

THE HON'BLE SMT. JUSTICE JUVVADI SRIDEVI

CRIMINAL APPEAL No.582 OF 2022

JUDGMENT:

This Criminal Appeal, under Section 378 of Cr.P.C. is filed by the appellant/complainant, challenging the docket order, dated 10.08.2022, passed in C.C.No.407 of 2017 by the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class Special (Mobile) Court at Kamareddy, whereby, the complaint of the appellant/complainant was dismissed by the Court below under Section 256 of Cr.P.C.

2. I have heard the submissions of the learned counsel for the appellant/complainant and perused the record. Learned counsel for the appellant/complainant has filed a memo in USR No.16306 of 2023 along with the postal cover stating that the notice sent to Respondent No.2/accused returned with the postal endorsement "party refused". A perusal of the returned postal cover makes it clear that there is an endorsement on the said cover as "party refused". Under these circumstances, the notice is deemed to be served on the Respondent No.2/accused. The Respondent No.2/accused did not enter appearance.

3. Learned counsel for the appellant/complainant would submit that the appellant/complainant has filed complaint against the Respondent No.2/accused under Section 138 of N.I. Act *vide* C.C.No.407 of 2017. The appellant/complainant was ready with the Chief Affidavit to adduce his evidence on 10.08.2022, but due to heavy traffic jam and congestion, the appellant/complainant and his counsel could not reach the Court during the call work. The Court below dismissed the complaint under Section 256 of Cr.P.C. during the call work itself holding that 33 adjournments were already granted to the complainant, but complainant did not appear before the Court and failed to affirm his chief affidavit and mark any documents on his behalf. The rights of the appellant/complainant cannot be axed at the threshold, which may result in irreparable loss to the appellant/complainant and ultimately requested to grant one more opportunity to the appellant/complainant to putforth his case before the Court below.

4. The absence of the appellant/complainant before the Court below on the date of passing of the impugned docket order, dated 10.08.2022 appears to be non-deliberate. The case of the appellant/complainant is that he was ready with the Chief Affidavit to adduce his evidence on 10.08.2022, due to heavy traffic jam and congestion, the appellant/complainant and his counsel could

not reach the Court during the call work. Having regard to the facts and circumstances of the case, this Court deems it appropriate to afford one more opportunity to the appellant/complainant to pursue the matter on payment of costs. Further, no prejudice would be caused to the Respondent No.2/accused, if the impugned order is set aside directing the Court below to dispose of the matter after affording opportunity to both the sides.

5. Accordingly, the Criminal Appeal stands allowed and the impugned docket order, dated 10.08.2022 passed in C.C.No.407 of 2017 by the Additional Junior Civil Judge-cum-Judicial Magistrate of First Class Special (Mobile) Court at Kamareddy, stands set aside. Consequently, the subject C.C.No.407 of 2017 stands restored to its file on payment of costs of Rs.1,000/- to the District Legal Services Authority, Kamareddy, within two weeks from the date of receipt of a copy of this order.

Miscellaneous applications, if any, pending in this Criminal Appeal shall stand closed.

JUVVADI SRIDEVI, J

21st February, 2023

Ksk