

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

**CRIMINAL PETITION No.4185 of 2015**

**ORDER:** (Heard and pronounced through Blue Jeans App(virtual) mode, since this mode is adopted on account of prevalence of COVID-19 Pandemic)

The present Criminal Petition has been filed seeking to quash the order dated 07.03.2014 passed in C.R.P.No.36 of 2012 on the file the Court of Special Judge for Trial of Offences under the Schedule Castes and Schedule Tribes(Prevention of Atrocities) Act, 1989-cum-V Additional Sessions Judge, Nellore.

The petitioner herein is the accused. The first respondent filed a complaint before the Chairman, Mandal Legal Services Authority, Gudur, alleging that the petitioner herein scolded in the name of her caste and warned with dire consequences. On the basis of the said complaint, a case in Crime No.31 of 2006 for offences punishable under Section 3(i)(x) of Schedule Castes and Schedule Tribes(Prevention of Atrocities) Act (for short 'S.Cs and S.Ts(POA) Act') was registered and after conducting investigation, final report was filed before the learned Judicial Magistrate of First Class, Gudur, referring the matter as false.

The first respondent after receipt of the referred notice, filed a private complaint in C.F.No.1882 of 2007 on the file of the Court of Additional Judicial Magistrate of First Class, Gudur on 02.07.2007. Subsequently, she filed a protest petition on 07.06.2008 in C.F.No.2772 of 2008 before the learned Magistrate. The learned Magistrate *prima facie* satisfied and took cognizance of the case for the alleged offences against the petitioner herein *vide* P.R.C.No.1 of 2012 and issued NBW against him by an order dated 20.01.2012.

Aggrieved by the same, the petitioner herein filed C.R.P.No.36 of 2012 on the file of the Court of Special Judge for Trial of Offences under S.Cs and S.Ts.,-cum-V Additional Sessions Judge, Nellore. The petitioner also filed Crl.M.P.No.430 of 2012 seeking stay of execution of arrest warrant issued by the learned Additional Judicial Magistrate of First Class, Gudur and the said application was allowed by an order dated 27.07.2012 granting stay of arrest warrant as also stay of all further proceedings, pending disposal of C.R.P.No.36 of 2012.

While so, the learned Special Judge by an order dated 07.03.2014, dismissed the said C.R.P., for default as there was no representation on behalf of the petitioner herein/revision petitioner. Aggrieved by the said order, the above quash petition was preferred.

A learned Single Judge of this Court, while permitting the petitioner to take out personal notice on the first respondent by an order dated 29.04.2015, granted stay of all further proceedings in the above referred P.R.C., until further orders. In compliance with the order dated 29.04.2015, a personal notice was taken out on the first respondent and the acknowledgment in proof of service was filed along with a memo on 15.06.2015. Despite service of notice, no appearance was entered on behalf of the first respondent. As per the cause title, respondent Nos.2 and 3 are not necessary parties to the present petition.

Heard the learned counsel for the petitioner and Sri Dusyanth Reddy, learned Additional Public Prosecutor.

Learned counsel for the petitioner submits that as the petitioner was transferred, he was not informed about the stage of the case by the learned counsel appearing in the Criminal Revision Petition and further that there was no willful negligence on the part of the petitioner or non representation of the matter on his behalf on 07.03.2014, when the matter was dismissed

for default by the learned Sessions Judge. He submits that the learned Sessions Judge ought to have appreciated that the Criminal Courts have no power to dismiss the case for non-prosecution as per the Judgment in **S.N.Sharma and Others v. The State<sup>1</sup>** and **Madan Lal Kapoor v. Rajiv Thapar and Others<sup>2</sup>**. He further submitted that the learned Sessions Judge having admitted the Revision Petition filed by the petitioner and granted stay of execution of all further proceedings should have decided the matter on merits instead of dismissing the same for non prosecution. He submits that the cognizance taken by the learned Magistrate for the alleged offence under Sections 3(i)(x) of S.Cs and S.Ts(POA) Act, itself, is unsustainable and in view of the registration of crime, the petitioner is subjected to serious prejudice. The learned counsel submits that no prejudice would be caused to the first respondent if the order of the learned Sessions Judge is set aside and the matter is remanded for passing appropriate orders on merits.

On consideration of the submissions, the only legal issue that arises for consideration by this Court is whether the Order dated 07.03.2014, warrants interference by this Court in exercise of its powers under Section 482 of Cr.P.C.?

As seen from the material available on record, the facts are not in dispute. The Order dated 07.03.2014 came to be passed, as a result of non appearance of the petitioner as also his counsel on the said date. In this regard, the learned counsel for the petitioner has placed reliance on the judgment of a learned Single Judge of the erstwhile High Court of Andhra Pradesh in the case referred to supra(1). A learned Single Judge while dealing with the matter as to whether a Revision entertained under Section 435 of Cr.P.C., could be dismissed for default, held that " the revision once admitted was required to be decided on merits and the order dismissing the

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<sup>1</sup> 1971 CrI.L.J.1056

<sup>2</sup> 2007(7)SCC 623

same for default was not sustainable in law. The relevant paragraph of the said judgment reads thus:

*"3. Having taken the revision on file and called for records of the proceedings before the Additional District Munsif, it was the duty of the learned Sessions Judge to examine those records for the purpose of satisfying himself as to the correctness, legality or propriety of the order sought to be challenged before him regardless of the presence or otherwise of the petitioners when the matter was called on for hearing in his Court and he had no jurisdiction to reject the revision petition, when once it was admitted, for default. Reference may be made in this context to G.V.Sadasivarao v. The Special Officer 1969(2) APLJ 241, in which it was pointed out by Mirza, J., that it is the duty of a Court, even if none of the parties is present and once the revision is admitted to decide the case on merits I must, therefore, agree with the petitioners that the order of the Court below rejecting the revision petition for default is unsustainable."*

In **Madan Lal Kapoor v. Rajiv Thapar and Others**, referred to supra, the Hon'ble Supreme Court set aside the order of the High Court of Delhi dismissing the Criminal Revision Petition for non prosecution. The Hon'ble Supreme Court while referring to **Bani Singha & Others v. State of U.P.**<sup>3</sup> wherein a three Judge Bench of Hon'ble Supreme Court held that a criminal appeal should not be dismissed in default, but should be decided on merits. The Hon'ble Supreme Court in its' Judgment in **Parasuram Patel & Another v. State of Orissa**<sup>4</sup> opined that the said reasoning applies to Criminal cases also and held that a Criminal Revision cannot also be dismissed in default.

In view of the above stated legal position, this Court finds merit in the contention raised by the learned counsel for petitioner that the Order dated 07.03.2014, passed by the learned Sessions Judge dismissing the

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<sup>3</sup> 1996 CrI.L.J.3491

<sup>4</sup> 1994(4) SCC 664

C.R.P., for non-prosecution is not sustainable in law. Accordingly, the Order dated 07.03.2014 is set aside.

In the result, the Criminal Petition is allowed and the matter is remanded back to the learned Sessions Judge for disposal on merits in accordance with law. It is needless to say that the first respondent shall be afforded a reasonable opportunity before deciding the C.R.P. The order of stay of arrest granted by this Court shall be continued till disposal of the above said C.R.P.

There shall be no order as to costs of the Criminal Petition.

Consequently, Miscellaneous Petitions pending, if any, in the Criminal Petition shall stand closed.

Date: 31.12.2020  
BLV

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**NINALA JAYASURYA, J**

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

**CRIMINAL PETITION No.4185 of 2015**

**31.12.2020**

BLV

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

CRIMINAL PETITION No.4185 OF 2015

**Between:**

1.B.K.Venkatesulu @ B.K.Venkateswarlu - - - Petitioner

and

1. Mondem Subbamma @ Mathamma and Others - - - Respondents

**DATE OF ORDER PRONOUNCED: 30.12.2020**

**THE HON'BLE SRI JUSTICE NINALA JAYASURYA**

1. Whether Reporters of Local newspapers may be allowed to see the Judgments?	Yes/No

2. Whether the copies of judgment may be Marked to Law Reporters/Journals.	Yes/No
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3. Whether Their ladyship/Lordship wish to see the fair copy of the Judgment? Yes/No

NINALA JAYASURYA, J

\* THE HON'BLE SRI JUSTICE NINALA JAYASURYA

**+ CRIMINAL PETITION No.4185 of 2015**

**%Date : 31.12.2020**

**# B.K.Venkatesulu @ B.K.Venkateswarlu - - -** Petitioner

and

**\$ Mondem Subbamma @ Mathamma and Others - - -** Respondents

**! Counsel for the Petitioners** : Sri K.Ramesh Babu  
Learned counsel for the petitioner

**^ Counsel for Respondents** : 1) Sri Dusynath Reddy,  
learned A.P.P. for respondents

**< GIST :**

**> HEAD NOTE :**

**? Cases referred :**

1. 1971 CrI.L.J.1056
2. 2007(7) SCC 623
- 3.1996 CrI.L.J.3491
4. 1994(4) SCC 664