

M/S Good Coffee Supplies Vs M/S Pragathee Coffee And Tea Supply Co.

Court: Karnataka High Court At Bengaluru

Date of Decision: Jan. 22, 2025

Acts Referred: Negotiable Instruments Act, 1881 " Section 138

Hon'ble Judges: Shivashankar Amarannavar, J

Bench: Single Bench

Advocate: Harinath M S, M J Alva

Final Decision: Allowed

Judgement

Shivashankar Amarannavar, J

1. This appeal is filed by the appellant " complainant praying to set-aside the order dated 14.11.2018 passed in C.C.No.8010/2018 by the XXI

Additional Chief Metropolitan Magistrate, Bengaluru, whereunder, the complaint of the appellant " complainant came to be dismissed for non

prosecution.

2. The appellant " complainant had initiated the proceedings against the respondent " accused for the offence under Section 138 of the Negotiable

Instruments Act, 1881 (for short hereinafter referred to as "N.I.Act"), and it was pending on the file of the XXI Additional Chief

Metropolitan Magistrate, Bengaluru in C.C.No.8010/2018. The said case was listed for cross examination of PW1 " complainant on 14.11.2018. On

that day, noting the absence of the appellant " complainant and his counsel, the complaint came to be dismissed for non prosecution. The said order

has been challenged by the appellant " complainant in this appeal.

3. Heard learned counsel for the appellant " complainant and learned counsel for the respondent " accused. With the consent of both the

counsels, even though the matter is listed for admission, it is taken up for final disposal.

4. Learned counsel for the appellant " complainant would contend that the appellant " complainant could not present himself on 14.11.2018 due to

puncture of his bike when he was going along with his counsel on the said bike and they reached the Court premises late, meanwhile, the complaint

was dismissed for non prosecution. He further submits that the absence of the appellant " complainant on that day was for bonafide reason. With

this, he prayed for allowing the appeal and restoration of the criminal case.

5. Learned counsel for the respondent Ã¢â¬ accused would contend that the appellant Ã¢â¬ complainant is not diligent in prosecuting his case. He was

absent on 23.10.2018 and also on 14.11.2018. Considering the absence of the appellant Ã¢â¬ complainant, the learned Magistrate has rightly dismissed

his complaint for non prosecution. With this, he prayed for dismissal of the appeal.

6. Having heard the learned counsels, the Court has perused the impugned order and the other materials placed on record.

7. The appellant Ã¢â¬ complainant had initiated the proceedings against the respondent Ã¢â¬ accused for the offence under Section 138 of the N.I.Act

and it was pending on the file of XXI Additional Chief Metropolitan Magistrate, Bengaluru in C.C.No.8010/2018. The said case came to be listed on

20.09.2018 for cross examination of PW1 Ã¢â¬ complainant. On that day, the respondent Ã¢â¬ accused was absent and cross examination was deferred

and the case was ordered to be listed on 23.10.2018. On 23.10.2018, the appellant Ã¢â¬ complainant was absent and the application has been filed for

exemption of presence of the appellant Ã¢â¬ complainant and it was allowed. On that day, the respondent Ã¢â¬ accused has changed his counsel and the

new counsel has filed the N.O.C vakalath for the respondent Ã¢â¬ accused and the case was adjourned for cross examination to 14.11.2018. On

14.11.2018, the appellant Ã¢â¬ complainant was absent. Noting the absence of the appellant Ã¢â¬ complainant and his counsel, the complaint came to be

dismissed for non prosecution. In Paragraph 7 of the appeal memo, it is stated that the appellant Ã¢â¬ complainant and his counsel were coming on the

bike and it was punctured and therefore, they could not attend the Court on that day. The absence of the appellant Ã¢â¬ complainant on 14.11.2018 is

for bonafide reason. Considering the said aspect, the appellant Ã¢â¬ complainant has made out case for allowing the appeal and restoration of the

criminal case. In the result, the following;

ORDER

The appeal is allowed. The impugned order dated 14.11.2018 passed in C.C.No.8010/2018 by the XXI Additional Chief Metropolitan Magistrate,

Bengaluru is set-aside and the criminal case is ordered to be restored. The appellant Ã¢â¬ complainant and the respondent Ã¢â¬ accused are directed to

appear before the Trial Court on 25.02.2025, without awaiting for any Court notice.