

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.13854 of 2016

ORDER :

This criminal petition is filed by the petitioner under Section 482 Cr.P.C seeking to quash the docket order dated 07.11.2014 in C.C.No.261 of 2013 on the file of Special Magistrate, Miryalguda.

2. The petitioner herein is the complainant in C.C.No.261 of 2013, which is filed under Section 138 of the N.I.Act and Section 420 I.P.C. and it is at the post cognizance stage, the learned Magistrate ordered to issue summons to the accused-2nd respondent herein through Court and registered post and after service of notice, on 29.09.2014, the accused was called absent and posted the matter to 07.10.2014 for appearance and on 07.10.2014 for non-appearance of the accused despite said opportunity, there was an order, which reads as follows:

“To avoid delay complainant is permitted to take N.B.W. to accused. Call on 13.10.2014”

On 13.10.2014 as there was no representation, the matter was posted to 17.10.2014 for execution of N.B.W. and on 17.10.2014 at the request of complainant the matter was posted to 28.10.2014. On 28.10.2014 with the same step of complainant did not submit report for execution of N.B.W. and posted, at request of complainant, to 07.11.2014 and on 07.11.2014 as the complainant did not submit report of execution of N.B.W., even the matter was kept by called absent with no representation, the N.B.W. was recalled and complaint was dismissed for default. Impugning the order dated 07.11.2014 present criminal petition

is filed under Section 482 Cr.P.C. about legality, correctness and sustainability.

3. In fact, once warrant be issued as contemplated by Chapter-VI Part-B Cr.P.C. covered by Section 70 onwards, what Section 72 Cr.P.C. speaks that “a warrant of arrest shall ordinarily be directed to one or more police officers, but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to another person or persons, and such person or persons shall execute the same”. In fact, the learned Magistrate did not advert to the said provision and permitting the complainant to take N.B.W. to accused covered by the docket order dated 07.10.2014 is as vague as anything in his saying to avoid delay, complainant is permitted to take N.B.Ws. to accused, which is nothing but wrong and incorrect approach, it is a judicial order of warrant, the Court has to issue and entrust and cannot direct to take N.B.W. There must be a subjective satisfaction of urgency and no police officer is available, to entrust even to a private person, the general approach in such cases is expeditious circumstances to made out to entrust by appointing an Advocate Commissioner and to direct the Advocate Commissioner to take assistance of the local police concerned of where accused ordinarily resides or carries on business and personally works for gain, to approach along with the local police and to execute the warrant and after arrest, to produce before near by executive or judicial Magistrate and therefrom to produce before the concerned Magistrate, if not a direction to produce

before the local Magistrate concerned and in turn to take into custody and transmit through that local police. Here nothing of such recourse is taken by the learned Magistrate and thereby the very order of permitting to take N.B.W. to accused by the complainant and the dismissal for its non-execution after posting even by three or four adjournments, is unsustainable and the impugned order is liable to be set aside on its face and to restore the complaint.

4. As seen from the docket proceedings as the complainant and his advocate even appeared, did not bring the said provision to the notice of the learned Magistrate and due to improper assistance it has taken away the valuable time of the Court, by imposing costs, the criminal petition can be allowed.

5. Accordingly, the criminal petition is allowed. The docket order dated 07.11.2014 is set aside and the complaint is restored, subject to payment of costs of Rs.1,000/- (Rupees one thousand only) to the State payable by the complainant before the Special Magistrate, Miryalguda, and after payment of said costs, the learned Magistrate shall cause remit the same to the State Government under concerned head of account of fines/compensation. Further, the learned Magistrate shall follow the procedure contemplated by Section 72 Cr.P.C. while issuing N.B.Ws.

6. Miscellaneous petitions pending, if any, in the Criminal Petition shall stand closed.

Dr. B. SIVA SANKARA RAO, J

29th September 2016.
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