

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15843 of 2016

ORDER:

This Criminal Petition is filed by petitioner/accused, under Section 482 of Cr.P.C., requesting to recall the Non-Bailable Warrant pending against him, by setting aside docket order dated 23.08.2016 passed in C.C.No.484 of 2016 by the Judicial First Class Magistrate – cum – Special Mobile Court, Sangareddy.

2. It is the contention of petitioner that this Court, while disposing of Criminal Petition No.5780 of 2016 on 21.04.2016, issued a direction to Court below to recall the NBW pending against petitioner on filing of an application to recall the NBW, on the same day, on condition of petitioner executing a personal bond for a sum of Rs.5,000/- (Rupees five thousand only) with one surety for the like sum to the satisfaction of said Magistrate. Petitioner appeared before Court below in pursuance of order of this Court. On 11.07.2016, complainant and accused were present before the Court below and the accused was examined under Section 251 of Cr.P.C., and on his pleading not guilty and claimed to be tried, notices were issued to LWs 1 to 3 and the matter was adjourned to 05.08.2016. On 05.08.2016, both the accused and complainant were absent and the matter was adjourned to 23.08.2016 for trial. On 23.08.2016, though complainant was present, but since the accused was absent and as

there was no representation for him, NBW was directed to be issued against petitioner.

3. As seen from order dated 21.04.2016 passed by this Court in Criminal Petition No.5780 of 2016, petitioner was directed to appear before the Court below on all the dates of hearing through his counsel, except on the dates when the Court below insists for his personal appearance. But unfortunately, on the date of adjournment, i.e., on 23.08.2016, advocate for the petitioner was also absent, though complainant was present. Therefore, the Court below, marking absence of petitioner, ordered issuance of NBW against petitioner.

4. When the advocate who is permitted to appear on behalf of petitioner did not represent the matter before the Court below, Magistrate cannot keep the matter pending for years together. It is one of the convenient modes to avoid facing trial by obtaining different orders from Courts and neither the parties nor his advocate representing the matter. In such case, it is difficult for any judicial Magistrate to decide a criminal case expeditiously, though such cases involve the question of personal liberty. In the instant case, there is any amount of justification in issuing NBW against petitioner and it is not totally in violation of directions issued by this Court in Criminal Petition No.5780 of 2016.

5. Though this petition is filed under Section 482 of Cr.P.C. to set aside the order dated 23.08.2016 of the Court below, but since the

impugned order is in consonance with the direction of this Court, the same cannot be set aside. However, power can be exercised under Section 483 of Cr.P.C., which permits the High Court to exercise continuous superintendence over the Courts of Judicial Magistrates subordinate to it, so as to ensure that there is expeditious and proper disposal of the case by Judicial Magistrates. In that view of the matter, issuance of NBW against petitioner for his absence and for non representation by any advocate on his behalf cannot be faulted. However, taking into consideration the direction issued by this Court by order 21.04.2016 in Criminal Petition No.5780 of 2016, petitioner is directed to appear before the Court below and file an application under Section 70 (2) of Cr.P.C., after issuing notice to respondent and on filing of such an application by petitioner, Court below is directed to decide the application in accordance with law.

6. The Criminal Petition is disposed of accordingly at the stage of admission. Miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

11th November, 2016
Bvv

M. Satyanarayana Murthy, J