
(2014) 06 AP CK 0069
In the Andhra Pradesh High Court
Case No : Criminal Appeal No. 359 of 2007

K. Sangameshwar

APPELLANT

Vs

Chand Pasha

RESPONDENT

Date of Decision : 26-06-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 258 378(4)
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2015) 2 ALT(Cri) 193

Hon'ble Judges : C. Praveen Kumar, J

Bench : Single Bench

Advocate : B. Rama Rao, Advocate for the Appellant;

Final Decision : Allowed

Judgement

C. Praveen Kumar, J.

1. The present appeal is filed by the complainant under Section 378(4) Cr.P.C. aggrieved by the judgment dated 18.10.2006 passed in C.C. No. 411 of 2003 on the file of Judicial Magistrate of First Class, Tandur. The appellant/complainant filed a private complaint against the accused for an offence punishable under Section 138 of the Negotiable Instrument Act. On 11.10.2006 the Judicial Magistrate of First Class, Tandur passed the following order:

"Complainant absent. Accused called absent. NBW pending. It is the matter of 2003, if the complainant failed to take steps to execute the NBW by next date of hearing, the C.C. stands dismissed. Call on 18.10.2006."

2. On 18.10.2006 neither the complainant nor the accused were present before the Court and N.B.W. issued against the accused were still pending. Since the complainant did not comply with the order dated 11.10.2006, the learned Magistrate acquitted the accused. Aggrieved by the same, the present appeal is filed.

3. Heard the learned counsel for the appellant.

4. A perusal of the impugned order would show that the N.B.Ws. issued against the accused are pending till the said date. The learned counsel for the appellant mainly submits that the conditional order dated 11.10.2006 wherein the complainant was directed to get N.B.Ws. executed by the next date of hearing failing which the impugned order of acquitting the accused is illegal and erroneous. A perusal of the order would show that on 11.10.2006 and 18.10.2006, neither the complainant nor the accused were present before the Court. When the N.B.Ws. issued against the accused were still pending, the question of complainant being present before the Court on those dates is of no use. His absence on that day does not in anyway affect the progress of the case. The said issue came up for consideration before this Court on number of occasions. In C.K. Sivaraman Achari Vs. D.K. Agarwall and Another, , the Kerala High Court held as under:

"While maintaining the presumption of the innocence of the accused, the Court should not be harsh towards the complainant. The reasons for absence of the complainant can be numerous including sometimes beyond his control or some times frivolous. Even though the Magistrate is not bound by the provisions of the Statute to do so, there is nothing wrong in adjourning the case to another date so that he may satisfy himself that the absence of the complainant was not due to lack of diligence. Or if the complainants presence is not required on the particular day, he may dispense with his attendance and proceed with the case. In all such cases, the Magistrate is expected to take stock of the whole situation before he uses his discretion and decides the course to be followed. He should not view the absence of the complainant as a short-cut for disposal of the case."

In Priyadarshini Cements Limited, Hyderabad v. State of Andhra Pradesh and another (2) 2002 (2) ALT (CrI.) 47 (A.P.): 2002 (2) ALD (CrI.) 5 (AP) this Court while dealing with a similar situation held that the complaint cannot be dismissed unless the presence of the complainant is necessary on the date of hearing for the progress of the case. Similar view was taken by this Court in Venkateswara Tea Traders Vs. Madhu Agencies and The State of A.P., .

5. Further, non-compliance of the condition imposed by the court i.e., execution of N.B.Ws. by the complainant leading to dismissal of the complaint, appears to be illegal and improper. Order 447 in Chapter 25 of the A.P. Police Manual, which deals with arrest, custody, bail and remand, reads as under:

Order 447(3) reads as under:

"1. xxxxxxxxxxxxxxxxxxxx

2. xxxxxxxxxxxxxxxxxxxx

3. The warrants are eitherailable or non-ailable. In respect ofailable warrants the arrestee should be released on bail when he offers the required security and in respect of non-ailable warrants the police officer has no

discretion, and the person must be produced before the concerned Court. Prompt execution of warrant is one of the foremost duties of the police and should receive high priority.

6. A reading of the said provision makes it clear that N.B.Ws. have to be executed only by the Police Officer and the same should be done on high priority. The criminal procedure Code does not anywhere prescribe any mode of execution of the warrants or the authority which should execute the warrant. As per the police manual it is only the police who have to execute the warrants. Neither the Code of Criminal Procedure nor the Criminal Rules of Practice contemplate execution of N.B.Ws. by the complainant, more so in a case arising out of a private complaint. Even Section 258 Cr.P.C. only gives power to the Magistrate to close a case arising otherwise than on a private complaint. There is no provision in the code which permits a Magistrate to dismiss a complaint due to non execution of warrants pending against the accused. Therefore, the condition imposed by the Magistrate in directing the complainant in the private complaint filed under Section 138 of N.I. Act to execute the N.B.Ws. is illegal and incorrect.

7. For the aforesaid reasons and taking into consideration the judgments referred to above, I deem it appropriate that an opportunity ought to have been given to the complainant to contest the matter on merits and the same ought not have been dismissed at the threshold, more so due to non-compliance of the order dated 11.10.2006. Accordingly, the criminal appeal is allowed by setting aside the order dated 18.10.2006 passed in C.C. No. 411 of 2003 on the file of the Judicial Magistrate of First Class, Tandur.

As a sequel thereto, Miscellaneous Petitions pending if any in this criminal appeal, shall stand closed.