

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2293 of 2017

JUDGMENT:

This Criminal Revision Case is filed by the petitioner/A-1 under Sections 397 and 401 of Criminal Procedure Code, challenging the order, dated 03-08-2017 in CrI.M.P.No.2695 of 2017 in C.C.No.1248 of 2012 passed by the XIV Addl. Chief Metropolitan Magistrate, Nampally, Hyderabad, dismissing the application filed under Section 70 (2) of Cr.P.C., to recall N.B.W. issued against petitioner/A-1 on 21-07-2017.

The case of the petitioner is that he along with A-2/respondent No.2 herein filed an application on 21-07-2017 under Section 317 of Cr.P.C., to dispense with their presence by filing printed proforma of application filling the blanks therein and the trial Court while dismissing the petition, issued N.B.W. against petitioner/A-1.

CrI.M.P.No.2695 of 2017 was filed by A-1 and A-2 on the ground that on 21-07-2017 the petitioner/A-1 appeared before the I Senior Civil Judge, City Civil Courts, Hyderabad in O.S.No.1834 of 2011 as the petitioner herein is the plaintiff in the said suit, which is coming up for trial. Simultaneously, on 21-07-2017, the petitioner herein had to attend before this Court in batch of writ petitions, which were posted for final hearing. Therefore, he filed application under Section 317 of

Cr.P.C., to dispense with his appearance and the reason assigned by the petitioner for his non-appearance on 21-07-2017 is genuine and therefore, requested to re-call N.B.W. issued by the XIV Additional Chief Metropolitan Magistrate, Nampally, Hyderabad.

During hearing, Sri C. Ramprasad, learned counsel appearing for the petitioner by over vehemence contended that the reason assigned by the petitioner is genuine and it is impossible for any one to appear before more than one Court, at a time, at 10.30 A.M. On the date of adjournment, i.e., on 21-07-2017, since the petitioner has to appear before the Metropolitan Sessions Court in Spl.S.C.No.27 of 2012 and on the same day at 10.30 A.M. so also before the I Senior Civil Judge in O.S.No.1834 of 2011, besides appearance before this Court in batch of writ petitions, which were posted for final hearing, therefore, his absence on the said date was genuine. But the trial Court dismissed the petition filed under Section 317 of Cr.P.C., without any specific reason and the present petition was also dismissed by cryptic order without assigning any reason and prayed to set aside the same.

Learned Public Prosecutor argued in support of the order passed by the trial Court.

It is the contention of the petitioner that on the date when N.B.W. was issued i.e., on 21-07-2017 while dismissing

the application filed under Section 317 of Cr.P.C., he had to appear before the Metropolitan Sessions Court in Spl.S.C.No.27 of 2012, before the I Senior Civil Judge, City Civil Courts, Hyderabad, in connection with O.S.No.1834 of 2011 and also before this Court in batch of writ petitions. In such case it is impossible for the petitioner to appear in all the Courts, at a time, as he was not an omnipresent, as such he could not appear before the Court below. The specific allegations made in paragraph No.3 would show that the petitioner had to appear before the I Senior Civil Judge in O.S.No.1834 of 2011 and also before this Court in batch of writ petition posted for final hearing.

In fact, there was no reference with regard to his appearance in Metropolitan Sessions Court, in Spl.S.C.No.27 of 2012, in the entire petition and it is an invention for the first time before this Court some how to get an order to re-call N.B.W. by this Court. In absence of any allegation in the petition, his appearance before the Metropolitan Sessions Court in Spl.S.C.No.27 of 2012, cannot be believed and the trial Court is not expected to conclude that he had appeared in Spl.S.C.No.27 of 2012. Hence, on this ground the N.B.W. cannot be re-called.

The other ground urged in the petition is because of his appearance before the I Senior Civil Judge, City Civil Courts,

Hyderabad, in connection with O.S.No.1834 of 2011 and also before this Court in batch of writ petitions he could not appear in C.C.No.1248 of 2012. But, those two matters are civil in nature, the presence of the petitioner is not required at 10.30 A.M. and at best he is required to appear before the Civil Court at the time when the matter reached for recording his evidence if it is posted for trial. The representation by the counsel is sufficient in civil suits so also in writ petitions. Therefore, on the ground that he had to appear before the Civil Court and this Court, the non-appearance in C.C.No.1248 of 2012 cannot be accepted as a genuine ground.

On the other hand, it appears from the allegations made in paragraph No.3 of the petition that he conveniently avoided his appearance before the Criminal Court on the pretext that he had to appear before the Civil Court and High Court. Therefore, such person, who is avoiding appearance before the criminal Court, is not entitled to get the warrant re-called under Section 70 (2) of the Cr.P.C.

The other contention urged before this Court is that the trial Court did not pass reasoned order.

As seen from the order passed by the Court below, the Court perused the record and recorded specific finding that the earlier petition to recall N.B.W. of A-2 was dismissed on

21-07-2017 vide orders in CrI.M.Ps., dated 23-06-2017, 22-02-2017, 22-03-2017, 13-04-2017 and 02-06-2017 and found no grounds to re-call the N.B.W. in absence of A-2 before the Court and those allegations are false and baseless. Thus, the Court below disbelieved the reason assigned by A-2 for re-call of N.B.W. and those reasons are sufficient to convey the ground on which the petition was dismissed. The Court need not give minute reasons for not accepting the cause shown by the petitioner, therefore, the order cannot be said to be cryptic and without reasons, on that ground the petition cannot be allowed.

Learned counsel for the petitioner further contended that there is a Judgment of Hon'ble Apex Court, which permits the Court to re-call such warrant but he did not bring to my note any such judgment, therefore, it is difficult to rely the principles based on the judgment he referred, without placing copy of the judgment of the Hon'ble Apex Court or atleast the citation, enabling the Court to pursue and pass order.

On over all consideration of entire material, I find no grounds to re-call the N.B.W. issued against petitioner/A-1. However, the petitioner/A-1 is at liberty to appear before the trial Court and file appropriate application to re-call N.B.W.

and on such filing of application by the petitioner, the trial Court is directed to decide the application on the same day.

With the above direction, the Criminal Revision Case is dismissed.

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

JUSTICE M. SATYANARAYANA MURTHY

August 17, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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