

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.7131 of 2017

ORDER:

Heard learned counsel for petitioners/ accused Nos.1, 2 and 5 and also learned public prosecutor representing the 2nd respondent—State before ordering notice to 1st respondent—defacto complainant and perused the docket averments impugned in the criminal petition and also the order dated 12.07.2016 passed in CrI.P. No.9978 of 2016 where the petitioners sought for quashing of proceedings in C.C. No.467 of 2014 pending on the file of I Additional Chief Metropolitan Magistrate, Hyderabad.

2) The facts necessary to mention for the purpose of disposal of petition are that:

3) Pursuant to Crime No.186 of 2012 of Saifabad Police Station, registered on the report of 1st respondent—de facto complainant for the offences punishable under Sections 384, 447, 509 and 120-b r/w 34 IPC, the police after investigation filed the final report and the learned Magistrate has taken cognizance as per the cognizance order dated 26.07.2014 by posting the matter to 12.09.2014 with a direction to issue summons to the accused Nos.1, 2 and 5, who are the petitioners herein stating that they are already on bail and also from perusal of the charge sheet contents.

4) Needless to say, once the accused were enlarged on bail, it is their duty to know the status of the case apart from the summons being issued by the Court. In fact, as per the impugned docket proceedings, it was recorded that accused absent, summons were issued and the same were returned as addressee is

shifted to Cudapah, and by ordering to issue fresh summons on accused on fresh address, the case was posted to 07.11.2014. On 07.11.2014, again the matter was posted to 21.01.2015, and on 21.01.2015 for their absence and summons returned unserved, issued surety notice, the matter was posted to 19.02.2015 and again on 19.02.2015, it was adjourned to 21.05.2015, on which date it was posted to 30.07.2015 and on 30.07.2015, the surety notice also returned as house vacated, thereby the Court issued NBW against accused Nos.1, 2 and 5 by posting the matter to 30.09.2015. It is, in fact, subsequently these petitioners/ accused Nos.1, 2 and 5 filed a quash petition before this Court in CrI.P. No.9978 of 2016 to quash the C.C. No.467 of 2014.

5) This Court observed that a perusal of the material reveals specific allegations against petitioners/ accused Nos.1, 2 and 5 and the truth or otherwise of the allegations can only be decided during course of trial, thereby, there were no grounds to interdict and quash the proceedings. Considering the request of the counsel for the petitioners/ accused Nos.1, 2 and 5, the Criminal Petition is disposed of, directing the trial Court to dispose of the case as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of that order, without insisting the presence of the petitioners 2 and 3/ accused Nos.2 and 5, unless required for any specific purpose and the petitioner No.1/ accused No.1 shall appear before the trial Court for every adjournment.

6) It is hardly believable that the petitioners have no knowledge about the NBWs and there is a force in the statement of

the learned Public Prosecutor that the petitioners suppressed the fact that the NBWs are pending against them and subsequently tried to seek quash and went unsuccessful and even the aforesaid order is outcome of fraud on the Court, which cannot be tolerated. Now the petitioners are impugning the docket proceedings of NBWs pending against them and the surety notice, filed the present Criminal Petition. They cannot take advantage of order obtained by playing fraud on the Court and the inherent powers of the Court under Section 482 Cr.P.C are meant either to sub-serve the ends of justice or to prevent the abuse of process of law.

7) Having regard to the above, though the order is passed by another bench, once fraud played on Court is noticed, they cannot be allowed to take advantage of that order much less to dispense with any of their appearance before the trial Court unless they specifically file an application under Rule 37 Cr.P.C before the trial Court to permit one to represent others, which has to be considered on its own merits. Subject to that now coming to the NBWs sought to be recalled, as sureties also failed their undertaking to produce the accused as and when required and see that the accused shall appear for every adjournment, the bail bonds are liable to be forfeited and penalty to be imposed. As accused are already on bail and the bail is not cancelled by virtue of this order, the learned Magistrate on appearance of the accused accept to their furnishing of fresh solvency subject to payment of penalty for earlier bonds. Once the accused pay the penalty, sureties of the earlier bonds are not liable. By making it clear, the trial Court is directed to accept fresh solvency and to secure their presence for every adjournment.

8) With the above observations, the Criminal Petition is disposed of.

9) Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.08.2017

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