

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1454 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is directed against the proceeding/notice, dated 15.05.2017, of the learned Executive Magistrate, Kesamudram Mandal, Mahaboobabad District.

2. I have heard the submissions of Sri D.V. Ramana Sarma, learned counsel for the petitioner, and of the learned Public Prosecutor, State of Telangana. I have perused the material record.

3. A perusal of the impugned proceeding/notice would show that the said proceeding/notice was issued to the surety, Tejavath Laxman, *inter alia*, stating that for violation of the conditions of the good behaviour bond given by the petitioner-accused, the surety bond was forfeited and the surety was required to pay a penalty of Rs.50,000/- or to show cause to the said Executive Magistrate within seven working days as to why the same should not be paid and cause the person for whom the said person stood as surety to appear before the said Magistrate.

4. As the surety, Tejavath Laxman, failed to comply with the proceeding/notice, the petitioner-accused has been adjudged for imprisonment and steps were initiated for his arrest and he was arrested and was lodged in prison. Hence, the petitioner is before this Court.

5. Learned counsel for the petitioner would submit that no enquiry as contemplated under law was conducted either before issuing the show cause notice/proceeding or after the alleged violation on the part of the surety to comply with the proceeding/show cause notice. He would also submit that the

time of seven days as mentioned in the notice is not a sufficient time considering the financial status of the petitioner as well as the surety and that even before the completion of the said seven days, the petitioner-accused was arrested and that no sufficient opportunity was afforded to the petitioner or the surety to offer their explanation or to pay the huge and unreasonable penalty demanded in the notice and that the notice does not disclose any material or the basis on which it was assumed that the petitioner violated the conditions of the bond. He would also submit that at the time of arrest of the petitioner and before lodging him in prison, the legal requirements were not followed and that the whole exercise is illegal, arbitrary and contrary to the provisions of the Indian Constitution.

6. Learned Public Prosecutor would submit that the instant revision on the ground that there is illegality in issuing the impugned notice/proceeding is not maintainable, as, in-fact, there is no illegality in issuing the notice/proceeding under challenge and that the surety, Tejavath Laxman, was given an opportunity to show cause within seven working days, but, he failed either to show any cause or pay the penalty demanded and that, therefore, the revision petition is liable to be dismissed.

7. In the instant case, the impugned proceeding/notice was issued to the surety holding that the petitioner has committed breach of the bond by committing an offence under Section 7(A) read with 8(e) of the Prohibition Act, and that, therefore, the bond given by the surety, Tejavath Laxman, was forfeited. In the proceeding/notice, it was further stated that the surety is liable to pay the penalty of Rs.50,000/- or show cause within seven working days as to why the payment of the same should not be enforced and cause the person for whom the said person stood as surety to appear before the said Magistrate. The order does not indicate specifically anything as to any prior enquiry has

been made for ascertaining the truth and for formulating an opinion that the conditions of the bond are violated and that there are valid grounds for forfeiting the bond and proceeding further in the matter. The proceeding/notice impugned only states that there was a violation by the petitioner by commission of an offence, but, does not disclose any further details thereof with regard to the source of information, quantity of contraband, if any, place, date & time of the alleged offence etcetera. Thus, *prima facie*, it appears that the proceeding/notice was issued without conducting proper enquiry and without following the procedure established by law and that as a sequel to the said proceeding/notice, the petitioner was arrested and lodged in prison and that therefore, the said proceeding/notice and the consequential action are liable to be set aside.

8. In the result, the Criminal Revision Case is allowed setting aside the proceeding/notice in MC.No.13/2017, dated 15.05.2017, passed by the Executive Magistrate, Hyderabad District and, the Executive Magistrate is now directed to proceed with the matter after giving an opportunity of hearing to the petitioner as well as the surety, however, in accordance with the procedure envisaged under law. It is made clear that the petitioner shall be set at liberty forthwith if his detention/confinement is not required in any other case and that he shall not be subjected to detention in the instant matter till such enquiry is completed and a speaking order is made in the matter.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M.SEETHARAMA MURTI

June 7, 2017

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