

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15783 of 2016

ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') challenging the docket order dated 16.09.2016 in C.C.No.49 of 2015 on the file of the Additional Judicial First Class Magistrate, Tuni, Visakhapatnam, issuing N.B.W. against him.

2. The grievance of the petitioner is that the petitioner being a government employee was transferred from Visakhapatnam to Hyderabad and presently he is working at Hyderabad. No summons was sent to the address of the petitioner at Hyderabad, but the summons was sent to Visakapatnam address and when the said summons were not served, without resorting to the other tools for securing the presence, issued N.B.Ws. it is illegal and prayed to quash the docket order dated 16.09.2016.

3. By the date of issuance of cheque, the petitioner was residing at Visakapatnam, working in a government undertaking, and petitioner addressed a letter to the banker ie., Branch Manager, S.B.I., Visakhapatnam, on 23.09.2013, requesting to provide acknowledgment and also directing the banker to stop payment. The complaint is filed in the year 2015 and it is evident from the record that the petitioner did not inform his changed address to the complainant due to strained relationship. The summons sent to the address at Visakhapatnam was not served, since the petitioner was

transferred from Visakhapatnam to Hyderabad and he did not furnish his changed address to the complainant. In such case, the Court has no option except to resort to proceed by issuing N.B.W. to secure the presence, since issue of summons would not serve any purpose, therefore, issued N.B.W. against the petitioner. However, the contention of the petitioner before this Court is that the trial Court is not recalling N.B.W. and requested this Court to recall N.B.W. issued by the trial Court. The jurisdiction under Section 70(2) Cr.P.C. has to be exercised by the Judicial First Class Magistrate, but instead of approaching the Judicial First Class Magistrate Court by filing a petition under Section 70(2) Cr.P.C., the petitioner approached this Court to quash the proceedings only on the ground that no summons was served to the petitioner before issuing N.B.W. But, special circumstances above mentioned, i.e., failure to furnish the address to the complainant is sufficient to conclude that the petitioner is avoiding to furnish his address to the complainant to serve summons issued in the C.C.No.49 of 2015, therefore, it is difficult to secure the presence of the petitioner by the trial Court except by issuing N.B.W. But, the petitioner approached this Court by abuse of process of the Court under the garb of power under Section 482 Cr.P.C. since the powers are unlimited, though such powers can be exercised sparingly, in such case the warrant cannot be recalled. As such, the petitioner/accused is directed to file an application under Section 70(2) Cr.P.C. before the trial Court and on filing of such application and on appearance of the

petitioner, the trial Court, after issuing notice to the de facto complainant, is directed to pass appropriate order in accordance with law, on the same day.

4. With the above direction, the criminal petition is disposed of.
5. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

8th November 2016

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