

HON'BLE SRI JUSTICE M.S.K. JAISWAL

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Criminal Petition No. 9282 of 2015

Order:

This Criminal Petition is directed against the orders, dated 01.09.2014, passed in CrI.MP No.3177 of 2014 in CC No.292 of 2012 by the VIII Metropolitan Magistrate, Cyberabad, Rajendranagar, whereby and whereunder the petition filed by the petitioners/A1 to A4, under Section 70(2) Cr.P.C., to recall the NBWs issued against them was dismissed.

2. The petitioners 1 to 4 herein are A1 to A4 in CC No.292 of 2012. The first petitioner/A1 was appearing on his behalf and also on behalf of the petitioners 2 to 4/A2 to A4 in the above said case as per the directions of the Court below. The matter was posted to 11.07.2014 and, on that day, a petition under Section 317 Cr.P.C was filed to dispense with the presence of the petitioners/A1 to A4, but the learned Magistrate has dismissed the said petition on the ground that they have not filed any medical certificate and issued NBW against the first petitioner/A1. Thereafter, the petitioners/A1 to A4 have filed Criminal Petition No.8290 of 2014 and this Court, by an order, dated 30.07.2014, passed in CrIPMP No.7846 of 2014 in CrI.P. No. 8290 of 2014, granted interim stay of all further proceedings in CC No.292 of 2012 and it is stated that the said stay continued till January 2015. On 01.09.2014, the first petitioner/A1 filed CrI.MP No.3177 of 2014 in CC No.292 of 2012, under Section 70(2) Cr.P.C., to recall the NBWs issued against them, however, since there was no representation when the petition was called, the learned Magistrate has dismissed the said petition. Aggrieved by the same, the present Criminal Petition has been filed.

3. The main contention of the learned counsel for the petitioners is that as on the date of issuing NBWs, the interim stay granted by this Court was in existence and though the said fact was brought to the notice of the Court below, NBWs were issued and the petition filed by the petitioner/A1 to recall the same was dismissed.

4. Taking into consideration the above facts and circumstances of the case, I feel that the ends of justice would be met if the Magistrate concerned is directed to consider the application to be filed by the petitioners afresh and to recall the NBWs issued against them.

5. Accordingly, the Criminal Petition is allowed and the impugned order is set aside. The petitioners/A1 to A4 are directed to appear in person before the Magistrate concerned within a period of fifteen (15) days from today and file a petition, under Section 70(2) Cr.P.C., afresh and, on filing such application, the Magistrate concerned shall consider the same on the same day and recall the NBWs issued against the petitioners/A1 to A4 on usual terms.

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

M.S.K. JAISWAL, J

Date: 08.10.2015

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