

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL APPEL No.995 of 2007

JUDGMENT :

This Criminal Appeal is filed by the complainant aggrieved by the judgment dated 22.6.2007 in CC No. 686 of 2006 passed by the learned II Additional Judicial Magistrate of First Class, Eluru, dismissing the complaint for the failure of the Advocate Commissioner to execute the NBW to secure the presence of the accused in the Court to proceed with in the matter.

2. Notice ordered to the respondent/accused returned un-served as he is not residing in the Village.

3. Heard learned counsel for the appellant and perused the impugned judgment.

4. This Court is constrained to hold the finding on which the trial Court dismissed the complaint quixotic and unsustainable in law. For better comprehension, the operative portion of the judgment is extracted, which is thus:

“28.5.2007: Complainant is present. The Commissioner not executed the warrant. He is directed to execute the warrant by 22.6.2007 and he is also directed to take the assistance of police and the police are directed to assist the complainant in execution of NBW by the commissioner failing which the complaint shall stand dismissed and posted to this day. But today the complainant not complied the condition order passed on 28.5.2007. Hence, the complaint is stands dismissed as per the self serving docket order dated 28.5.2007, the complaint is dismissed, accused is discharged. The Commissioner is directed to return warrant.”

5. It would appear that the trial Court has fixed the date i.e., 22.6.2017 for the advocate commissioner to execute NBW with a direction that the complaint shall stand dismissed if he fails to execute NBW. On the fateful day i.e., 22.6.2007, it would appear the advocate commissioner, for the reasons not mentioned in the impugned order, did not execute the NBW. Hence, the Court basing on its earlier conditional order dated 28.5.2007, dismissed the complaint.

6. This Court is unable to understand what was wrong with the complainant if the advocate commissioner failed to execute the NBW. One can understand if the trial Court made an observation that the complainant did not follow or assist the advocate commissioner in execution of the NBW and on that ground the trial Court dismissed the complaint. However, that is not the situation here, as the trial Court did not make any comment against the conduct of the complainant. On the other hand, the judgment would read that the trial Court on 28.5.2007, instructed the advocate commissioner to take the assistance of police and also directed the police to assist the complainant in execution of NBW. In that scenario, when the advocate commissioner failed to execute the warrant by 22.6.2007, the trial Court, in my considered view, ought to have directed the advocate commissioner to return the warrant and either instructed to seek for alternative mode of serving the notice on the accused or ought to have appointed another advocate commissioner for executing the NBW. Without following any viable options, the trial Court straight away dismissed the complaint. It is a classic example of the principle *actus curiae neminem gravabit* (An act of the Court shall prejudice no man). Hence, in the interest of justice, this Criminal Appeal is allowed and the impugned judgment dated 22.6.2007 in CC No. 686 of 2006 passed by the II Additional Judicial Magistrate of First Class, Eluru is set aside with a direction to the trial Court to issue fresh NBW and appoint fresh

advocate commissioner and direct him to execute the NBW and proceed with the matter.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 18.06.2018
KA

