

THE HONOURABLE JUSTICE G. SRI DEVI
CRIMINAL REVISION CASE No.1494 of 2019

ORDER:

This revision is filed under Section 397 read with Section 401 of Cr.P.C., against the order of dismissal dated 05.12.2019 passed in CrI.A.No.130 of 2019 by the learned Principal Sessions Judge, Nalgonda.

2. After due trial, the petitioner was found guilty of the offence under Section 138 of Negotiable Instruments Act, 1881 and convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay compensation of Rs.1,30,000/- within two months, failing which he shall undergo simple imprisonment for two months vide judgment dated 13.09.2019 in C.C.No.1213 of 2014 on the file of the Special Judicial Magistrate of First Class (Prohibition and Excise Offences) Nalgonda. Aggrieved by the same, the petitioner filed CrI.A.No.130 of 2019 on the file of Principal Sessions Judge, Nalgonda, along with a petition for suspension of the sentence. The appellate Court, while suspending the sentence of imprisonment, imposed a condition on the petitioner to deposit 20% of the compensation i.e., Rs.26,000/- on or before 22.11.2019 before the trial Court and directed him to release on bail on his furnishing a personal bond for Rs.10,000/- with two sureties for a like sum each to the satisfaction of the trial Court. However, as the petitioner was called absent on 22.11.2019 and there was no representation on his behalf and for non-compliance of the conditional order, the appeal was posted for dismissal to 05.12.2019,

on which date also, the petitioner was called absent and hence, the appeal was dismissed for default and non-prosecution. Challenging the same, the present revision is filed.

3. Heard learned counsel for the petitioner and perused the order impugned.

4. Learned counsel for the petitioner submits that dismissal of appeal for default and non-prosecution is illegal, arbitrary and unsustainable. He further submits that as the appeal is filed against conviction, the trial Court ought to have perused the record and passed the judgment on merits. He further submits that the trial Court ought to have considered the contentions of the petitioner in proper perspective and ought to have acquitted him for the alleged offence as there was no legally enforceable liability against him. He further submits that the judgment of dismissal passed by the learned Sessions Judge is liable to be set aside.

5. The operative portion of the order dated 05.12.2019 in Crl.A.No.130 of 2019 is extracted as under:

“Today appellant represented. Later on appellant absent, no representation. Hence, the Appeal No.130 of 2019 is dismissed for default and non-prosecution”.

A perusal of the aforesaid order, it is apparent that the appeal was not disposed of on merits, but it was dismissed for default and non-prosecution, which is not permissible under law. Therefore, the order passed by the learned Principal Sessions Judge is liable to be set aside on this score only and accordingly, the same is set aside. However, the revision petitioner is directed to appear before the

appellate Court on 20.01.2020 positively, and he shall comply with the condition imposed by the appellate Court in Crl.M.P.No.1007 of 2019 in Crl.A.No.130 of 2019 on the same day. Thereafter, the learned Sessions Judge shall proceed with the appeal in accordance with law.

6. With the aforesaid directions, the Criminal Revision Case is disposed of.

7. Miscellaneous applications, if any pending in this revision, shall stand closed.

31st December, 2019

sj

G. SRI DEVI, J

