

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

Criminal Appeal No.601 OF 2005

Between:

R. Vararaj

... Appellant

And

The State of Andhra Pradesh,
rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad & Ors
Respondents

...

DATE OF JUDGMENT PRONOUNCED: 22.07.2022

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

* THE HON'BLE SRI JUSTICE K.SURENDER

+ CRL.A. No.601 of 2005

% Dated 22.07.2022

R. Vararaj

... Appellant

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rep. by its Public Prosecutor,
High Court for the State of A.P,
Hyderabad & Ors
..Respondent.

! **Counsel for the Appellant:** G. Dhananjai

^ **Counsel for the Respondent:** Public Prosecutor

>HEAD NOTE:

? Cases referred

THE HON'BLE SRI JUSTICE K.SURENDER

CRIMINAL APPEAL No.601 OF 2005

JUDGMENT:

1. This Criminal Appeal is filed against the order passed by the Additional Judicial First Class Magistrate, East and North, Ranga Reddy District at L.B.Nagar, in C.C.No.814 of 2002, dated 22.09.2004.

2. The learned Additional Judicial First Class Magistrate passed docket order on 22.09.2004 which reads as follows;

“Both parties are absent. Petition filed under Section 317 Cr.P.C. for A2 is allowed. Complainant is absent. Their advocates are absent. Process not paid, for issuance of NBW against A1. Hence complainant is dismissed, for default. Both accused are discharged.”

3. Aggrieved by the said dismissal of the complaint which was filed under Sections 418, 420, 427, 441, 468, 506 of Indian Penal Code read with section 34 and 120 B of Indian Penal Code, against respondents 1 and 2, the appellant, who is the complainant in the said case filed the present appeal.

4. Learned counsel appearing for the appellant/complainant would submit that a private complaint was filed by the appellant herein against the two respondents on the basis of

which the Magistrate had taken cognizance and issued summons to the respondents. Since the respondents never appeared in the Court after service of summons, the learned Magistrate issued NBWs to the respondents on 16.08.2002. The learned counsel further submits that the respondents / Accused Nos.1 and 2 were in jail in another case. The learned Magistrate ordered fresh process to be paid for the issuance of NBWs on 27.08.2004 and the case was posted to 22.09.2004. However, the learned Magistrate passed the order of dismissal of the complaint erroneously. The absence of the complainant on the said date was not intentional and an opportunity has to be granted to the complainant to prosecute the case against respondents 1 and 2.

5. None appeared for the respondents/accused. The learned Magistrate having taken cognizance of the complaint, registered the case as C.C.No.814 of 2002 and the same was pending for the appearance of the accused. The case being a private complaint it is for the complainant to prosecute his complaint diligently and the absence of the complainant would entail dismissal for default.

6. As seen from the order of the learned Magistrate, both the parties i.e. complainant and the accused were absent. Advocates were absent and the process was not paid for issuance of NBW against A1. In the said circumstances, the learned Magistrate thought it fit to dismiss the complaint for non-prosecution.

7. In case of private complaints, the procedure to be followed is under Chapter XV of Cr.P.C. On the basis of complaint the Magistrate examines the complaint and takes cognizance under Section 200 of Cr.P.C. Section 204 clause 4 of Cr.P.C. prescribes issuance of process.

Section 204 of Cr.P.C reads as follows;

“204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons- case, he shall issue his summons for the attendance of the accused, or

(b) a warrant- case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear

at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub- section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process- fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.”

8. Though the discretion of the learned Magistrate is wide under Section 204 clause 4 of Cr.P.C., the same shall be used with care and caution. Any dismissal of complaint would adversely affect the complainant and also give undue advantage to the accused.

9. However, in the present facts and circumstances, the complaint was filed in the year 2002 and for two years though Non-Bailable Warrants were pending, the complainant had not taken any steps to pay requisite process. In the said

circumstances, it was apparent that the complainant was not interested in prosecuting his own case. Having filed the complaint it is for the complainant to prosecute his case with due diligence. On failure to proceed with the case diligently by following the procedure prescribed under Cr.P.C., the Court will not have no other option but to dismiss the complaint.

10. In the said circumstances of the case wherein the C.C is of the year 2002, dismissed in the year 2004, appeal filed in the year 2005 and though the case had come up earlier on several occasions, there was no representation in the said case. The absence on several dates would go to show that the appellant is not willing to prosecute the case, as such, presently after a lapse of 20 years, no useful purpose would be served. However, since there is no illegality committed by the learned Magistrate in dismissing the complaint, I see no grounds to interfere with the said order of dismissal.

11. Accordingly, the appeal is dismissed. As a sequel thereto, miscellaneous applications, if any, shall stand closed.

K.SURENDER, J

Date:22.07.2022
tk

HON'BLE SRI JUSTICE K.SURENDER

Crl.A.No.601 of 2005

Dated:22.07.2022

tk