

**HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL No.1750 of 2018**

**ORDER:**

This Criminal Appeal is arising out of docket order dated 15.6.2016 passed in CC No.464 of 2015 on the file of III Additional Judicial Magistrate of First Class, Rajahmundry, East Godavari District.

2. The petitioner filed a complaint under Section 200 CrPC against the respondent Vide docket order dated 15.6.2016, the learned Magistrate has passed order, as under :

*“Accused present. In spite of several conditional orders the complainant failed to appear before this court, and there is no representation on behalf of the complainant it shows the complainant has no interest to proceed further by conducting trial. Under those circumstances this court left with no appearance except to proceed with next step.*

*In the result, this case is dismissed for default, accordingly the accused is acquitted. “*

3. Aggrieved by the said order, the appellant/ complainant filed Criminal Appeal before the lower appellate Court. The learned Sessions Judge vide order dated 23.02.2018 has directed to return the appeal to concerned advocate to prefer appeal before this Court. Hence, the present appeal has been filed.

4. The complaint was dismissed under Section 256 Cr.P.C.

As per Section 256 Cr.P.C: **Non-appearance or death of complainant.**

*“(1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day*

*subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day: Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.”*

5. The provision deals with non-appearance or death of complainant. If the complainant is represented by a pleader or by the officer conducting prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case. However, the learned Magistrate has not given any reasons for dismissing the complaint except the reasons stating that the complainant was absent on that particular day. The learned Magistrate ought to have stated that the presence of the complainant was necessary on that particular day for proceeding further with the case. In view of the absence of any reasons mentioned in the order it shows that the learned Magistrate has not exercised its discretion properly in view of the provision under Section 256 Cr.P.C.

6. Having regard to the facts and circumstances of the case, it is obvious that it is only a mistake committed by the appellant in noting down the date of adjournment. The mistake was neither wanton nor intentional. On the other hand the criminal appeal was not dismissed on merits by the lower

appellate Court and no reasonable grounds are brought on record for rejecting the claim of the appellant.

7. In view of the above discussion, the Criminal Appeal is allowed setting aside the order dated 15.6.2016 passed in CC No.464 of 2015 by the trial Court.

8. The trial Court is directed to dispose of the case mentioned above within six (06) months from the date of receipt of a copy of this order.

Miscellaneous Petitions, if any pending, shall stand closed.

Date : 19-11-2018.  
ISL/gvl

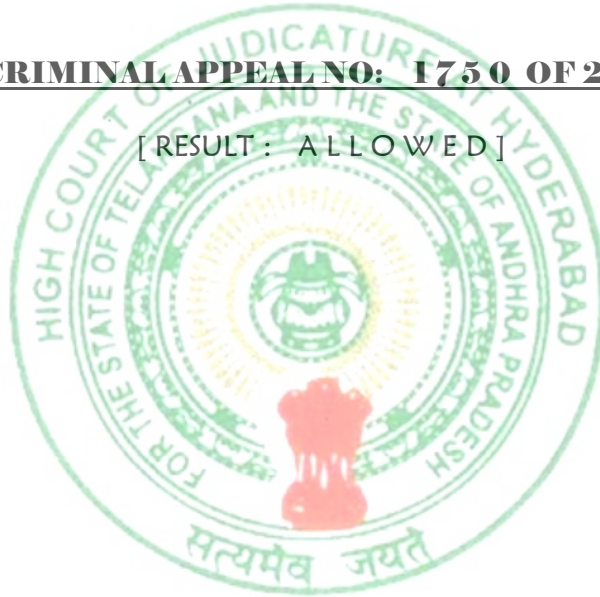


**GUDISEVA SHYAM PRASAD, J.**

**HONOURABLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

**CRIMINAL APPEAL NO: 1750 OF 2018**

[ RESULT : ALLOWED ]



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