

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

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CRIMINAL PETITION No.2590 of 2015

ORDER:

This criminal petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') by the petitioners, who are arraigned as accused Nos.1 to 13 in C.C.No.293 of 2005 on the file of Judicial Magistrate of First Class, Puttur, Chittoor District, requesting to set aside the order dated 29.12.2014 passed in Crl.M.P.No.1670 of 2012 in the said calendar case.

2. The facts would reveal that the offences punishable under Sections 403, 408 and 471 read with 120-B I.P.C. were levelled against the petitioners herein in the said calendar case. During pendency of the proceedings, the petitioners herein filed Crl.M.P.No.1670 of 2012 under Section 239 of the Code, seeking their discharge. The learned Magistrate while recording the presence of accused Nos.1 to 3, 5 to 9 and 11 to 13 and allowing the petition to dispense with the presence of accused No.10, dismissed the petition observing thus:

"A.1 to A.3, A.5 to A.9 and A.11 to A.13 present. A.10 absent petition filed and allowed. The petitioner did not submit arguments for inquiry in spite of several conditional orders. The matter is coming for hearing from 21-12-12. Since then so many adjournments are given for hearing at request. But the counsel for petitioner even not turn up for conditional orders. Hence this petition stands dismissed as there is no representation."

3. Heard both sides.

4. Learned counsel for the petitioners submits that in fact a criminal revision case was preferred and it was returned by the Registry questioning the maintainability, on which it was resubmitted

converting the criminal revision case into a petition under Section 482 of the Code. In regard to maintainability of the petition of this nature to exercise the power under Section 482 of the Code, the learned counsel for the petitioners placed reliance on the decisions in **Raj Kapoor and others v. State (Delhi Administration) and others**^[1], **Municipal Corporation of Delhi v. Ram Kishan Rohtagi and others**^[2] and **Puran v. Rambilas and another**^[3]. It is his submission that on account of the absence of the counsel on the date of hearing, the petitioners herein cannot be penalized, more particularly, when earlier, the petitioners moved this Court by filing Criminal Petition No.2685 of 2012 under Section 482 of the Code making a request to quash the proceedings in the above calendar case and this Court while giving liberty to the petitioners to file discharge petition before the trial Court, also observed that concerning dispensing with the presence of the petitioners, necessary application be moved before the trial Court after framing of charges. The learned counsel also submits that in the instant case, charges were framed on 19.12.2005 and thereafter only, the discharge petition was filed on 05.06.2012, and, therefore, sought to set aside the order dated 29.12.2014 passed in CrI.M.P.No.1670 of 2012, and to restore the same by affording an opportunity of being heard for disposal of the same on merits.

5. Learned Additional Public Prosecutor resisted the request contending that a petition for discharge cannot be made subsequent to framing of charges, and, therefore, the very petition is not maintainable, and, if any order is to be passed by this Court to make an observation to the effect that subject to maintainability, CrI.M.P.No.1670 of 2012 can be disposed.

6. A perusal of the order under challenge shows that the said order was passed on 29.12.2014 stating that since 21.12.2012, many adjournments were given for hearing, but the counsel for the petitioners has not turned up despite passing conditional orders also. Of course, the proceedings sheet is not filed by the petitioners herein, though, it is obligatory to file such proceedings sheet to look at the conduct of the petitioners. Be that as it may, since the petition was dismissed not on merits and the order is also not elaborating the earlier conditional order said to have passed, it is a fit case to set aside the order so as to afford an opportunity to the petitioners to tender their arguments, however, subject to maintainability of the petition, which can be decided in accordance with law by the trial Court. Therefore, the order dated 29.12.2014 passed in Crl.M.P.No.1670 of 2012 in C.C.No.293 of 2005 on the file of Judicial Magistrate of First Class, Puttur, Chittoor District, is set aside and the Crl.M.P.No.1670 of 2012 is restored. Since the said petition relates to the year 2012, it is desirable to direct the trial Court to dispose of the said petition preferably within one month from the date of receipt of the order. The petitioners shall cooperate with the trial Court for disposal of the said petition.

7. With the above observations and directions, the criminal petition is allowed.

8. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

23rd April, 2015

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[\[1\]](#) AIR 1980 SC 258

[\[2\]](#) 1983 CRI.L.J. 159

[\[3\]](#) 2001 CRI.L.J. 2566