S. Rama Krishna vs S. Rami Reddy (D) By His Lrs. & Ors on 29 April, 2008

Equivalent citations: AIR 2008 SUPREME COURT 2066, 2008 AIR SCW 2824, (2008) 4 MH LJ (CRI) 246, (2008) 1 CRILR(RAJ) 450, 2008 CRILR(SC&MP) 450, 2008 (6) SRJ 162, 2008 (5) SCC 535, 2008 (2) SCC(CRI) 645, 2008 (6) SCALE 450, 2008 ALL MR(CRI) 1751, 2008 (4) CRI RJ 719, (2008) 2 BOMCR(CRI) 78, (2008) 2 CAL LJ 54, (2008) 2 GUJ LH 439, 2008 CRILR(SC MAH GUJ) 450, (2008) 3 CIVILCOURTC 196, (2008) 40 OCR 517, (2008) 2 PUN LR 782, (2008) 3 RAJ LW 1926, (2008) 2 RECCRIR 894, (2008) 2 CURCRIR 326, (2008) 3 ALLCRIR 3122, (2008) 6 SCALE 450, (2008) 2 DLT(CRL) 633, (2008) 2 NIJ 276, (2008) 63 ALLCRIC 307, (2008) 3 CHANDCRIC 37, (2008) 3 ALLCRILR 216

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Bench: S.B. Sinha, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (crl.)  755 of 2008

PETITIONER:
S. RAMA KRISHNA

RESPONDENT:
S. RAMI REDDY (D) BY HIS LRS. & ORS

DATE OF JUDGMENT: 29/04/2008

BENCH:
S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:
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J U D G M E N T REPORTABLE CRIMINAL APPEAL NO. 755 OF 2008 (Arising out of SLP (Crl.) No. 1762 of 2007) S.B. Sinha, J.

1. Leave granted.

2. Appellant issued two cheques for a sum of Rs. 5,00,000/- (Rupees Five lakhs) each in favour of the original complainant - i.e. S. Rami Reddy (since deceased) on or about 9.1.2001 and 10.1.2001. The said cheques were deposited in a bank for collection on or about 25.2.2001. They were dishonoured.

Rami Reddy filed a complaint petition in the Court of Additional Judicial Magistrate First Class, Kurnool purported to be under Section 138 read with Section 142 of the Negotiable Instruments Act, 1881 (for short 'the Act') on 6.6.2001. It was registered as C.C. No. 368 of 2001. Rami Reddy expired on 28.10.2003. Respondents herein filed an application for substitution of their names in place of the said Rami Reddy on 22.12.2003. Appellant filed an objection thereto. No order was passed on the said application. The counsel appearing on behalf of the complainant started representing the proposed heirs of the said Rami Reddy. It appears that on or about 18.4.2005 till 23.1.2006, i.e., on 14 dates nobody represented the complainant.

3. On 23.1.2006, noticing that the respondents had not been attending the court for a long time, the appellant was acquitted by the learned Magistrate in purported exercise of his jurisdiction under Section 256 of the Code of Criminal Procedure. An appeal was preferred thereagainst before the High Court of Andhra Pradesh questioning the validity of the order dated 23.1.2006.

By reason of the impugned judgment, a learned single judge of the High Court set aside the said judgment of acquittal holding:

> "A perusal of the docket order passed by the Court below, coupled with the extract of diary maintained by the Court below, show that the matter has undergone several adjournments due to the absence of the appellants only, and ultimately, on 23.1.2006 the trial court passed the impugned order. From this it is clear that the appellants are not interested in getting the matter prosecuted. However, as this Court has consistently taken the view that any lis between the parties shall be decided on merits rather than on technicalities, this Court is of the view that the appellants may be given one more opportunity to get the matter prosecuted."

Appellant is, thus, before us.

4. Mr. Guntur Prabhakar, learned counsel appearing on behalf of the appellant, would submit that the High Court had committed a manifest error in passing the impugned judgment insofar as it failed to take into consideration that since the complainant remained absent for a long time, there was no justification for setting aside the order of acquittal passed by the learned Magistrate.

5. The learned counsel appearing on behalf of the respondents, however, supported the impugned judgment.

6. Admittedly, the respondents themselves did not seriously press their applications for their substitution in place of the original complainant.

7. Section 256 of the Code of Criminal Procedure empowers a Magistrate to pass an order of acquittal on non-appearance or death of the complainant.

The complaint petition was filed in the year 2001. Rami Reddy died in 2003. A large number of dates were fixed for hearing of the case. Although, on some dates, the respondents were either

present in court in person or were represented by their Advocate, but as noticed hereinbefore, continuously for about 15 dates fixed for hearing, they remained absent. The ingredients of Section 256(1) are: (i) that summons must have been issued on a complaint, (ii) the Magistrate should be of the opinion that for some reasons, it is not proper to adjourn the hearing of the case to some other date; and (iii) the date on which the order under Section 256(1) can be passed is the day appointed for appearance of the accused or any day subsequent thereto, to which the hearing of the case has been adjourned. It is not a case where the proviso appended to sub-Section (1) of Section 256 of the Code was applicable.

8. The matter remained pending for more than five years. It was obligatory on the part of the respondents to press their application for substitution. They did not file attendance of their witnesses. The case was fixed for hearing.

9. The learned Magistrate in terms of sub-Section (1) of Section 256 exercises wide jurisdiction. Although an order of acquittal is of immense significance, there cannot be any doubt or dispute whatsoever that the discretion in this case had been properly exercised by the learned Magistrate.

10. The provisions of Section 256(1) mandate the Magistrate to acquit the accused unless for some reason he thinks it proper to adjourn the hearing of the case. If an exceptional course is to be adopted, it must be spelt out the discretion conferred upon the learned Magistrate, however, must be exercised with great care and caution. The conduct of the complainant for the said purpose is of immense significance. He cannot allow a case to remain pending for an indefinite period. Appellant had been attending the court for a long time, except on some dates where when remained absent or was otherwise represented by his Advocate.

He had to remain present in court. He attended the court on not less than 20 occasions after the death of the original complainant. If in the aforementioned situation, the learned Magistrate exercised his discretionary jurisdiction, the same, in our opinion, should not have been ordinarily interfered with.

11. The High Court was exercising its jurisdiction under sub-Section (4) of Section 378 of the Code of Criminal Procedure. The appeal preferred by the respondents was against a judgment of acquittal. The High Court should have, therefore, exercised its jurisdiction keeping in view the limited role it had to play in the matter.

12. The High Court itself had come to the finding that the respondents were not interested in getting the matter prosecuted. Despite the same, it allowed their appeal, opining that any lis between the parties should be decided on merits rather than on technicalities. On what basis such a statement of law was made is not known. No precedent was cited; no reason has been assigned.

The High Court failed to take into consideration the fact that it was dealing with an order of acquittal and, thus, the principle of law which was required to be applied was that, if two views are possible, a judgment of acquittal should not ordinarily be interfered with. There exists a distinction between a civil case and a criminal case. Speedy trial is a fundamental right of an accused. The

orders passed by the competent court of law as also the provisions of Code of Criminal Procedure must be construed having regard to the Constitutional scheme and the legal principles in mind.

13. The High Court, in our opinion, therefore, misdirected itself in passing the impugned judgment.

It can therefore not be sustained. We set aside the order of the High Court accordingly. The Appeal is allowed.