

SUPREME COURT OF INDIA

Mohd. Azeem

Vs.

A.Venkatesh

Crl.A.No.839 of 2002

(M. B. Shah and D. M. Dharmadhikari JJ.)

16.08.2002

ORDER

1. Special Leave to Appeal is granted. We have heard learned counsels appearing for both the parties.
2. The petitioner filed a criminal complaint under Section 200 Criminal Procedure Code (for short 'Cr.P.C.') against respondent no. 1 in the court of Metropolitan Magistrate, Secunderabad for an alleged offence under provision of Section 138 of Negotiable Instruments Act. The petitioner was prosecuting the complaint diligently and had been attending the court of Magistrate on all dates excepting one because according to him he wrongly noted the date for hearing. Due to his absence on one day fixed for trial, the Magistrate by Order dated 22.6.2001 dismissed his complaint and acquitted the accused. Aggrieved by the Order of the Magistrate, the petitioner preferred an appeal under Section 378(4) of Cr.P.C. to the High Court and the High Court by the impugned Order dated 24.7.2001 dismissed his appeal against which the petitioner has approached to this court.
3. From the contents of the impugned Order of the High Court, we have noticed that there was one singular default in appearance on the part of the complainant. The learned Judge of the High Court observes that even on earlier dates in the course of trial, the complainant failed to examine the witnesses. But that could not be a ground to dismiss his complaint for his appearance on one single day. The cause shown by the complainant of his absence that he had wrongly noted the date, has not been disbelieved. It should have been held to be a valid ground for restoration of the complaint.
4. In our opinion, the learned Magistrate, and the High Court have adopted a very strict and unjust attitude resulting in failure of justice. In our opinion, the learned Magistrate committed a error in acquitting the accused only for absence of the complainant on one day and refusing to restore the complaint when sufficient cause for the absence was shown by the complainant.

5. The impugned orders dated 22.6.2001 of Metropolitan Magistrate and dated 24.7.2001 of the High Court respectively, are set aside. The complaint is restored and learned Magistrate is directed to proceed with the trial of the case after issuance of formal notices to both the parties of the next date to be fixed in the case. The learned counsel appearing for the parties are directed to inform the parties to appear before the court of Metropolitan Magistrate on or before 9th of September, 2002 to ascertain the date fixed by the trial Judge for the case.