

APHC010189652023



**IN THE HIGH COURT OF ANDHRA
PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**



[3396]

**TUESDAY, THE TENTH DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE SMT.JUSTICE VENKATA JYOTHIRMAI PRATAPA

CRIMINAL APPEAL NO: 333/2023

Between:

- 1.P.CHANDRA SEKHAR REDDY, (DIED PER LRS 2 AND 3)
- 2.P. SANDEEP KUMAR, S/O. LATE P. CHANDRA SEKHAR REDDY 10-21, ABBIREDDYGARI STREET, CHENNUR, YSR KADAPA, ANDHRA PRADESH
- 3.SOBHA RANAMMA, W/O. LATE P. CHANDRA SEKHAR REDDY 10-21, ABBIREDDYGARI STREET, CHENNUR, YSR KADAPA, ANDHRA PRADESH

...APPELLANT(S)

AND

- 1.THE STATE OF ANDHRA PRADESH, REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF ANDHRA PRADESH, AMARAVATI
- 2.GUMMADI VENKATESWARULU, S/O. KOTAIAH, AGED ABOUT 68 YEARS, HINDU, R/O. JUBILEE HILLS, HYDERABAD

...RESPONDENT(S):

Counsel for the Appellant(S):

- 1.SODUM ANVESHA

Counsel for the Respondent(S):

- 1.RAJA REDDY KONETI
- 2.PUBLIC PROSECUTOR (AP)

The Court made the following:

JUDGMENT:

Impugning the judgment dated 09.12.2022 passed in C.C.No.93 of 2014
by the I Additional Judicial Magistrate of First Class, Proddatur for the offence

under Section 138 read with 142 of the Negotiable Instruments Act, 1881¹, the Appellants preferred the present appeal.

2. Heard Sri Ch.Chaitanya Bhargava Sarma, learned counsel representing Ms.Sodum Anvesha, learned counsel for the Appellants and Sri Raja Reddy Koneti, learned counsel for Respondent No.2.

3. Learned counsel for the Appellants would submit that C.C.No.93 of 2014 was dismissed for default for the absence of the Appellants before the trial Court and thereby acquitted the Respondent No.2 / Accused under Section 256 read with 204(4) Cr.P.C. Learned counsel would further submit that the Complainant was present before the trial Court on several occasions. Learned counsel would further submit that the Complainant was examined-in-chief as P.W.1 and was also cross examined on 13.10.2017 and thereafter could not appear during Covid time. It is submitted that, the Complainant suffered from old age ailments and subsequently died on 13.05.2022, but unfortunately, the same was not brought to the notice of the trial Court. Learned counsel would submit that Respondent No.2/Accused filed Crl.P.No.4162 of 2019 before this Court and obtained stay of further proceedings before the trial Court until further orders and in view of the subsistence of the stay order, the presence of the Complainant is also not necessary. In support of his contentions, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in **BLS Infrastructure Limited v. Rajwant Singh and Others**².

¹ For short 'the N.I.Act'

² (2023) 4 SCC 326

4. Learned counsel for Respondent No.2/Accused would submit that the Complainant neither led further evidence nor closed his evidence and was continuously absent. Learned counsel would further submit that, no application was filed before the trial Court to condone the absence of the Complainant. Learned counsel would further submit that, the present case is one of the cases filed against the Respondent No.2/Accused and out of the said cases, Accused was acquitted from two cases. Learned counsel would finally submit that the learned trial Judge exercised the discretion after giving several opportunities to the Complainant. There are no grounds to interfere with the impugned judgment. Hence, prayed for dismissal of the appeal.

5. Admittedly, the Complainant filed a private complaint in C.C.No.93 of 2014 on the file of the Court of I Additional Judicial Magistrate of First Class, Proddatur for the offence under Section 138 read with 142 of the N.I.Act for the dishonour of cheque issued by the Accused. During trial, the Complainant was examined as P.W.1, documents were marked on his behalf and was also cross examined at length on 13.10.2017 before the trial Court. Subsequently, the learned trial Judge *vide* judgment dated 09.12.2022 dismissed the complaint for default for the absence of the Complainant and consequently acquitted the Accused under Section 256 read with 204(4) Cr.P.C. At this stage, it is apposite to extract Section 256 Cr.P.C which reads as under:

“256. 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.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death."

6. A plain reading of the proviso to sub-section (1) of Section 256 would show that, where the Magistrate is satisfied that the personal attendance of the Complainant is not necessary, he can dispense with the attendance of the Complainant and proceed with the case. Such a situation may arise where Complainant's evidence has been recorded and to decide the case on merits, Complainant's presence is not necessary. In the instant case, a bare perusal of the material on record would show that, trial was commenced in the above case, the Complainant was also examined as P.W.1. Subsequently, though the Complainant died, the same could not be brought to the notice of the trial Court. As such, for non-appearance of the Complainant the complaint was dismissed for default.

7. In the facts and circumstances of the case, this Court is of the view that, since the Complainant had already been examined as a witness in the present case, it would not be appropriate for the Court to pass an order of acquittal merely for non-appearance of the Complainant. The judgment relied on by the learned counsel for Appellants is squarely applicable to the facts of the present case. As such, the order of acquittal is liable to be set aside directing

the learned trial Judge to proceed further in the above case from the stage where it reached before the order of acquittal.

8. In the result, the Criminal Appeal is allowed, setting aside the judgment dated 09.12.2022 passed in C.C.No.93 of 2014 on the file of the Court of I Additional Judicial Magistrate of First Class, Proddatur. The proceedings in the case shall stand restored and the learned trial Judge shall proceed further in C.C.No.93 of 2014 in accordance with law.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date:10.12.2024

Dinesh

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

Crl.A.No.333 of 2023

Dt.10.12.2024

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