

**HON'BLE SRI JUSTICE U.DURGA PRASAD RAO**

**CRIMINAL REVISION CASE No. 2472 of 2016**

**ORDER:**

This Criminal Revision Case is filed by the petitioner/accused aggrieved by the order dated 3.8.2016 in CrI.R.P No. 58 of 2016 on the file of Metropolitan Sessions Judge, Hyderabad, whereby and whereunder the learned Judge allowed CrI.R.P.No. 58 of 2016 and set aside the order of the lower Court in C.C No. 893 of 2013 dated 29.10.2014, and directed both the parties to appear before the lower Court on 18.8.2016.

2. The III Additional Chief Metropolitan Magistrate, Hyderabad in his order dated 29.10.2014 dismissed the CC with the observation that the complainant was absent and there was no representation till 5.00 PM and the matter was already posted finally but there was no avail and process was not paid. Aggrieved, it appears, respondent/complainant filed CrI.R.P.No. 58 of 2016 and the same was allowed as stated supra.

3. Learned counsel for petitioner would submit that the conduct of the complainant was such that he would never get ready in the matter and on 29.10.2014 also there was no representation on his behalf and he did not pay the process even, and therefore, the trial Court having no other go, dismissed the complaint and there was no fault in the said order and therefore, the learned Metropolitan Sessions Judge ought not to have allowed the CrI.R.P.

4. On the other hand, learned counsel for respondent/complainant supported the order.

5. A perusal of the impugned order in Crl.R.P.No. 58 of 2016 would show that the learned Metropolitan Sessions Judge having found that the complaint was dismissed for non-payment of the process and also considering that it would be better if the matter were to be decided on merits as the valuable rights of the parties were at stake, inclined to give another opportunity to the petitioner to prosecute the case and accordingly allowed the Crl.R.P by following the ruling of the Apex Court reported in *Collector, Land Acquisition, Ananthnagh and Others Vs. MSD Kasturi and Others*<sup>1</sup>.

6. It is informed by both the parties that it is a case under Section 138 of Negotiable Instruments Act and the cheque amount is Rs. 38 lakhs and odd. Of course, the contention of the learned counsel for the petitioner/accused is that he never issued any cheque.

7. Be that as it may, since heavy amount is at stake in the form of cheque, as rightly observed by the learned Metropolitan Sessions Judge, Hyderabad, it would be always better the case is disposed of on merits rather being dismissed on technicalities. Viewing in that perspective, the order of the MSJ cannot be found fault.

8. However, considering the fact that the respondent/complainant was not present till 5.00 PM on that day, in the considered view of this

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<sup>1</sup> AIR 1997 SC 1353

Court, the said petition can be allowed on imposing some terms. Therefore, while sustaining the order in Crl.R.P.No.58 of 2016, the respondent/complainant is directed to pay costs of Rs. 1,000/- before the District Legal Services Authority on or before 14.3.2018. Upon such payment, the trial Court shall proceed further in CC No. 893 of 2013.

9. Accordingly, the Criminal Revision Case is disposed of.

As a sequel there to, miscellaneous applications, pending if any, shall stand closed.

Date: 07.03.2018  
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**U.DURGA PRASAD RAO, J**

