

THE HON'BLE SRI JUSTICE N.BALAYOGI

Criminal Revision Case No.2204 of 2018

ORDER :

Heard the counsel for the petitioner/accused and the learned Public Prosecutor.

2. This is the revision against the order dated 7.8.2018 passed in Criminal M.P.No.650 of 2008 in Criminal Appeal No.177 of 2015 on the file of the V Additional District & Sessions Judge, Nellore, wherein the appellate court dismissed the petition filed to dispense with the presence of the petitioner/accused. The petitioner/accused in C.C.No.128 of 2014 (old C.C. No.653 of 2011) was convicted and sentenced to undergo simple imprisonment for a period of one year and to pay compensation of Rs.20,00,000/-, in default, to undergo simple imprisonment for a period of 3 months for the offence under Section 138 of the Negotiable Instruments Act. Against the said orders, the petitioner/accused preferred criminal appeal No.177 of 2015 and the same is pending for hearing. The material on record further goes to suggest that the appeal was posted to 1.8.2018 'for judgment'. On the date on which the appeal was posted for judgment, the appellant was absent, therefore, the matter was adjourned to 7.8.2018 'for judgment'. On that day also the appellant was called absent and he filed petition under Section 317 of Cr.P.C. to condone the absence of the petitioner/accused. The said

petition was dismissed and N.B.Ws. were issued to the petitioner/accused and the matter was posted to 14.8.2108 'for judgment'.

3. As per the judgment relied on by the petitioner/accused in *Bani Singh and others v. State of UP* (AIR 1996 SC 2439), the Apex Court held that even if a case is decided on merits in the absence of the appellant, the higher court can remedy the situation if there has been a failure of justice. The Apex Court further held that the High Court erred in dismissing the appeal for non-prosecution simpliciter without examining the merits, therefore, the judgment is set aside.

But, in the present case, the appeal was posted 'for judgment'. During the course of appeal, the petitioner/accused was appearing and on the date on which the appeal was posted 'for judgment', the petitioner/accused was called absent and the matter was adjourned to some other date. On the adjourned date also the appellant was called absent and filed petition under Section 317 of Cr.P.C. to condone the absence of the petitioner/accused. On that, the appellate court dismissed the said petition and issued N.B.Ws. to the petitioner/accused and posted the matter to 14.8.2108 'for judgment'. There has been no failure of justice. The petitioner one way or the other protracting the litigation by absenting himself and causing obstruction to the court of law. The law does not enjoin that the Court shall adjourn the case if both the appellant and his lawyer are absent. If the Court does so as a matter of prudence or indulgence, it

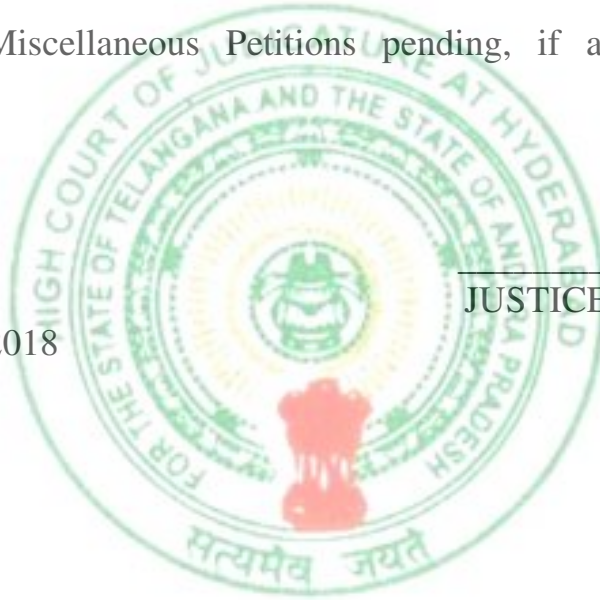
is a different matter, but it is not bound to adjourn the matter. In the instant case, the court below acted as a matter of prudence and intelligence and posted the matter 'for judgment' and issued N.B.Ws. There is no error in the order of the court below.

4. Hence, the Criminal Revision Case is dismissed, while confirming the order dated 7.8.2018 passed in Criminal M.P.No.650 of 2008 in Criminal Appeal No.177 of 2015 on the file of the V Additional District & Sessions Judge, Nellore.

5. Miscellaneous Petitions pending, if any, shall stand closed.

16th August, 2018

skmr



JUSTICE N.BALAYOGI