

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL APPEAL No.311 of 2019

JUDGMENT:

This Criminal Appeal is filed under Section 378 (4) of the Criminal Procedure Code seeking to set-aside the order, dated 19.01.2019 passed in C.C.No.418 of 2010 on the file of the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Shadnagar and to restore C.C.No.418 of 2010.

The facts in issue are as under:

The appellant herein filed a private complaint against the 2nd respondent for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, which came to be numbered as C.C.No.418 of 2010. On 19.01.2019 there was no representation on behalf of the complainant. On the said date the complainant and accused were not present before the Court. Hence, the learned Magistrate dismissed the complaint for default.

Heard the learned counsel for the appellant, the learned Additional Public Prosecutor appearing for first respondent-State and perused the record.

A perusal of the material placed before the Court would indicate that the case is still at the stage of examination of the accused. The reason given by the appellant for his absence was that due to ill health he could not appear before the Court on 19.01.2019. Since the amount involved in the case is Rs.5,00,000/-

the counsel for the appellant submits that atleast an opportunity may be given to him by restoring the complaint on to its file.

It is true that there was no representation on behalf of the complainant on 19.01.2019. The complaint is still at the stage of examination of accused and non-bailable warrants are pending against him. As the amount involved is Rs.5,00,000/- it would be appropriate to give an opportunity to the complainant. In view of the above, this Court is inclined to restore the complaint on to its file.

Accordingly, the Criminal Petition is allowed by setting aside the order, dated 19.01.2019 passed in C.C.No.418 of 2010 on the file of the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class, Shadnagar and the complaint in C.C.No.418 of 2010 is restored to its file. The appellant/complainant is directed to appear before the Court concerned on 17.01.2020 and to file process as directed by the trial Court.

As a sequel thereto, Miscellaneous Petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

02.01.2020
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