



HIGH COURT OF ANDHRA PRADESH
FRIDAY ,THE FOURTH DAY OF FEBRUARY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
CRIMINAL REVISION CASE NO: 123 OF 2008

Between:

1. SREE LAKSHMI SAI SREE FINANCE , Sri C.Srinivasa Reddy, S/o.
Krishna Reddy,
R/o. Marteru Village and Penmantra Mandal,
West Godavari District

...PETITIONER(S)

AND:

1. THE STATE OF A.P., REP BY PP AND ANOTHER, rep.by its Public
Prosecutor,
High Court of A.P.,
Hyderabad
2. Nayanarapu Tilak, S/o. Adamu,
DTC Office,
Chodimella (chintaala Pudi Road)
Eluru,
West Godavari District

...RESPONDENTS

Counsel for the Petitioner(s): SAI GANGADHAR CHAMARTY

Counsel for the Respondents: PUBLIC PROSECUTOR

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI****CRIMINAL REVISION CASE No.123 of 2008****JUDGMENT:-**

(through virtual mode)

1. By means of this petition under Section 397 and 401 of the Code of Criminal Procedure (for short "Cr.P.C."), the petitioner/complainant is challenging the order, dated 31.12.2007 passed in C.C.No.790 of 2004 on the file of the Court of II Additional Judicial First Class Magistrate, Tanuku by which his complaint was dismissed, under Section 204 (4) Cr.P.C, as the complainant was absent and had not filed the publication.

2. The revision was admitted on 18.02.2008 and notice was issued to the respondent No.2 on 26.02.2008 through Court of II Additional Judicial Magistrate of I Class, Tanuku. As per the office report, the notice sent to respondent No.2 has not yet returned. In view thereof, as the notice was sent on 26.02.2008, about 14 years back through Court and has not been returned unserved, the notice on respondent No.2 is deemed to be sufficient. No representation from the side of the respondent No.2.

3. The petitioner filed complaint under Sections 138/142 of the Negotiable Instruments Act (the N.I. Act) against the respondent No.2 on the averments *inter alia* that the complainant, is a partnership firm carrying on the business of maintaining books of account in the regular course of its business. The accused/respondent No.2 borrowed an amount of Rs.45,000/- (Rupees forty-five thousand only) from the complainant and executed a promissory note on 18.04.2004 agreeing to repay the loan with interest at 24% per annum and in discharge of such



liability, the accused gave a cheque bearing No.707427 on 28.05.2004 for Rs.45,000/- (Rupees forty-five thousand only) drawn on Andhra Bank, Bhimavaram. The cheque on presentation in the bank was dishonored due to 'funds insufficient' on 19.09.2004, upon which the complainant served a statutory notice to the accused on 18.10.2004, but neither any reply was submitted nor the payment was made by the accused/respondent No.2.

4. Sri Raghu Prasad, learned counsel, representing Sri Sai Gangadhar Chamarty, learned counsel for the petitioner/revisionist submits that the case proceeded on various dates, but on one date 31.12.2007, the complainant was absent and consequently the complaint was dismissed under Section 204 (4) Cr.P.C. He submits that the complainant was diligently prosecuting the case and except on 31.12.2007 at no point of time he was absent, and even the absence 31.07.2007 was, due to the fact that the complainant suffered with viral fever and was advised bed rest. The learned Magistrate ought to have considered that valuable right of complainant was involved and ought to have fixed some other date instead of dismissing the complaint for the single absence.

5. Sri S.Venkata Sainath, learned Special Assistant Public Prosecutor, fairly submits that the dismissal of the complaint for the single absence of the complainant is not the sound exercise of judicial discretion and has very fairly placed before the Court, the judgment of the Hon'ble Apex Court in the case of **Mohd. Azeem vs. A.Venkatesh and Another**¹, in which the Hon'ble Apex Court observed that for the absence of one single date, the Magistrate in its discretion ought not to have dismissed the complaint.

¹ 2002 7 SCC 726



6. I have considered the submissions advanced and perused the material on record.

7. From perusal of the order, dated 31.12.2007, it is evident that the dismissal of the complaint is under Section 204 (4) Cr.P.C. as the complainant was absent on that date and the publication was not filed.

8. Section 204 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") provides for issuance of process and sub-section (4) thereof provides that where 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. Section 204 of Cr.P.C is being reproduced as under:-

"204. Issue of process.

(1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be-

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction.

(2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing every summons or warrant issued under sub-section (1) shall be accompanied by a copy of such complaint.

(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."

9. Section 204 (4) Cr.P.C confers the power on the Magistrate to dismiss the complaint where the process is not filed. The exercise of the power by the Magistrate to dismiss the complaint under Section 204(4) or for the non appearance of the complainant, is discretionary which requires to be exercised judiciously, for advancement of the cause of justice. It is well settled in view of ***Mansram Sharma v. S.P.Pathak and others***², that where the power is conferred to effectuate a purpose, it has to be exercised in a reasonable manner.

10. In ***Associated Cement Company Limited v. keshwanand*** : AIR 1998 SC 596, the Honorable Supreme Court held that when the court notices that the complainant is absent on a particular date, the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. The discretion must be exercised judicially and fairly without impairing the cause of administration of criminal justice.

11. In Mohd. Azeem (supra), the Hon'ble Supreme Court held that for one singular default in appearance on the part of the complainant, the dismissal of the complaint was not proper and the Magistrate as also the High Court adopted a very strict and unjust attitude resulting in failure of justice.

12. The complaint was filed under Section 138 N.I. Act. Normally in such cases the complainant is having a stake. The purpose of

² 1984 1 SCC 125



the enactment of N.I. Act is also to provide security to the creditors by ensuring compensation to the complainant and the intent of the legislature in providing a criminal sanction for dishonor of cheques is to ensure, not necessarily the imposition of sentence of imprisonment but to encourage to settle the dispute which is beneficial to both the complainant, as it results in early recovery of money, as also to the accused who is benefitted by avoidance of a conviction and sentence.

13. Considering the object of Section 138 of N.I.Act, and the power being discretionary with the Magistrate to dismiss the complaint for the absence of the petitioner, but to be exercised judicially to provide opportunity of hearing. I find that the complaint ought not to have been dismissed in default for the absence on 31.12.2007, by taking a strict view. The learned Magistrate ought to have adjourned the case, to some other date to afford opportunity to the petitioner to do what was required to be done on 31.12.2007, for advancement of justice.

14. The cause shown for the petitioner's absence i.e., that the petitioner was suffering from viral fever and other illness, this Court has no reason to disbelieve.

15. For all the aforesaid reasons, the impugned order, dated 31.12.2007 is set aside and the complaint is restored to its number on the file of the Court concerned.

16. Let the complainant/petitioner appear before the concerned Court upon which the Court shall proceed with the complaint in accordance with law.

17. It is hereby clarified that this Court has not expressed any view on the merits of controversy between the parties.



18. The revision is allowed in the aforesaid terms.

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

RAVI NATH TILHARI,J

Date: 04.02.2022

Note:

L.R copy to be marked.

B/o.

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THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

CRIMINAL REVISION CASE No.123 of 2008

Date: 04.02.2022

Scs