

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL NO.2858 OF 2018

JUDGMENT:

This appeal arises out of judgment, dated 02.08.2018 passed in C.C.No.145 of 2017 by the II Additional Junior Civil Judge, at Vijayawada, wherein, the complaint filed under Sections 190 and 200 Cr.P.C to punish the accused for the offence punishable under Section 138 r/w 142 of the Negotiable Instruments Act, 1881 and award compensation out of the fine amount under Section 357 Cr.P.C. to the complainant was dismissed under Section 256 Cr.P.C.

2. The trial Court dismissed the complaint as the complainant was called absent and there was no representation on behalf of the complainant. The complainant has not paid the process for execution of N.B.Ws since 10.04.2018. Aggrieved by the impugned judgment, this appeal is preferred by the complainant on the ground that the complainant had wrongly noted dates of adjournments and therefore, he was not present before the Court and consequently, the complaint was dismissed and therefore, sought to set aside the order passed by the trial Court in dismissing the complaint.

3. Heard the arguments of the learned counsel for the appellant and the learned Public Prosecutor.

4. Notice has been served on the 2nd respondent-accused and proof of service is filed, but none appeared on behalf of the 2nd respondent. Section 256 Cr.P.C. reads thus:

“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.

It is obvious that dismissal of complaint for default under Section 256 Cr.P.C. entails the acquittal of the accused. Once an accused has been acquitted of the offence, the law provides a remedy by way of an appeal against the order of acquittal under Section 378 (4) of the Code; *H.P. AGRO INDUSTRIES CORPN. LTD. V M.P.S.CHAWLA* ((1997) 2 Crimes 591 (H & P))”

5. The present appeal is filed under Section 378 (4) Cr.P.C., which reads thus:

“If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.”

6. In the instant case, the appellant is the complainant. The complaint was dismissed for default by the trial Court under Section 256 Cr.P.C. The dismissal of the complaint amounts to acquittal. Therefore, the complainant preferred this appeal and sought leave from this Court under Section 378 (4) Cr.P.C. and accordingly, leave was granted. As far as the merits of the case is concerned, the judgment of the trial Court in dismissing the complaint is not a speaking order. The trial Court simply stated in the judgment that the complainant was absent and process was not paid since 10.04.2018. Therefore, the complaint was dismissed.

7. Learned counsel for the appellant-complainant submits that the appellant had wrongly noted the dates of

adjournments and hence, the complainant was absent on 02.08.2018 and that the counsel for the complainant has also not informed the date of adjournment and failed to pay the process for issue of N.B.Ws. Therefore, non-appearance of the complainant was neither willful nor wanton. The explanation of the complainant reveals that the complainant was not at fault and his counsel has not informed about the date of adjournment and as he did not pay process, he could not prosecute the case. Usually, the counsel used to be present on the date of adjournment and pay process on behalf of the parties. In the instant case, it is stated in the grounds of appeal that the counsel has not informed the date of adjournment to the complainant and he has also not filed process before the trial Court. Therefore, the complaint was dismissed.

8. In view of the grounds mentioned above that the appellant was not at fault, the appellant can be given an opportunity to prosecute the case on payment of process.

9. Accordingly, the Criminal Appeal is allowed setting aside the judgment, dated 02.08.2018 passed in C.C.No.145 of 2017 by the II Additional Junior Civil Judge, at Vijayawada and the complaint is restored to file. The trial Court has already issued N.B.Ws against the respondent-accused. Therefore, the respondent-accused is directed to surrender before the trial Court within a period of one week from the date of receipt of copy of this judgment and on such surrender, his case may be considered for release on bail as per the bail provisions.

GUDISEVA SHYAM PRASAD, J

DATED: 22-10-2018

Hsd