
(2003) 06 AP CK 0045
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 644 of 1995

Ampolu Apparrao	Vs	APPELLANT
Public Prosecutor		RESPONDENT

Date of Decision : 23-06-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2003) 6 ALD 156 : (2003) 2 ALT(Cri) 187 : (2004) 1 BC 348 : (2003) 4 RCR(Criminal) 298

Hon'ble Judges : M. Narayana Reddy, J

Bench : Single Bench

Advocate : Kuriti Bhaskara Rao, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Narayana Reddy, J.—This Judgment, according to Law, based on the legal material placed on Record, arises out of a Criminal Appeal, filed by the sole appellant, against respondent 1 and respondent 2, under Sub-section (4) of Section 378, Cr.P.C., 1973, questioning the validity and legality of the adjudications made by and set forth in para 2, *infra*.

2. Orders, dated 21.4.1995, of the Court of the III Metropolitan Magistrate, Visakhapatnam (Trial Court), made in C.C.No. 15/94, of its file.

3. Perused the material papers of the Record.

4. Arguments were heard.

5. The sole appellant herein is the sole complainant in the said C.C. No. 15/94, on the file of the said Trial Court. Respondent 2 herein is the sole accused therein. The parties are, hereinafter, referred to, as such, as in that C.C. No. 15/94, unless, otherwise, so specified. Respondent 1 -State herein is impleaded, as such, for the first time, as per Rule requirement.

6. The sole complainant filed a private complaint, against the sole accused, in that Trial Court, for punishing the sole accused u/s 138 of the Negotiable Instruments Act.

7. As disclosed by the impugned Orders, which are very short, that Court dismissed that complaint and acquitted the sole accused, u/s 256, Cr.P.C., 1973, because, on 21.4.1995, being the date of the impugned orders, neither the complainant, nor, his Pleader, was present.

8. After perusing the now impugned Orders, vis-a-vis, the Grounds to Appeal questioning the same, vis-a-vis, the arguments of the learned Counsel, I am of the opinion, that, for absence on one occasion, the complaint should not be dismissed, in the interest of substantial Criminal justice, unless, the Court is of the opinion, that, the complainant has been trying to protract the matter to harass the accused, unnecessarily, or, deliberately, mala fide, or, with ulterior motive, and the like, in such rare cases, only. Lest, in my opinion, always substantial Criminal justice should be preferred, as against technical justice of default orders.

9. Hence, in the interest of substantial Criminal justice, and to give reasonable opportunities to the complainant, I am of the opinion, that, the impugned Orders should be set aside, and the directions, as under, should be given.

10. Hence, the High Court both hereby adjudicate upon the Criminal Appeal, as under:

I. Set aside, the impugned Orders, set forth in para 2, supra;

II. Consequently, directing the III Metropolitan Magistrate, Visakhapatnam, to restore C.C. No. 15/94, to its file, and to give due notices of such restoration, to the complainant and the accused and, thereafter, to proceed with the case and adjudicate thereupon, according to law, at the earliest, as the case is of the year 1994.