

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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Criminal Petition No.2567 of 2015

Order:

The instant Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C') requesting to quash the docket order passed in CrI.M.P. No.526 of 2015 in CC No.298 of 2014 on the file of Judicial Magistrate of First Class, Special Mobile Court, Kurnool, dated 27.02.2015. Offences punishable under Sections 138, 142 and 142 of the Negotiable Instruments Act, 1881 have been levelled against the petitioner on the complaint of the second respondent.

2. Heard Sri K.V. Raghuveer, learned counsel for the petitioner, and the learned Assistant Public Prosecutor for the State.

3. Learned counsel for the petitioner contends that since the petitioner was suffering from illness, he could not make appearance on the date when Non-Bailable Warrant was issued against the petitioner and when an application under Section 70(2) Cr.P.C., was moved to recall the NBW, the order under challenge was passed rejecting the request. It is his submission that since summons trial procedure is being resorted to, with certain conditions the petitioner may be enlarged on bail by quashing the said order.

4. Perused the order. The specific observation of the learned Magistrate is that, subsequent to receipt of summons by the petitioner in the month of May 2014, except making his appearance on the date of examination under Section 251 Cr.P.C., he never attended the Court. In fact, on the date when the petition under Section 70(2) Cr.P.C was filed, the petitioner was not present and the said petition was moved by his learned counsel placing reliance on a decision in **Chundru**

Ammanna v. Assistant Commissioner of Labour, Kakinada. As seen from the said observation and also as seen from the reasoning assigned by the learned Magistrate no material was placed to prove that the petitioner was bed-ridden and unable to move out of the bed on the day when the petition under Section 70(2) Cr.P.C was filed and, therefore, cannot be faulted with. Even, otherwise, there is no merit in the instant petition.

5. Accordingly, the Criminal Petition is dismissed. However, it is open to the petitioner to make such an application by making his appearance before the concerned Court and if the petitioner does so, the learned Magistrate to consider it on merits and dispose of the same on the same day.

6 . As a sequel thereto, the miscellaneous applications, if any, pending in the Criminal Petition shall stand closed.

A. SHANKAR NARAYANA, J

Date: 06.04.2015

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