

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.2026 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), by the petitioner/Accused no.17, is directed against the order, dated 30.06.2017, of the learned VI Additional Chief Metropolitan Magistrate, Hyderabad, passed in CrI.M.P.No.1272 of 2017 in C.C.No.268 of 2005 (arising out of Crime no.19 of 2001 of Police Station, C.I.D., Hyderabad).

2. I have heard the submissions of *Sri P.Ramesh Babu*, learned counsel for the petitioner/Accused no.17, and of the learned Public Prosecutor for the State of Telangana representing the sole respondent. I have perused the material record.

3. The facts of the case, which are required to be considered, in brief, are as follows:-

The petitioner/Accused no.17, along with the other accused, is facing trial for the offences punishable under Sections 420, 403, 408, 409, 477-A, 201 & 120-B of the Indian Penal Code, 1860. According to the submissions of the learned counsel for the petitioner, the case is at the stage of examination of the accused. However, on non appearance of the petitioner/Accused no.17 before the Court of the learned VI Additional Chief Metropolitan Magistrate, Hyderabad, a Non Bailable Warrant was issued against him. Thereafter, he filed the afore-stated miscellaneous petition under Section 70(2) of the Code, requesting to recall the said Non Bailable Warrant. His case, in support of the said request, is as follows: 'On 28.06.2017, he could

not appear before the trial Court as he was bedridden on account of his old age ailments. He is a senior citizen aged 89 years. His absence before the trial Court on the said date of adjournment is neither wilful nor intentional. He is suffering from Alzheimer's disease.' The prosecution resisted the petition *inter alia* stating that the case is of the year 2005 and that the prosecution of the case is being unnecessarily delayed and that the allegations that the petitioner is 89 years old and that he is bedridden are not correct and the said contentions are not supported by any valid medical certificate. On merits and by the order impugned in the Revision, the trial Court dismissed the petition of the petitioner/Accused no.17. Therefore, he is before this Court.

4. The learned counsel for the petitioner/Accused no.17 submits that the petitioner is nearly 90 years old and the said fact is not in dispute and that he filed a medical certificate, dated 28.06.2017, issued by a competent medical officer, wherein, it is certified that he is suffering from Alzheimer's disease and, therefore, there are no wilful laches on his part in not attending before the Court of the learned VI Additional Chief Metropolitan Magistrate, Hyderabad, on the date of hearing on which, the Non Bailable Warrant was issued.

5. The learned Public Prosecutor, while reiterating the case of the prosecution stated in the counter, supports the order of the Court below.

6. In the considered view of this Court, if really the petitioner/Accused no.17 is suffering from Alzheimer's disease, it is necessary to find out as to whether the petitioner/Accused no.17 is in

a fit medical condition to face the trial before the trial Court as the said *Alzheimer's* disease is a brain disease that causes a slow decline in memory, thinking and reasoning skills; and, one of the most common signs of *Alzheimer's* is memory loss, which disrupts daily life. In that view of the matter, the contention of the petitioner about his illness requires a detailed examination by the trial Court. Hence, this Court deems it appropriate to dispose of this Criminal Revision Case with appropriate directions.

7. In the result, the Criminal Revision Case is allowed and the order impugned is set aside, subject to the condition that the petitioner shall appear before the trial Court on the next date of hearing without fail. Till then, the Non Bailable Warrant issued against the petitioner shall remain in abeyance. On the failure of the petitioner to appear before the trial Court on the next date of adjournment, the revision case shall stand dismissed and the order now impugned in this Revision shall stand revived and the trial Court shall be at liberty to proceed further in the matter in accordance with the procedure established by law. Nevertheless, on the petitioner appearing before the trial Court as directed supra on the next date of hearing, the Non Bailable Warrant issued against the petitioner shall stand recalled. However, the trial Court shall examine the correctness or otherwise of the contention of the petitioner/Accused no.17 that he is suffering from *Alzheimer's* disease and then proceed further in the matter on arriving at a satisfaction that he is mentally fit for facing trial. If so required, the trial Court shall direct the petitioner/Accused no.17 to undergo medical examination and submit a report or subject him to medical examination and call for a medical

report about his mental health, as per the procedure established by law.

Pending miscellaneous petitions, if any, shall stand closed.

25th July, 2017
Bvv

M.Seetharama Murthi, J

