

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.1186 of 2018

JUDGMENT:

This appeal is arising out of order dated 12.03.2018 passed in C.C.No.279 of 2017 on the file of Special Magistrate, Amalapuram.

2. The appellant is the *defacto* complainant, who has filed a complaint, under Section 138 of Negotiable Instruments Act (N.I. Act), stating that the accused/respondent borrowed an amount of Rs.5,00,000/- on 16.12.2015, and executed a promissory note, in favour of the appellant. Subsequently, the respondent issued a cheque bearing No.528951 dated 13.10.2016, drawn on State Bank of India, Amalapuram, for an amount of Rs.4,00,000/-. On 19.11.2016, when the appellant presented the above cheque to the bank, it was returned with an endorsement "funds insufficient". Accordingly, the appellant got issued a notice to the respondent on 24.11.2016. But it was returned with an endorsement that "the accused left without instructions". Therefore, the appellant filed a complaint before the trial Court.

3. The trial Court vide order, dated 12.03.2018, has passed the following order:

"Complaint is called absent. No representation. Accused absent. Complaint is dismissed under Section 256 Cr.P.C."

4. Aggrieved by the impugned order, the appellant preferred the present appeal.

5. Even in this appeal, there is no appearance on behalf of the appellant. Hence, the appeal is taken up for disposal.

6. As per Section 256 Cr.P.C: **Non-appearance or death of complainant.**

“(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.”

7. On a perusal of the case, it reveals that, the appellant has failed to appear before the trial Court on the day when the matter was called. Therefore, the trial Court has dismissed the case due to the non-appearance of the complainant/ appellant.

8. In view of the above, I find no illegality or perversity in the order passed by the Court below.

9. Finding no merit in the instant appeal, the same is accordingly dismissed at the admission stage.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 12-11-2018

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