

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

Crl.P.No.7207 of 2015

ORDER :

This petition is filed under Section 482 of the Code of Criminal Procedure (for short, 'the CrPC') by the Petitioner-Accused to set aside the dismissal order dated 22.06.2015 in Crl.M.P.No.657 of 2015 in C.C.No.577 of 2011 filed for the 4th time for cancellation of Non Bailable Warrant (NBW) issued against the petitioner on 12.01.2015 on the file of the Judicial Magistrate of First Class, Shadnagar, Mahabubnagar district.

2. Heard the learned counsel for the petitioner/Accused and also the 1st respondent-state, before admission and before ordering notice to the 2nd respondent/defacto-complainant and perused the impugned order of the trial Court dated 22.06.2015 in dismissing the application for recall of the N.B.W. In fact, it is observed by the trial Court that NBW even earlier issued thrice for the non-diligence and absence of the petitioner and filed the above petition 4th time. In fact, the offence under Section 138 of the Negotiable Instruments Act, the trial contemplated is as a summary trial under Section 143 of the N.I.Act, the Court has to proceed day-to-day. Now it is in the stage of cross-examination of complainant by the accused.

3. It is the submission of the learned counsel for the petitioner that on that day, there is lack of diligence on the part of the advocate on record in representing the matter or filing application under Section 317 Cr.P.C. to proceed with the matter waiving right of Section 273 of Cr.P.C. since representing through advocate however, it was not done. As can be seen from the impugned order, earlier the matter was adjourned on costs of Rs.50/- and the same was also not paid. Practically the warrant is not so far as executed, the trial is stalled.

4. Having regard to the above observation to meet the ends of justice, this Court feels it just to direct the petitioner to appear before the

lower Court and file application afresh for recall of warrant (NBW) and after hearing the complainant, the learned Magistrate shall recall the warrant subject to payment of Rs.1,000/-(one thousand rupees only) by the petitioner and to complete the cross-examination of P.W.1 on the date being fixed by the Court. It is needless to say if the petitioner not able to present since representing through advocate, files any application under Section 317 of Cr.P.C. to condone his absence, the learned Magistrate shall consider and to proceed with the trial for completing cross-examination through advocate on record. The lower Court shall make an endeavor to dispose of the case within two months from the date of receipt of this order.

5. Accordingly, the Criminal Petition is disposed of. Miscellaneous petitions, if any pending, in this Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 19.08.2015

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