

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF AUGUST, 2018

BEFORE

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

CRIMINAL PETITION NO.5626/2018

Between:

Sri K.T. Venkatesh,
S/o. Late Thimmegowda,
Aged about 53 years,
R/o Kalenahalli Village,
Kothathi Hobli,
Mandya Taluk,
Pin Code - 571432

...Petitioner

(By Sri Sharath S. Gowda, Advocate)

And:

Sri Shivanna,
S/o. Late Subbaiah,
Aged about 60 years,
R/o Ragimuddanahalli Village,
Kothathi Hobli,
Mandya Taluk,
Pin Code - 571432.

...Respondent

This Criminal petition is filed under Section 482 of Cr.P.C praying to set aside and recall the order dated 26.05.2018 passed by the Judicial Magistrate First Class, at Mandya in C.C.No.765/2015 filed against the respondent/accused and to restore the complaint.

This Criminal petition coming on for Admission this day, the Court made the following:

ORDER

Heard learned counsel for the petitioner/complainant.

2. Having regard to the relief claimed in the petition notice to respondent is dispensed with.

3. The petitioner is aggrieved by the order dated 26.05.2018, passed by the learned J.M.F.C, Mandya, whereby, the learned Magistrate has dismissed the complaint filed by the petitioner under Section 138 of Negotiable Instruments Act, 1881 for non prosecution. The order reads as follow:

"Complainant is absent. No representation. Perused the entire order sheet. In spite of providing sufficient opportunities, complainant remained continuously absent. He is neither appearing in person nor through his counsel. In the absence of complainant, case cannot be proceeded with. The matter is pending at the stage of taking steps since 18.09.2015. The complainant failed to take effective steps to secure the presence of the accused. It appears that complainant is not interested in proceeding with the case. I find no reason to keep the file pending. Hence case is dismissed for non-prosecution."

4. The learned counsel for the petitioner has placed reliance on the decision of Hon'ble Supreme Court of India in the case of ***Indian Bank Association and Others V/s. Union of India and others*** reported in ***(2014) 5 SCC 590***, with reference to para No.23.2 and submits that the learned Magistrate was required to adopt pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by email address got from the complainant. The court, in appropriate cases, may take the assistance of the police or nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

5. On perusal of the records, it is noticed that on presentation of the complaint, notice was issued to the accused. The accused though served, did not put in appearance. Thereafter, learned Magistrate vide order

dated 13.04.2015, condoned the delay in presentation of the complaint. The cognizance was also taken under Section 204 of Cr.P.C.

6. Subsequent order sheet reveals that the complainant was present before the Court on 02.12.2016. From 23.01.2017, the Presiding Officer was on leave till 05.08.2017. Thereafter, the complainant is said to have been present on 09.02.2018 and on subsequent days, he remained absent. In the said circumstance, though learned Magistrate appears to be justified in dismissing the complaint for the absence of the petitioner/complainant, the records do not indicate that the complainant was continuously absent as noted in the order. Moreover, the order sheet maintained by the learned Magistrate indicates that the learned Magistrate has directly proceeded to issue NBW, without ensuring service of summons to the accused.

7. In that view of the matter, the order passed by the learned Magistrate cannot be sustained. Accordingly, the impugned order is hereby quashed. C.C.No.765/2015, pending on the file of the Judicial Magistrate First Class at Mandya is restored to file. The complainant is put on notice that he shall appear before the Court regularly on every date of hearing, unless exempted by the Court. The trial court shall issue summons to the accused and proceed thereafter, in accordance with law.

Petition stands **allowed** accordingly.

**Sd/-
JUDGE**

ds/-