

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 23rd DAY OF JUNE 2005

BEFORE

THE HON'BLE MRS JUSTICE MANJULA CHELLUR

CRIMINAL APPEAL No.295/2005

BETWEEN:

**Quality Thermopack & Insulations Industries
B-29, KSSIDC Industrial Estate,
Kumbalagodu,
Mysore Road,
Bangalore-560 074.
Represented by its Managing Partner
Sri Rakesh Kumar Jain.**

.. APPELLANT

(By Sri Sanjay Nair, Adv)

AND:

**1. Packwell Industries,
No.39, Vijaya Bank Road,
Shivananda Nagar,
Mudalapalya, Bangalore.560 072.
Represented by its proprietor
Mr Ratnakar Shetty.**

**2. Mr Ratnakar Shetty,
Proprietor, Packwell Industries,
No.39, Vijaya Bank Road,
Shivananda Nagar,
Mudalapalya, Bangalore.560 072.**

.. RESPONDENTS

(By Sri R.Prabhakar & Gopal Singh, Adv)



This Criminal Appeal is filed u/s 378(4) Cr.P.C. to set aside the order dated 4.11.04 passed by the XVI Addl.C.M.M, Bangalore in C.C.No.7262/04 dismissing the complaint for non-prosecution.

This Criminal Appeal coming on for ORDERS this day, the Court delivered the following:

JUDGMENT

Heard the learned Counsels on either side and perused the records.

2. IA NO.1/05 is filed for condoning the delay of 46 days in filing this appeal. For the reasons mentioned therein, delay is condoned.

3. Admittedly, the appellant herein was the complainant prosecuting a private complaint filed against the respondent for offence punishable u/s 138 of the N.I.Act. Subsequent to the issue of summons, the accused appeared before the Court. The matter was listed for evidence of the complainant on 4.11.04. On that day, the accused was present but the complainant was absent. As no one made any representation on behalf of the complainant, the complaint came to be dismissed. Ultimately, a revision petition came to be filed before the District & Sessions Court and the same came to be dismissed holding

that procedure u/s 256 Cr.P.C has to be followed and the only remedy lies by way of appeal to the High Court. This fact would reveal the complainant was not negligent in prosecuting his complaint but due to noting down the wrong date by the colleague of the learned Counsel for the appellant, he was not present when the case was called on 4.11.04. Having regard to the limitation and the time within which a complaint has to be filed for an offence u/s 138 of the N.I Act and also the requirement of mandatory notice which is already done in this case, the complainant/appellant will not be entitled to file one more private complaint. Considering these facts, in the interest of justice, the appeal deserves to be allowed and accordingly, it is allowed. The dismissal of the complaint for default and non-prosecution on 4.11.04 on the file of the XVI Addl.Metropolitan Magistrate, Bangalore is hereby set aside and the complaint is restored. The trial court shall proceed with the matter in accordance with law. Parties are directed to be present before the trial court on 01.07.2005.

Sd/-
Judge

Kc*