

THE HON'BLE Dr. JUSTICE G. RADHA RANI

CRIMINAL APPEAL No.462 OF 2022

ORDER:

This Criminal Appeal is preferred by the appellant-complainant aggrieved by the order dated 30.03.2022 in STC No.2738 of 2021 on the file of XII Metropolitan Magistrate, Hyderabad, wherein the complaint filed by him under Section 138 of the Negotiable Instruments Act (for short 'NI Act') was dismissed for non-prosecution.

2. Heard learned counsel for the appellant. There is no representation by the learned counsel for the 1st respondent.

3. The learned counsel for the appellant submitted that the trial court erroneously dismissed the complaint on the ground that the appellant was absent, ignoring that the appellant was absent only on two adjournments and the case was dismissed on the third date of hearing. The date of hearing of the case was on 21.01.2022, however, due to Covid-19 pandemic situation and in view of the circular issued by this Court vide ROC No.394/SO/2020 dated 17.01.2022, the case

was adjourned to 23.02.2022. On 23.02.2022, the appellant's representative Mr. Anil Kumar could not reach the court in time and by the time he reached, the matter was called and adjourned to 30.03.2022. On 30.03.2022, as the representative of the appellant was suffering with high grade fever and body pains, he could not attend the court. The counsel on record for the appellant was also out of station, as such, there was no representation on behalf of the appellant-complainant. The court ought to have appreciated that on 30.03.2022, the presence of the appellant-complainant was not necessary as by that date, the accused had not made his appearance and was not examined under Section 251 Cr.P.C. The presence of the appellant-complainant was mandatory only after the appearance of the 1st respondent-accused, as such dismissal of complaint was wholly unwarranted.

4. He further submitted that the trial court failed to appreciate that the subject cheque was for a sum of Rs.53,00,000/- and huge stakes were involved and more particularly, the appellant society was formed with a virtuous object to cater the financial needs of its members and was answerable to its members for the recovery of amounts from defaulting members and prayed to allow the appeal by setting aside

the judgment dated 30.03.2022 passed in STC No.2738 of 2021 by the XII Metropolitan Magistrate, Hyderabad.

5. He relied upon the judgments of the Hon'ble Apex Court in **Associated Cement Co.Ltd. v. Keshavanand¹** and **Mohd. Azeem v. A. Venkatesh and another²**.

6. Perused the record. The record would disclose that the trial court dismissed the STC filed by the complainant due to his absence on 30.03.2022. The Hon'ble Apex Court in the **Associated Cement Co.Ltd.**'s case (1 supra) held that:

“17. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the magistrate shall not acquit the accused. Second is, when the magistrate considers that personal attendance of the complainant is not necessary on that day the magistrate has the power to dispense with his attendance and proceed with the case. When the court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

¹ (1998) 1 SCC 687

² (2002) 7 SCC 726

7. The trial court failed to state in the dismissal order for what reasons the presence of the complainant was necessary before the court on the said date. As submitted by the learned counsel for the appellant, it was only on the third date of hearing the matter was dismissed for non-appearance of the complainant.

8. The Hon'ble Apex Court in **Mohd.Azeem's** case (2 supra) also held that for one singular default in appearance on the part of the complainant, dismissal of complaint was not proper. The record also would disclose that the subject cheque was for a sum of Rs.53,00,000/- and huge stakes were involved in the case. Dismissal of the complaint would cause irreparable injury to the complainant as the complainant was a Society formed to cater the financial needs of its members and was answerable to its members for the recovery of amounts from defaulting persons. Hence, it is considered fit to allow the appeal by setting aside the impugned order.

9. In the result, the Criminal Appeal is allowed setting aside the judgment dated 30.03.2022 in STC No.2738 of 2021 on the file of XII Metropolitan Magistrate, Hyderabad and directing the trial court to

restore the STC in the interest of justice. However, the appellant-complainant is also directed to be diligent enough in prosecuting the matter in future.

Pending miscellaneous petitions, if any, shall stand closed.

Dr. G. RADHA RANI, J

November 07, 2022
KTL