

THE HON'BLE SRI JUSTICE T. SUNIL CHOWDARY

CRIMINAL APPEAL No.1003 OF 2007

JUDGMENT:

This appeal is filed by the complainant under Section 378(4) of Cr.P.C., assailing the order dated 05.6.2007 in C.C. No.493 of 2004 on the file of the Court of II Additional Judicial Magistrate of First Class at Khammam, wherein and whereby the second respondent-accused was acquitted under Section 256 of Cr.P.C., on the ground that the complainant was absent on that day.

2. This Court issued notice to the second respondent. The second respondent, having received the notice, did not choose to appear and contest the appeal.

3. A perusal of the record reveals that the complainant filed complaint under Section 200 of Cr.P.C., against the accused for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act. On 05.6.2007, the complainant did not appear before the trial Court and the accused was present. The trial Court passed the impugned order acquitting the accused, without adjourning the matter to any further date. There is no material on record to establish that the complainant failed to attend before the trial Court on any prior date of adjournment. A perusal of the record further reveals that the complainant has been attending the Court except on 05.6.2007. For one reason or the other, the complainant could not attend the Court on 05.6.2007. The trial Court, instead of dismissing the complaint, ought to have adjourned the case to some other day. While deciding the matters of this nature, the approach of the Court shall be pragmatic but

not pedantic. If no opportunity was given to the complainant, it may not be possible for him to ventilate his legitimate and legal grievance. On the other hand, even if the complaint is restored by setting aside the impugned order, no prejudice will be caused to the accused.

4. Having regard to the facts and circumstances of the case, this Court is of considered view that it is a fit case to allow the appeal.

5. In the result, the criminal appeal is allowed, setting aside the order dated 05.6.2007 in C.C. No.493 of 2004 on the file of the Court of II Additional Judicial Magistrate of First Class at Khammam; consequently, C.C.No.493 of 2004 is restored. Since the complaint is an old one, the trial Court is hereby directed to dispose of C.C.No.493 of 2004 as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order, without fail. Miscellaneous petitions, if any pending in this appeal shall stand closed.

T. SUNIL CHOWDARY, J

Date: 08.2.2018

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