

THE HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.36886 of 2016

ORDER

This writ petition under Article 226 of Constitution of India is filed seeking to declare the order dated 19.10.2016 passed in Crl.A.No.91 of 2012 on the file of IV Additional District and Sessions Judge, Nellore, in issuing NBWs against the petitioners when no sentence has been recorded/imposed, as arbitrary and illegal.

2. Heard learned counsel for petitioners and learned Government Pleader for Home.

3. The first petitioner is a registered company and second petitioner is its Managing Director. Petitioners, who are A1 and A3, were acquitted vide judgment dated 04.04.2012 in C.C.No.40 of 2005 on the file II Additional Judicial Magistrate of First Class, Nellore, filed by the third respondent herein, for the offence punishable under Section 138 of Negotiable Instruments Act, 1881. On appeal, the appellate Court found the second petitioner-A3 guilty of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 and convicted him for the said offence vide order dated 17.10.2016 and subsequently, on 19.10.2016, issued NBW against him. The main grievance of petitioners is that the appellate Court while reversing the judgment of acquittal imposed the conviction without passing any sentence of imprisonment and consequently, issued NBW against the second petitioner.

4. The material on record would disclose that the appellate Court, while reversing the judgment of acquittal, passed the order of

conviction on 17.10.2016 against the second petitioner/A3. Since the accused has to be questioned on the quantum of sentence, the appellate Court directed the second petitioner's presence by issuing NBW on 19.10.2016.

5. The main grievance of the petitioners is that the docket order passed by the appellate Court on 19.10.2016 does not disclose the quantum of sentence and that the second petitioner apprehends his arrest in view of the N.B.W issued by the said Court on 19.10.2016. Further it is the apprehension of the second petitioner that if any sentence of imprisonment is imposed by the appellate Court, he may not get the benefit of invoking the provision under Section 389(3) Cr.P.C.

6. This Court considered the above said submissions of the learned counsel for the petitioners. As observed earlier, the N.B.W issued by the appellate Court is for the appearance of second petitioner before the Court. Since it is informed by the learned counsel for the petitioners that the second petitioner is ready to appear before the Court, the N.B.W issued against the second petitioner is hereby recalled with a direction to surrender before the appellate Court on or before 14.11.2016. On such appearance, any sentence of imprisonment is imposed by the Court, the second petitioner is at liberty to file an application under Section 389(3) Cr.P.C., for suspension of sentence. Further this Court is of the view that in an order of conviction by the appellate Court, the provision under Section 389(3) Cr.P.C., is also applicable for suspension of sentence. Hence, on filing an application by the second petitioner

seeking suspension of sentence, the said Court is directed to pass appropriate orders as per the provision under Section 389(3) Cr.P.C.

7. With the above directions, the writ petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

JUSTICE RAJA ELANGO

31st October, 2016

sj

