

THE HON'BLE SRI JUSTICE RAJA ELANGO

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CRIMINAL PETITION No.2679 OF 2016

ORDER:

This Criminal is filed by the petitioners, under Section 482 Cr.P.C., seeking to quash order, dated 07.01.2016 in CrI.M.P.(SR) No.4668 of 2015 in CC No.474 of 2011, passed by the VIII Additional Chief Metropolitan Magistrate, Hyderabad, whereby the learned Magistrate issued NBW against the 2nd petitioner.

Heard and perused the material available on record.

The offences alleged against the petitioners are punishable under Sections 196, 209, 464, 465, 468, 471, 470 and 420 r/w.511 IPC. The case was taken cognizance by the learned Magistrate in CC No.474 of 2011 against the petitioners and since the 2nd petitioner was absconding, NBW was issued against him. Even after issuance of NBW, the 2nd petitioner was not appeared before the Court, since he is in USA, the case against the 2nd petitioner was split up and numbered as CC No.3 of 2016. The de facto complainant filed the impugned application to issue NBW again, against the 2nd petitioner to cause his arrest in USA. The Court below issued fresh NBW against the 2nd petitioner through the impugned order, which reads as follows:

“On perusing the record, this court has taken cognizance against both the accused and A2 is not appearing before the court inspite of several adjournments. As A2 is not attending before the court NBW were issued against the A2. Even then A2 has not appeared before the court. Then this case was split up against A2 for proceeding further, but it was brought to the notice by this court that at present A2 is residing in Unites States of America and present petitioner has also furnished the address of A2 in the cause title. Without the appearance of A2 definitely this court cannot proceed against A2 and the case is adjourning from day to day without any further step. Therefore, issue fresh NBW against A2 and send the same to the Honourable Chief Metropolitan Magistrate Court, Hyderabad to send the same to concerned authorities for execution of warrants against A2.”

The main contention raised by the learned counsel for the petitioners is that the case against the 2nd petitioner was split up and numbered as CC 3 of 2016 and again fresh NBW was issued against him in CC No.474 of 2011, which is erroneous and the 2nd petitioner is not able to come to India and therefore, he may be permitted to represent through his father before the trial Court.

Considering the facts and circumstances of the case and also taking into consideration the submissions of the learned counsel for the petitioner, this Court is inclined to pass the following order:

The order, dated 07.01.2016, in CrI.M.P.(SR) No.4668 of 2015 in CC No.474 of 2011 passed by the VIII Additional Chief Metropolitan Magistrate, Hyderabad, is hereby set aside and the trial Court is directed to conduct the trial by clubbing CC Nos.474 of 2011 and 3 of 2016 and dispose of both the cases in accordance with law. The 1st petitioner is directed to represent the case on behalf of the 2nd petitioner and also permitted to answer the charges and to give statement under Section 313 Cr.P.C., on behalf of the 2nd petitioner, and he shall present before the trial Court on all the hearing dates.

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With the above directions, the Criminal Petition is disposed of. Consequently, miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

March 23, 2016.
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