

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1846 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused having been aggrieved of the order, dated 15.05.2017, of the learned II Special Magistrate at Vijayawada, passed in CrI.M.P.No.2206 of 2017 in C.C.No.129 of 2017.

2. I have heard the submissions of *Sri Sai Gangadhar Chamarty*, learned counsel appearing for the petitioner, and of the learned Public Prosecutor representing the 1st respondent-State of Telangana. As this Court is of the considered view that the revision case can be disposed of at the stage of admission, no notice is necessary to the 2nd respondent-complainant. I have perused the material record.

3. By the order impugned in this revision, the learned Magistrate dismissed the afore-stated petition filed for recalling of the NBW issued against the petitioner/accused, as the petitioner/accused was absent at the hearing of the said petition.

4. Learned counsel for the petitioner would submit that the petitioner/accused filed the afore-stated petition for recalling of NBW by assigning valid reasons for his earlier absence in the matter before the trial Court and that there are a catena of decisions in support of the proposition that the presence of the accused is not necessary at the time of hearing of the application seeking recall of NBW. He, therefore, prays for recalling of the NBW and for granting an appropriate order.

5. Learned Public Prosecutor would submit that as there are no special circumstances as mentioned in the order of the trial court, the trial court is justified in dismissing the petition as the personal attendance of the petitioner is necessary at the time of hearing of the petition filed for recalling of the NBW.

6. Having regard to the facts and submissions, this Court is of the considered view that the Revision Case can be disposed of with appropriate directions.

7. In the result, the Criminal Revision Case is allowed and the order impugned is set aside. Accordingly, the trial Court is directed to permit the petitioner/ accused to file a fresh application for the same relief, entertain, register, and dispose of the same on merits and in strict accordance with the procedure established by law, as expeditiously as possible and preferably within a period of two weeks from the date of filing of the said application by the petitioner/accused, however, without insisting upon the appearance of the petitioner at the time of hearing of the said application. Nevertheless, the NBW issued against the petitioner/accused shall remain in abeyance till the disposal of the afore-stated petition that may be filed by the petitioner/accused. It is made clear that the trial Court shall be at liberty to proceed in the matter in accordance with the procedure established by law on the disposal of the petition that may be filed by the petitioner/accused as per the directions supra or on the failure of the petitioner to file any such application within two weeks from the date of receipt of a copy of this order.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

July 5, 2017
Lmv