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25.11
2024
Ct. No. 237

C.R.A.(SB) 174 of 2024
K.R. Srinivas
Vs.
Surendra Chakraborty & Anr.

Mr. Amit Ranjan Pati
Ms. Swastika Chowdhury

...For the Petitioner/Appellant

Affidavit-of-service and affidavit-in-reply filed on behalf of the appellant are kept with the record.

Respondents are not represented.

Appellant/complainant herein initiated a criminal proceeding under Section 138 of the Negotiable Instruments Act for alleged dishonor of cheque amounting to Rs. 1 lakh.

It is submitted by the petitioner that the accused/ opposite party herein was not diligent in appearing before the Court. However, 26th June, 2024 was fixed for cross examination of PW 1 and since the accused was not represented on that day the Trial Court was pleased to issue warrant of arrest against the accused fixing on 19th September, 2024 for execution report.

In the meantime the accused voluntarily surrendered before the Court. But his bail prayer was rejected and next date was fixed on 31st July, 2024 for cross-examination of complainant's witnesses. On 19th July the accused person again filed a put up petition and moved a bail application when his bail prayer was allowed by the Court fixing 31st July, 2024 for cross-examination by the accused.

However, the next date was not allegedly communicated by the

learned Counsel for the petitioner to the complainant and as such no step was taken on 31st July, 2024 when the Court below was pleased to ask the complainant to file show cause by 27th August, 2024 and it is submitted that since complainant was under the impression that the next date is on 19th September, 2024, so, on 27th August, 2024 he failed to take any step and the Court below invoking its jurisdiction under Section 256 of the Code of Criminal Procedure acquitted the accused and thereby dismissed the complaint.

Having considered the facts and circumstances of the case and submissions made on behalf of the appellant that by an earlier order next day was fixed on 19th September, 2024 and that due to the laches on the part of the Advocate appearing on behalf of the complainant in the Court below might have caused miscommunication about preponement of date, the Court below instead of acquitting the accused, ought to have given an opportunity to the complainant and in such situation he ought to have adjourned the case, at best by imposing cost. The power given under section 256 must be exercised reasonably and only in a case where the complainant has failed to appear without any just cause. In such view of the matter, the Court was not justified in dismissing the complaint and thereby acquitting the accused person.

The appeal, being C.R.A. (SB) 174 of 2024 is accordingly allowed. The order of acquittal dated 27th August, 2024 passed by the Court below in C.R. 171 of 2017 is hereby set aside. The cases is

remanded to the Court below for further trial from the stage where it reached before the order of acquittal.

Since, the matter is pending for a considerable period of time, the Court below is directed to make every endeavour for expeditious disposal of the case and to conclude the entire proceeding preferably within a period of 12 (twelve) weeks from the date of communication of this order.

Urgent Photostat certified copy of this order, if applied for, be given to the parties, on priority basis, upon compliance of all necessary formalities.

(Dr. Ajoy Kumar Mukherjee, J.)