

THE HONOURABLE SRI JUSTICE RAJA ELANGO
CRIMINAL PETITION No.2829 OF 2016

ORDER:

The petitioner-accused preferred the present Criminal Petition by invoking the provision under Section 482 of the Code of Criminal Procedure (in short 'Cr.P.C.') seeking to quash the order, dated 20.05.2013, in CrI.MP No.466 of 2014 in STC No.19 of 2013 passed by the Special Magistrate, Palamaner.

Heard and perused the material available on record.

The 2nd respondent filed a complaint against the petitioner for the offence under Section 138 of the Negotiable Instruments Act, alleging that the petitioner borrowed an amount of Rs.2,00,000/- from him as a hand loan and inspite of repeated requests, he did not pay the same and on demand, he issued a cheque, which was dishonoured due to insufficient funds. The 2nd respondent was examined as PW.1. Thereafter, he died. The respondents 3 to 5 are the legal heirs of the 2nd respondent and they filed the impugned application to permit them to come on record and to permit the son of the deceased i.e. 4th respondent to prosecute the case. The trial Court allowed the said application vide order impugned. Aggrieved over the same, the present petition is filed by the petitioner.

Learned counsel for the petitioner submitted that the application filed by the respondents 3 to 5 before the trial Court to permit them to come on record as LRs., of the deceased 2nd respondent is not filed in accordance with the provisions of Section 256 Cr.P.C., and therefore, it is not maintainable and further, the learned trial Judge, without giving notice and without giving any opportunity to the petitioner, straightaway allowed the said application, and therefore, the order impugned may be set aside.

After perusing the record and after hearing the arguments of the learned counsel for the petitioner, this Court is of the view that mentioning of a wrong provision is not a ground to set aside the order

and as seen from the order impugned, since the petitioner was absent, the trial Court issued NBW against the petitioner. The contention of the petitioner is that before giving number to the application filed by the respondents 3 to 5, the trial Court issued the NBW to him and therefore, the NBW pending against the petitioner should be recalled, to meet the ends of justice.

Considering the facts and circumstances of the case, the NBW issued against the petitioner in CrI.MP No.466 of 2014 in STC No.19 of 2013 is hereby recalled and the petitioner is directed to appear before the trial Court regularly.

Accordingly, the Criminal Petition is disposed of. Consequently, the Miscellaneous Petitions pending if any, shall stand closed.

RAJA ELANGO, J

March 11, 2016.

KTL