

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.P.No.15827 of 2016

ORDER:

This Criminal Petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') is filed to set aside the impugned Order dt. 23.05.2016 in Crl.M.P.No.2156 of 2016 in C.C.No.1065 of 2014 on the file of Judicial Magistrate of First Class at Nandyal, Kurnool District.

2. It is the case of the petitioners that the petitioners/A.3 and A.4 in C.C.No.1065 of 2014 pending on the file of Judicial Magistrate of First Class at Nandyal, Kurnool District filed Criminal Petition No.5912 of 2016 and obtained Order dispensing with their presence before the trial Court, except for examinations under Section 251 and 313 Cr.P.C., respectively and on the date of pronouncement of the Judgment. This Order was passed on 22.04.2016, but the learned Magistrate allegedly passed the Order under challenge on 23.05.2016 i.e., almost one month after passing of the Order by this Court.

3. During hearing, Sri Chandra Sekhar Ilpakurti, learned counsel for the petitioners, contended that passing of the in Crl.P.No.5912 of 2016 is informed to the trial Court orally by the counsel on record before the Magistrate Court. Despite it, the Magistrate concerned issued N.B.W dismissing the petition filed by the petitioners under Section 317 Cr.P.C. to condone their absence. He also further contended that whenever this Court passed an Order, it is deemed to have communicated to the trial Court immediately and giving oral information is sufficient to attribute the knowledge to the Magistrate

concerned. But, despite of such information, the Magistrate passed the Order dt. 23.05.2016 dismissing the petition filed by the petitioners.

4. Sri B.S.Reddy, learned counsel for respondent, contended that no information was passed to the Magistrate concerned and the Order was not communicated to the trial Court since the Order was compared on 15.06.2016, as per the endorsement on the Order passed by this Court, and prayed to dismiss the instant petition.

5. As seen from the record, this Court passed an Order in Crl.P.No.5912 of 2016 on 22.04.2016 dispensing with the presence of the present petitioners/A.3 and A.4 before the trial Court on all dates except for the examinations under Section 251 and 313 Cr.P.C., respectively and on the date of pronouncement of judgment.

6. It is not the case of the petitioners that the Order was already communicated, but it is orally informed by the learned counsel appearing before the trial Court. If really, the petitioners informed orally to the trial Court about dispensing of their presence, the question of filing a petition under Section 317 Cr.P.C. to condone their absence does not arise. At this stage, Sri Chandra Sekhar Ilpakurti, learned counsel for petitioners, contended that when an oral information was given about passing of the Order dt. 22.4.2016 by this Court to the Magistrate concerned, the learned Magistrate insisted to file an application to condone their absence under Section 317 Cr.P.C. and at the instance of the learned Magistrate, such application was filed.

7. In para No.4 of the Petition, it is averred that basing on the Order dt. 22.4.2016 in Crl.P.No.5912 of 2016 passed by this Court, the petitioners could not appear before the trial Court and the counsel appearing for the petitioners filed a petition under Section 317 Cr.P.C. to condone the absence of petitioners. But, the trial Court dismissed the said petition and issued NBW against the petitioners. If really, such representation is made and informed orally about passing of the Order by this Court dispensing with their presence and the learned Magistrate insisted to file such an application, it would have been reflected in the petition. But, conveniently, such allegation is made during hearing of the instant petition. Therefore, filing of a petition under Section 317 Cr.P.C. to condone their absence on 23.05.2016 itself indicates that the Advocate, who filed the above said petition had no knowledge about passing of the Order by this Court on 22.04.2016.

8. General procedure to communicate the Order passed by this Court is to file a Memo along with Letter signed by the Advocate, who appeared in the High Court, intimating about the order granted by this Court. But, no piece of paper is filed before the trial Court intimating about passing of the Order by this Court on 22.4.2016. In the absence of any written communication, the alleged oral information cannot be accepted and hence, this Court cannot rely on such oral information.

9. In view of the above specific contention, this Court called for the information from the Current Section regarding Communication of the Order. Even according to the written information furnished by

the Section Officer, the Order was dispatched on 16.06.2016 and therefore, by the date of passing the Order under challenge i.e., 23.05.2016 by the trial Court, the Order passed by this Court on 22.4.2016 was not communicated. Even otherwise, the endorsement of the concerned Section Officer regarding comparison, it was completed on 15.6.2016. In any event, the question of communicating the Order before comparison i.e., on 15.6.2016 does not arise. Therefore, the NBWs issued against the petitioners/A.3 and A.4 by the Magistrate concerned is not in violation of the Order passed by this Court since the Order of this Court was not communicated. Therefore, I find no error in the Order passed by the learned Magistrate. However, the petitioners are at liberty to file an appropriate application before the Magistrate concerned to recall NBWs intimating about the Order passed by this Court on 22.04.2016. Hence, the Order of the trial Court cannot be set aside on the ground that this Court has already passed an order dt. 22.4.2016 prior to the Order passed by the learned Magistrate.

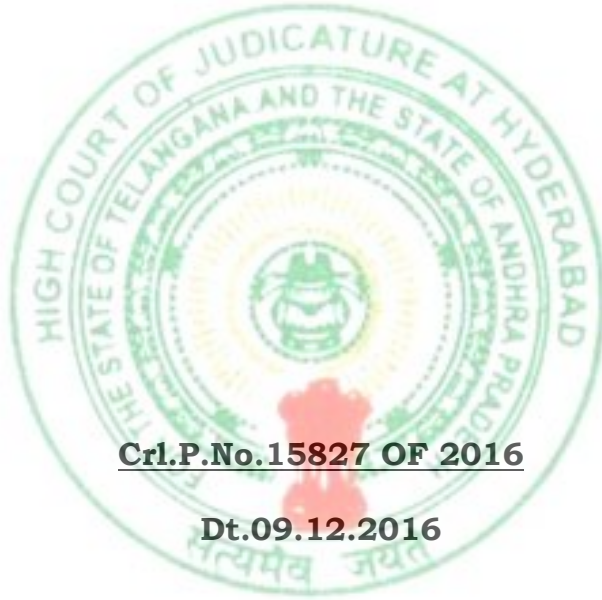
10. With the above observation, this Criminal Petition is dismissed.

Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

December 09, 2016.
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THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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