

THE HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.3113 OF 2015

ORDER:

The petitioner/A.2 has preferred the present criminal revision case by invoking the provisions under Sections 397 and 401 of Code of Criminal Procedure (Cr.P.C.,) being aggrieved by the order, dated 05.10.2015 passed in CrI.M.P.No.3256 of 2015 in C.C.No.67 of 2009, passed by the Court of the I Additional Judicial Magistrate of First Class, Proddatur, YSR Kadapa District, whereby the learned Judge dismissed the petition filed by the petitioner/A.2 to recall the Non Bailable Warrant (NBW) issued against him.

Heard and perused the material available on record.

The notice issued to the petitioner herein in C.C.No.67 of 2009 was returned with endorsement 'not claimed' and thereafter, when the case was called, the petitioner was absent and as such, the Court below issued NBW against the petitioner/A.2. Subsequently, the petitioner herein filed criminal petition before this Court to quash the proceedings and in the said petition, this Court granted stay for a period of four weeks and subsequently, the stay was extended for another four weeks and the said petition is pending adjudication. Hence, the petitioner filed the petition to recall the NBW before the Court below and the Court below dismissed the same on the grounds that the petitioner kept quite for five years and though the stay is not extended by the Hon'ble High Court, the petitioner could not appear before the Court below knowing fully well that the stay is not extended.

Learned counsel for the petitioner submits that the Court below has not considered the fact of 'vikunta samaradhana' of the petitioner's mother. He further submits that the petitioner could not appear before the Court below due to 'vikunta samaradhana' only and as such, he prays this Court to set aside the impugned order and direct the Court below to recall the NBW issued against the petitioner herein.

Considering the facts and circumstances, this Court is of the view that when once the stay order is not in existence, the learned Magistrate is at liberty to issue NBW against the petitioner herein when he is absent before the Court

below. However, taking into consideration the submission of the learned counsel for the petitioner, one more opportunity may be given to the petitioner to appear before the Court below. Hence, the petitioner is directed to appear before the Court below and file an application for recalling NBWs issued against him, and on filing of such application, the Court below is directed to recall the NBWs issued against the petitioner/A.2 on the same day on condition of the petitioner executing a personal bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with one surety for the like sum to the satisfaction of the said Magistrate. The petitioner is directed to appear before the Court below on all hearing dates.

The Criminal Revision Case is accordingly disposed of. Consequently, the miscellaneous petitions filed in this revision, if any, shall stand closed.

JUSTICE RAJA ELANGO

15.12.2015
pln