

(2002) 11 AP CK 0003

Andhra Pradesh High Court

Case No: Criminal Petition No. 5063 of 2002

Devi Pesticides Pvt. Ltd. and Sri
Rama Murthy

APPELLANT

Vs

Sri Sai Balaji Fertilisers and
Another

RESPONDENT

Date of Decision: Nov. 11, 2002

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 82, 83
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2004) 3 ALD 2 : (2003) 1 ALT(Cri) 127

Hon'ble Judges: C.Y. Somayajulu, J

Bench: Single Bench

Advocate: M.S. Tirumala Rani, for the Appellant; Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.Y. Somayajulu, J.

Petitioner filed C.C. No. 385 of 1995 against the 1st respondent for offence u/s 138 of Negotiable Instruments Act. The Court took cognizance of the offence and it appears that the N.B.W. issued to the 1st respondent could not be executed. A Commissioner seems to have been appointed to facilitate execution of the N.B.W. by the police. On 18-9-2002 the Commissioner filed a report that the N.B.W. could not be executed. On such report, the learned Magistrate passed the following order:

"This is a case of year 1995.

If the complainant fails to produce the accused on the next date of hearing by taking appropriate steps, complaint will be dismissed for default".

2. The above order of the learned Magistrate is being questioned by the petitioner/complainant in this petition.

3. Since the accused would not be in the hands of the complainant, it is not for the complainant to secure the presence of the accused. If the police are unable to execute the N.B.W., issued against the accused, it is for the Court to take appropriate steps and proceed against the police for their laches and negligence in not executing the N.B.W., and filing a report before the Court. The Court instead of pulling up the police officials for their laches and inability to execute the N.B.W., erred in trying to penalize the petitioner-complainant for the laches or negligence or inability of the police to execute the N.B.W. The question of dismissing a complaint for default, which was filed u/s 138 of Negotiable Instruments Act, does not and cannot arise as long as the complainant is present in Court, more so because the Court is unable to secure the presence of the accused due to the inability or otherwise of the police personnel. The learned Magistrate should remember that it is the duty of the Court and the police to secure the presence of the accused in a case, and it is no part of the duty of the complainant to secure the presence of the accused. The learned Magistrate should also have kept in view that Sections 82 and 83 of Cr. P.C. authorise him to issue proclamations and attachment of the property of the absconding accused. So he ought to have taken appropriate steps and given directions to the police to secure the presence of the accused, and was in error in directing the petitioner/complainant to secure the presence of the accused.

4. Therefore the order directing the complainant to secure the presence of the accused passed by the learned Magistrate is wholly unsustainable and is liable to be set aside and is set aside.

5. Petition is ordered accordingly.