

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1614 of 2017

ORDER:

This criminal revision case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973, ('the Code', for short) is filed by the petitioner-respondent-accused having been aggrieved of the return endorsement of the Office of the Court below returning the petition filed by him under Section 70(2) of the Code on the ground of maintainability.

2. I have heard the submissions of *Sri M. Karuna Sagar*, learned counsel for the petitioner, and of the learned Public Prosecutor (AP) representing the 1st respondent-State, at the stage of admission. 2nd respondent is stated to be the appellant-complainant.

3. I have perused the material record.

4. Learned counsel for the petitioner would submit as follows:

The petitioner is the accused in C.C.No.93 of 2015 (old No.650 of 2014) on the file of the Court of the learned Special Magistrate III, Visakhapatnam. While the said Calendar Case was pending before the trial Court, the petitioner herein was provided with the services of a legal aid counsel. After full fledged trial, the Calendar Case ended in acquittal by a judgment, dated 08.10.2015, of the learned Judge of the trial Court. Subsequently, the petitioner came to know about the issuance of an NBW by the Court below/ appellate Court, when the police of Gopalapatnam PS started visiting his house. The petitioner also came to know that since no notice was served on him in the appeal before the Court below, one T. Satya Rao, legal aid counsel, advanced arguments on his behalf and that the Court below, having found the petitioner guilty of the offence alleged against him, allowed the appeal and issued an NBW against the petitioner for hearing him on the quantum of punishment. On coming to know

of the facts that an appeal was preferred and that even without a notice to the petitioner and without any authority given by the petitioner to the legal aid counsel, a legal aid counsel appeared before the Court below and that the appeal was allowed and that an NBW was issued against him, the petitioner approached the Court below with the subject petition under Section 70(2) of the Code. However, the Court below un-necessarily returned the application on the ground of maintainability and did not permit the petitioner herein to engage an advocate of his choice and represent the matter. Therefore, the petitioner is aggrieved.

5. I have given detailed and thoughtful consideration to the facts and submissions.

6. The crux of the case of the petitioner-accused is that in the Calendar Case before the trial Court, he was represented by a legal aid counsel and that he was acquitted and that subsequently, the complainant-2nd respondent herein filed an appeal and that in that appeal no notice was issued to the petitioner and that without his request or authorisation, a legal aid counsel appeared and that on hearing the said counsel, the appeal of the complainant was allowed and that the petitioner was convicted and that the judgment of conviction passed by the Court below after hearing the legal aid counsel, who is not the duly authorised agent of the petitioner, is unsustainable under facts being opposed to principles of natural justice, equity and fairness and that, therefore, the Court below ought to have recalled the NBW and ought to have given an opportunity to the petitioner to engage a counsel of his choice after recalling the appointment of the legal aid counsel, if any, made without the request of the petitioner in that regard.

7. In the light of the facts and submissions, to meet the ends of justice, this Court is of the considered view that the revision case can be disposed of with appropriate directions.

8. In the result, the Criminal Revision Case is disposed of with the following directions:

The NBW issued against the petitioner-accused shall stand recalled. The petitioner shall appear before the Court below within three (03) weeks from today. Nevertheless on such appearance of the petitioner, the Court below shall enlarge him on bail on his executing a personal bond for Rs.10,000/- (Rupees ten thousand only) with one surety in a like sum to its satisfaction. Further, the Court below shall give an opportunity of hearing to the petitioner-accused to make his submissions on the aspects now mentioned before this Court and then examine the record and verify as to whether the petitioner was served with notice in the appeal or not and whether or not the legal aid counsel was appointed in accordance with the procedure established by law as according to the petitioner, the authority given to the legal aid counsel who appeared in the trial Court came to an end with the disposal of the case by the trial Court and that the petitioner was not served with notice in the appeal and he did not ask for appointment of a legal aid counsel to represent him in the appeal. If the Court below agrees with the contentions of the petitioner-accused in the above regard, it is needless to mention that the Court below shall give an opportunity to the petitioner to file a petition to recall its judgment which is passed without notice and without an opportunity to the petitioner for appointing a counsel of his choice and then rehear the appeal after following the procedure established by law and giving an opportunity to the petitioner to appoint a counsel of his choice.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

20.06.2017
Vjl