

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL APPEAL No.1743 of 2018

JUDGMENT :

This Criminal Appeal is arising out of the judgment dated 25.04.2018 in C.C.No.258 of 2017 passed by the learned X Special Magistrate, Kukatpally, Cyberabad, Ranga Reddy District.

The appellant is the complainant, who had filed a complaint under Sections 190 and 200 of Cr.P.C. before the learned X Special Magistrate, Kukatpally, Cyberabad, Ranga Reddy District, against respondent No.1/Accused alleging that he had committed an offence under Section 138 of the Negotiable Instruments Act, 1881. During the trial, the evidence of PW.1 was recorded and the case was coming up for defence evidence and on 25.04.2018 the complainant was called absent and there was also no representation on his behalf. As he has also not paid the process for service of Non-bailable Warrant against the Accused, the trial Court has dismissed the complaint and acquitted the accused, vide impugned judgment dated 25.04.2018. Aggrieved by the same, the appellant/complainant has preferred the present Criminal Appeal.

Heard Sri V. Eswaraiah Chowdary, learned counsel for the appellant/complainant and the learned Public Prosecutor

for respondent No.2-State. The learned counsel for respondent No.1/Accused is not present. Perused the material on record.

Learned counsel for the appellant mainly submits that the counsel representing the complainant before the trial Court was not present and paid the process, the complaint was dismissed by the trial Court. It is further submitted that as the trial Court has already recorded the evidence of PW.1 and the accused has got the cross-examination done, the trial Court ought to have disposed of C.C.No.258 of 2017 on merits, instead of dismissing the complaint.

As far as the provision under Section 256 Cr.P.C. is concerned, if the Court finds that non-appearance of the complainant, the trial Court may acquit the Accused, unless for some reason it thinks fit and proper to adjourn the hearing to some other date.

Admittedly, the case was coming up for defence evidence. The trial Court issued NBWs against the Accused for his appearance and the process has to be paid by the complainant. As the complainant failed to pay the process, the complaint was dismissed under Section 256 of Cr.P.C. and the accused was acquitted.

The trial Court also invoked the provision under Section 204(4) of Cr.P.C. for dismissal of the complaint. Clause (4) of Section 204 Cr.P.C., reads as under:

“Section 204 - Issue of Process:

(1) to (3)

(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.”

At this juncture, it is appropriate to refer to the impugned order passed by the trial Court, which reads as under, to find out whether the dismissal is in accordance with law.

“Dated: 25.04.2018:

Complainant absent, no representation. Passed over, Court waited till 5.00 P.M., complainant absent, no representation. Process not paid. Hence the complaint is dismissed U/Sec. 256, 204(4) Cr.P.C. and 235(2) Cr.P.C. Accused is acquitted. The bail bonds of accused shall stands cancelled.”

A perusal of the impugned order dated 25.04.2018 reveals that the provision under Section 204(4) of Cr.P.C. is not complied with. The said provision says that if any fees are not paid within a reasonable time, the complaint may be dismissed. In the instant case, the learned Magistrate has not mentioned anything in his order as to when the NBW was issued and when the fee was ordered to be paid. Therefore,

the impugned order is cryptic and do not reflect compliance of the provision under Section 204(4) Cr.P.C.

On the other hand, the complainant has already been examined and his evidence as PW.1 was recorded and he was cross-examined by the learned counsel for the Accused. Therefore, the only course left open for the trial Court was to consider the evidence of respondent No.1/Accused as 'nil' and pass orders basing on the evidence available on record. However, instead of following the said procedure, the trial Court had dismissed the complaint as the process was not paid. The particulars about the process also were not mentioned in the order. Therefore, the order passed by the trial Court is liable to be set aside.

Accordingly, this Criminal Appeal is allowed setting aside the impugned judgment dated 25.04.2018 in C.C.No.258 of 2017. The trial Court is directed to dispose of the matter on merits and the appellant/complainant is directed to deposit process for issuance of process as per the provision under Section 204 Cr.P.C.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

GUDISEVA SHYAM PRASAD, J

26.12.2018

NOTE: Issue C.C. in one week.
(B/O)
Msr

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26.12.2018
Msr