

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No. 1744 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, (for short, 'the Code') by the unsuccessful petitioners/ accused is directed against the docket orders, dated 02.05.2017, of the learned Special Judicial First Class Magistrate (For Prohibition & Excise Offences), Nalgonda.

2. I have heard the submissions of *Sri Nambi Krishna*, learned counsel for the petitioners/ accused, and of the learned Public Prosecutor representing the respondent, State of Telangana. I have perused the material record.

3. Learned counsel appearing for the petitioners would submit as follows: 'The impugned order is unsustainable. In W.P.no.37373 of 2016, this Court directed the police to complete investigation in the crime as early as possible and file final report, if any, either way, in accordance with law, without arresting the petitioners. Thereafter, the police completed investigation and filed charge sheet. Thus, the accused are not arrested till the filing of the charge sheet. On taking the case (PRC) on file, the learned Magistrate issued summons. Having received summons, the petitioners appeared before the Court of the learned Magistrate, on 28.03.2017; and, the Court below adjourned the matter to 02.05.2017. On 02.05.2017, the impugned order was passed *inter alia* observing therein that the accused are not arrested in the case and that in the orders of the High Court in W.P.no.37373 of 2016 there are no directions to the Court (the Court of the learned Magistrate) and that the accused requested time and that, therefore, the matter is adjourned to 08.06.2017. Thus, once charge sheet is filed and summonses were issued to the accused, the Court will not exercise the power to issue NBWs, unless the accused failed to appear before it on receipt of the summonses. The power to

issue NBWs is exercisable, if only the accused fail to appear before the Court after receiving the summonses but not when the accused appear before the Court in response to the summonses served upon them. As the petitioners appeared before the Court below, there is no justification in insisting on issuance of NBWs. This Court already passed orders directing the police not to arrest and complete the investigation without arresting the petitioners and file final report, if any, either way, in accordance with law. Therefore, insisting upon issuance of NBWs despite appearance of the accused is not legal and valid. The Court below adjourned the matter on the request of the counsel that an order would be obtained from this Court. Hence, the order impugned is unsustainable.'

4. Learned Public Prosecutor would submit as follows: 'When the petitioners/accused are not arrested during the course of investigation and when a charge sheet is filed before the Court of the learned Magistrate opining that some of the offences committed by the petitioners/accused are punishable by a Court of Session, then, the learned Magistrate, who has registered a PRC, ought to have issued warrants against the accused to secure their presence instead of issuing the summonses. Since the petitioners are not arrested during the course of investigation and till charge sheet is filed, the learned Magistrate ought to have given them an opportunity to obtain bail from the Court of Session/ District Court, on their appearance before him in response to the summonses issued to them. As per law, on failure of the petitioners to get either anticipatory bail or regular bail, the Committal Magistrate is obliged to remand them to judicial custody and then pass committal orders to ensure their attendance before the Court of Session. The petitioners/accused, therefore, ought to have obtained anticipatory bail or regular bail from the Court of Session instead of approaching this Court.'

5. In the first place, it is apposite to refer to the committal Court's docket order, dated 02.05.2017, which reads verbatim as follows:

"A.1 present. A.2 to A.5 called absent. Petition under Sec.317 Cr.P.C filed. There is a direction from Hon'ble High Court for completion of investigation without arrest of A.1 to A.5. There is no direction to Court. Accused counsel request time for getting a direction from High Court regarding the further proceeding without arrest of accused. Accused counsel filed memo requesting time. Call on 08.06.2017."

It is also profitable to refer to Section 209 of the Code, which reads as follows:

"209. Commitment of case to Court of Session when offence is triable exclusively by it.--- When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall---

(a) commit, after complying with the provisions of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;

(b) subject to the provisions of this Code relating to bail, remand, the accused to custody during, and until the conclusion of, the trial;

(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence;

(d) notify the Public Prosecutor of the commitment of the case to the Court of Session."

The provision of the first clause (a) makes it manifest that subject to the provisions of the Code relating to bail, the committal Magistrate shall remand the accused to custody until such commitment has been made to the Court of Session. Further, the provision of the clause (b) also makes it clear that subject to the provisions of the Code relating to bail, the committal Magistrate

shall remand the accused to custody during, and until the conclusion of, the trial. Therefore, when the accused, who are not on bail, appear before the learned committal Magistrate, either in response to the summonses or warrants, the learned Magistrate shall remand them to custody until commitment to the Court of Session, as some of the offences are triable exclusively by the Court of Session. In the case on hand, the learned committal Magistrate did not remand the accused to custody though they are not on bail and simply adjourned the matter when the accused made a request to obtain orders from this Court. In fact, the accused ought to have approached the District & Sessions Court and ought to have obtained bail instead of approaching this Court.

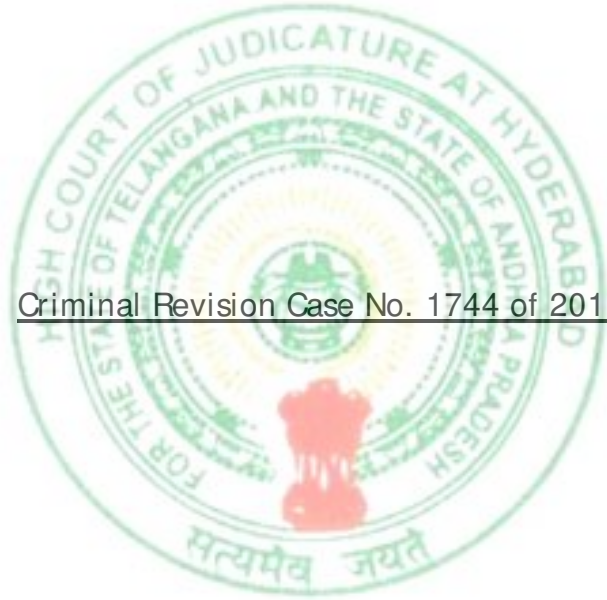
6. Having regard to the facts and circumstances, the Criminal Revision Case is disposed of accordingly enlarging the petitioners/ accused on bail, subject to their executing personal bonds for Rs.20,000/- (Rupees twenty thousand only) each with two sureties each in a like sum each to the satisfaction of the learned committal Magistrate and directing them to appear before the learned committal Magistrate for their release accordingly. It is needless to state that on such release of the petitioners/ accused on bail, they shall regularly and without fail appear before the learned committal Magistrate till commitment to the Court of Session in accordance with the procedure established by law.

Pending miscellaneous petitions, if any, in this Criminal Revision Case shall stand closed.

03.07.2017
RAR

M. SEETHARAMA MURTI, J

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Dated : 03-07-2017

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