

HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.604 of 2016

JUDGMENT:

This appeal is filed by the complainant challenging the order dated 13.4.2015 passed by the IV Special Magistrate, Kukatpally at Miyapur, in C.C.No.121 of 2014.

The appellant filed a complaint against the 1st respondent for the offence punishable under Section 138 of the Negotiable Instruments Act before the VIII Additional Chief Metropolitan Magistrate, Cyberabad at Rajendranagar and the same was numbered as C.C.No.1423 of 2013. The learned Magistrate issued summons to the 1st respondent. The summons were also served on the 1st respondent. Even after issuance of summons as the 1st respondent failed to appear, the learned Magistrate issued NBWs against him. While so, as per the orders of the Apex Court, the above C.C. was transferred to the IV Special Magistrate, Kukatpally at Miyapur and the said case was renumbered as C.C.No.121 of 2014 and summons were issued to the 1st respondent afresh. As the 1st respondent failed to appear in spite of service of summons, NBWs were issued against him on 27.11.2014. Pending execution of the same, on 13.4.2015 the appellant did not appear before the Court below as he was hospitalized from 20.3.2015 to 22.4.2015. As there was no representation on behalf of the appellant-complainant, the learned Special Magistrate dismissed the complaint vide order under appeal. Aggrieved by the same, the appellant-complainant filed this appeal.

Heard and perused the material available on record.

Learned Counsel for the appellant submitted that NBWs are pending against the 1st respondent and after issuance of NBWs, the appellant filed the process within time and that the appellant was hospitalized from 20.3.2015 till 22.4.2015 and therefore, he did not

appear before the Court below, and his absence is not willful and wanton.

Considering the facts and circumstances of the case and the submissions made by the learned Counsel for the appellant, this Court is inclined to restore the above C.C.

Accordingly, the Criminal Appeal is allowed setting aside the order dated 13.4.2015 passed in C.C.No.121 of 2014 by the IV Special Magistrate, Kukatpally at Miyapur. Consequently, C.C.No.121 of 2014 is restored. Miscellaneous petitions pending, if any in this appeal, shall stand closed.

RAJA ELANGO, J

18th July 2016

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