

(2001) 12 AP CK 0029

Andhra Pradesh High Court

Case No: Criminal Appeal No's. 606 and 654 of 1997

Priyadarshini Cements Limited
and

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision: Dec. 19, 2001

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 251, 256, 256(1), 378
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2002) 2 ALD(Cri) 5 : (2002) 2 ALT(Cri) 47 : (2002) CriLJ 4465

Hon'ble Judges: E. Dharma Rao, J

Bench: Single Bench

Advocate: Goverdhan Venu and A. Rameshbabu, for the Appellant; Public Prosecutor and M.V.S. Prasad, for the Respondent

Final Decision: Allowed

Judgement

E. Dharma Rao, J.

Criminal Appeal No. 606 of 1997 is filed against the order of the learned V Metropolitan Magistrate, Hyderabad dated 21-8-1996 made in C.C. No. 721 of 1994 dismissing the complaint filed by the appellant-complainant u/s 256 of Cr.P.C. and acquitting the respondent-accused.

2. Criminal Appeal No. 654 of 1997 is filed aggrieved by the order of the learned XI Metropolitan Magistrate, Secunderabad dated 6-3-1996 in C.C. No. 881 of 1994 dismissing the complaint filed by the appellant-complainant u/s 256 of Cr.P.C. and acquitting the respondent-accused which was confirmed by the learned IV Additional Metropolitan Sessions Judge, Hyderabad by his judgment dated 30-9-1996 in Criminal Appeal No. 171 of 1996.

3. The question that arises for consideration in both these criminal appeals is as to whether the respective complaints filed by the appellants-complainants can be

dismissed u/s 256 of Cr.P.C. in the facts and circumstances of the case.

4. Since the question that arises for consideration in both these Criminal Appeals is one and the same, these appeals can be disposed of by this common judgment,

5. The facts leading to the filing of these appeals may briefly be noted as under :

The appellant-complainant in Criminal Appeal No. 606 of 1997 is a company registered under the Companies Act, 1956 and it manufactures cement at its factory. The respondent-accused has taken cement from the appellant-complainant company from time to time on credit basis and in that transaction he fell due an amount of Rs. 61,147/- to the appellant-complainant company. In discharge of the said debt, the respondent-accused issued a cheque for Rs. 61,147/- in favour of the appellant-complainant company. When the said cheque was presented by the appellant-complainant company in the bank for realisation, it was dishonoured due to insufficient funds. Hence, the appellant-complainant filed a complaint u/s 138 of the Negotiable Instruments Act, 1881 in C.C. No. 721 of 1994 on the file of the learned V Metropolitan Magistrate, Hyderabad. On 21-8-1996 as the appellant-complainant was absent before the court below the said complaint was dismissed u/s 256 of Cr.P.C. by the learned Magistrate and thereby acquitted the respondent-accused.

6. Similarly, the appellant-complainant in Cri. A. No. 654 of 1997 filed a private complaint against the respondent-accused for the offence punishable u/s 138 of the Negotiable Instruments Act, 1881 before the learned XI Metropolitan Magistrate, Secunderabad and the same was taken on file as C.C. No. 881 of 1994. On 6-3-1996 the said complaint was dismissed u/s 256 of Cr.P.C. on the ground that the appellant-complainant failed to appear before the court and thereby acquitted the respondent-accused. Aggrieved by the said order, the appellant-complainant preferred an appeal before the learned IV Additional Metropolitan Sessions Judge, Hyderabad in Cri. A. No. 171 of 1996. The learned Sessions Judge, after adverting to the provisions of Sections 256 and 378 of Cr.P.C, dismissed the said appeal holding that the appeal against the order of acquittal lies only to the High Court and not to the Sessions Court. The learned Sessions Judge also went into the merits of the case and found that the learned Magistrate has given sufficient opportunity to the appellant-complainant and adjourned the matter from time to time and in spite of such opportunity the appellant-complainant failed to appear before the matter and observing so dismissed the appeal.

7. The contention of the learned Counsel for the appellant-complainant in Cri. A. No. 606 of 1997 is that the complaint was filed on 23-9-1994 and the examination of accused u/s 251, Cr.P.C. could not take place till 2-11 -1995 as the accused was not before the Court and a non-available warrant was issued against him and subsequently also trial could not be taken up for non-appearance of the accused before the Court. It is further contended that on 21-8-1996 on which date the

complaint was dismissed, the representative of the appellant-complainant company could not present before the court during the call work as his mother fell ill, and he could be present before the court at about 2-30 p.m., on the same day, by which time he came to know that the complaint was already dismissed by the learned Magistrate. The learned Counsel further contended that except on the said date, on all other dates of hearing the representative of the complainant-company was present before the court, but the learned Magistrate without considering the above facts dismissed the complaint which resulted in grave injustice to the complainant-company. The learned Counsel also contends that the absence of the representative of the complainant-company on that particular day is not intentional one and it was beyond his control and, therefore, prayed to allow the appeal.

8. The learned Counsel for the appellant-complainant in CrI. A. No. 654 of 1997 contended that on 15-2-1996 the appellant-complainant was informed by his counsel appearing in the lower Court that the case was adjourned to 8-3-1996 instead of 6-3-1996 and on 8-3-1996 when he went to the Court he was informed by the Bench Clerk that his complaint was dismissed on 6-3-1996 itself in the call work for his non-appearance. The appellant-complainant was also informed that no representation was made on his behalf by his Advocate. He submits that the non-appearance of the complainant on 6-3-1996 is only due to wrongly noting the date of adjournment by his counsel and not for any other reason and for the mistake of his counsel in wrongly noting down the date of adjournment, the appellant-complainant should not be penalised and therefore, prayed to allow the appeal.

9. On the other hand, the learned Counsel appearing on behalf of the respondents-accused in both the appeals supported the orders of the Courts below and prayed that the appeals be dismissed. .

10. For brevity and better understanding of the matter, it is expedient to extract Section 256, Cr.P.C. which reads as follows :

(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 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 the 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.

11. A reading of the above section in its entirety would reveal that two constraints are imposed on the Court for exercising the power under the said Section. First is, if the Court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day, the Court must consider whether personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reasons. If the situation does not justify the case being adjourned, the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary, then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore, be exercised judicially and fairly without impairing the cause of administration of criminal justice.

12. I have perused the impugned orders under appeals. A perusal of the order in C. C. No. 721 against which CrI. Appeal No. 606 of 1997 is filed would reveal that the learned Magistrate simply dismissed the complaint u/s 256, Cr.P.C. and acquitted the accused stating that the complainant was absent on that day i.e. on 21-8-1996 without recording any reasons whatsoever. Similarly in C. C. No. 881 of 1994 the learned XI Metropolitan Magistrate also dismissed the complaint u/s 256, Cr.P.C. on the ground of non-appearance of the complainant and acquitted the accused. In both the cases, the complainants have given their explanation for their absence on the day on which the complainants were dismissed. But the learned Magistrates without taking into consideration the explanation given by the complainants for their absence and without considering the provisions of Section 256, Cr.P.C. have dismissed the complaints filed by the complainants. As noticed above, two constraints are imposed on the Court for exercising the power u/s 256 of Cr.P.C. Firstly, if the Court thinks that in a situation it is proper to adjourn the hearing, then the Magistrate shall not acquit the accused. Secondly, when the Magistrate considers that personal attendance of the complainant is not necessary on that day, the Magistrate has the power to dispense with his attendance and proceed with the case. The Court also must notice that whether the presence of the complainant on that particular day is essential for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in Section 256 of Cr.P.C. Therefore, the discretion by the Court must be exercised judicially and fairly without impairing the cause of administration of criminal justice.

13. My above view is fortified by the judgment of the Supreme Court in [Associated Cement Co. Ltd. Vs. Keshvanand](#), wherein it is held that the complaint shall not be axed down if the presence of the complainant on that day was quite unnecessary.

14. It is seen from the record that the learned Magistrates in both the cases have not recorded any reasons for dismissing the complaints u/s 256 of Cr.P.C. It is also seen that the learned Magistrates have not taken into consideration the explanation offered by the complainants for their absence on that particular days. The learned Magistrates also did not notice that the presence of the complainants on those particular days was essential and their presence hindered the progress of the case. The learned Magistrates passed the impugned orders in a casual and mechanical manner without having any regard to the loss that would cause to the complainants.

15. For the foregoing reasons, I hold that the Courts below have committed a irregularity and illegality in dismissing the complaints u/s 256 of Cr.P.C. Therefore, the orders under challenge are liable to be set .aside.

16. In the circumstances, the order-dated 21-8-1996 in C. C. No. 721 of 1994- on the file of the learned V Metropolitan Magistrate, Hyderabad is set aside. The complaint in the said C. C. shall stand restored to its original file for disposal on merits in accordance with law.

17. Similarly, the order dated 6-3-1996 in C. C. No. 881 of 1994 on the file of the learned XI Metropolitan Magistrate, Secunderabad and the judgment in Cri. A. No. 171 of 1996, dated 30-9-1996 on the file of the learned IV Additional Metropolitan Sessions Judge, Hyderabad are set aside. The complaint in C. C. No. 881 of 1994 on the file of the learned XI Metropolitan magistrate shall stand restored to its original file for disposal on merits in accordance with law.

18. Both the learned Magistrates are directed to dispose of the said Calendar Cases in accordance with law as expeditiously as possible.

Both the Criminal Appeals are accordingly allowed.