the appellant/complainant, challenging the order, dated 05.01.2011, passed in C.C.No.580 of 2009 by the Principal Junior Civil Judge, Tanuku, West Godavari District, whereby, the complaint filed by the appellant/complainant for the offences under Sections 138 & 142 of the Negotiable Instruments Act, 1881, read with Section 357 of Cr.P.C., was dismissed for default.

2. Heard the learned counsel for the appellant/complainant, the learned Additional Public Prosecutor representing the 1st respondent-State and perused the record. There is no representation on behalf of the 2nd respondent/accused.

3. The learned counsel for the appellant/complainant would submit that the advocate appearing on behalf of the appellant/complainant before the trial Court met with an accident on 05.01.2011. Therefore, he could not appear before the trial Court on that day. Consequently, the subject Calendar Case was dismissed for default. The appellant/complainant has to be given an opportunity to proceed with the trial of the subject Calendar Case and ultimately prayed to allow the appeal by setting aside the order under challenge.

4. In view of the above submissions, the only point that arises for determination in this appeal is whether the order under challenge passed by the trial Court in the subject Calendar Case is sustainable.

5. A perusal of the order under challenge reveals that on 04.01.2011, the complainant was called absent and there was no representation on his behalf before the trial Court. On 05.01.2011 also, the same was the position before the trial Court. The trial Court, having waited till 04:15 PM on 05.01.2011, dismissed the subject Calendar Case for default, observing that the complainant had no interest in prosecuting the complaint. Now, the learned counsel for the appellant/complainant would contend that the counsel for the appellant/complainant before the trial Court met with the accident and therefore, he could not appear before the trial Court on 05.01.2011. The said contention is not supported by any documentary evidence. It appears that the said contention is invented to file this appeal. The appeal is devoid of merit and is liable to be dismissed.

6. In the result, the appeal is dismissed.

Pending Miscellaneous Petitions, if any, shall stand closed.

13th December, 2018
Bvv

Dr. SHAMEEM AKTHER, J