

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1037 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 ('the Code', for brevity), is filed by the petitioner/accused, partly assailing the order, dated 22.03.2017, of the learned VII Additional District and Sessions Judge, Vijayawada, passed in Crl.M.P.No.100 of 2017 in Criminal Appeal No.98 of 2017 (C.C.No.114 of 2015 on the file of the learned Chief Metropolitan Magistrate, Vijayawada).

2. I have heard the submissions of the learned counsel for the petitioner/accused and of the learned Public Prosecutor for the State of Andhra Pradesh.

3. The learned counsel for the petitioner would submit that though the first respondent/*de facto* complainant and her counsel on record in the proceedings before the Court below are duly served, they did not enter appearance and that proof of service of notice on the first respondent and her counsel on record in the proceedings before the Court below is filed before the Registry. I have perused the material record.

4. The learned counsel for the petitioner would submit that by the order impugned in this Criminal Revision Case, the Court below, while allowing the miscellaneous petition filed by the petitioner and while suspending the operation of the sentence of imprisonment imposed by the trial Court in the Judgment in C.C.No.114 of 2015 till the disposal of the appeal pending before it, directed the petitioner to deposit 1/4th of the cheque amount to the credit of the said Calendar Case before the trial Court with a further observation that on failure to deposit the said amount, the miscellaneous petition shall stand dismissed. He would further bring to the notice of this Court that there is no direction in the

judgment of the trial Court to deposit the cheque amount or any part thereof and that therefore, the condition imposed by the Court below in the order impugned, i.e., to deposit 1/4th of the cheque amount is redundant and that such a direction ought not to have been issued by the Court below and that the said direction, which is illegal and unsustainable, is liable to be set aside.

5. A plain perusal of the judgment of the trial Court which is impugned in the appeal pending before the Court below makes it manifest that the sentence of simple imprisonment for a period of six months was imposed, besides imposition of fine of Rs.5,000/- coupled with default sentence and there was no further direction to deposit the cheque amount or any part thereof. The learned counsel for the petitioner would submit that the fine amount was already paid. In that view of the matter, this Court finds that the request of the petitioner in this Criminal Revision Case merits consideration.

6. Accordingly, the Criminal Revision Case is allowed and the order impugned is modified only with regard to the direction to deposit 1/4th of the cheque amount by setting aside accordingly the said direction of the Court below in the impugned order. The impugned order in all other aspects hold good.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

07th June, 2017
Bvv

M.Seetharama Murti, J