

HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL APPEAL No.666 of 2016

JUDGMENT:

This appeal is filed by the complainant challenging the order dated 19.8.2015 passed by the V Additional Chief Metropolitan Magistrate, Vijayawada, in C.C.No.184 of 2015.

The appellant filed a complaint in the above C.C. against respondents 1 and 2 for the offence punishable under Section 138 of the Negotiable Instruments Act. The learned Magistrate issued NBWs against the accused from time to time and finally, the matter was posted for execution of NBW, to 19.8.2015. On that day, the appellant was absent as he was suffering from fever and his Counsel was also absent. Therefore, the learned Magistrate dismissed the above C.C. for default and for non-payment of continuation of batta. 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 respondents 1 and 2 and that the continuation of batta was paid on 23.4.2015 and that the trial Court failed to observe the same and that as the petitioner was suffering from fever, he did not appear before the Court below on 19.8.2015 and that 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 19.8.2015 passed in C.C.No.184 of 2015 by the V Additional chief Metropolitan Magistrate, Vijayawada. Consequently, C.C.No.184 of 2015 is restored and the learned Magistrate is directed to proceed in accordance with law. Miscellaneous petitions pending, if any in this appeal, shall stand closed.

26th July 2016

Nn

RAJA ELANGO, J

HONOURABLE SRI JUSTICE RAJA ELANGO

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