

HONOURABLE SRI JUSTICE RAJA ELANGO

CRIMINAL APPEAL No.555 OF 2016

JUDGMENT:

This criminal appeal is filed by the complainant - appellant by invoking provisions under Section 378 (4) of the Code of Criminal Procedure being aggrieved by the docket order, dated 20.05.2016, passed in C.C. No.222 of 2014, by the Judicial Magistrate of First Class, Jangareddygudem.

The appellant filed a complaint under Section 138 of the Negotiable Instruments Act (for short 'NI Act') against the 1<sup>st</sup> respondent before the Court of Judicial Magistrate of First Class, Jangareddygudem, complaining that the 1<sup>st</sup> respondent borrowed an amount of Rs.1,00,000/- from him on 25.11.2012 for his business purpose by executing a promissory note, agreeing to repay the said amount with interest at 24% per annum, but he failed to repay the said amount. Subsequently, on repeated demands, the 1<sup>st</sup> respondent issued a cheque for Rs.90,000/- to the appellant towards part payment of the amount. When the appellant presented the said cheque in his bank, the same was dishonoured for the reason of 'Account Closed.' Therefore, the appellant filed a complaint against the 1<sup>st</sup> respondent for the offence under Section 138 of the NI Act. The case was numbered as CC No.222 of 2014. On 20.05.2016, as the appellant - complainant was absent before the trial Court, the trial Court dismissed the complaint for default and acquitted the 1<sup>st</sup> respondent for the offence under Section 138 of the NI Act. Challenging the same, the present criminal appeal is filed.

Even though notice was served on the 1<sup>st</sup> respondent, there is no representation on his behalf. Heard the learned counsel for the petitioner and perused the material available on record.

Learned counsel for the petitioner submitted that the petitioner was regularly attended the trial Court on all hearing dates and on 01.04.2016, the trial Court issued fresh warrants against the accused and posted the matter to 29.06.2016; that in the meantime, the accused approached the trial Court on 29.04.2016 and filed a petition to recall the warrants pending against him and he was released on bail and the matter was posted to 03.05.2016, 10.05.2016 and 20.05.2016; and since the petitioner has no knowledge about the adjournments of the case, he could not appear before the trial Court on the above dates and hence, the case was dismissed for default.

Considering the facts and circumstances of the case and also in view of the submissions made by the learned counsel for the petitioner, this Court is inclined to pass the following order:

The Criminal Appeal is allowed and the Judicial Magistrate of First Class, Jangareddygudem, is directed to restore CC No.222 of 2014 to its file, after issuing notice to the 1<sup>st</sup> respondent - accused and dispose of the CC in accordance with law. The miscellaneous petitions pending, if any, shall also stand closed.

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RAJA ELANGO, J

October 14, 2016.  
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