

**THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

**Crl.R.C.No.1565 of 2017**

**ORDER**

This criminal revision case is filed under Sections 397 and 401 of Cr.P.C., aggrieved by the order dated 05.01.2017 passed by the Special Judicial Magistrate of First Class (Excise) at Karimnagar, in Crl.M.P.No.46 of 2017 in C.C.No.504 of 2007, dismissing the petition filed under Rule 219 of Criminal Rules of Practice for return of F.D.R. to the petitioner.

2. The petitioner stood surety to the accused in C.C.No.504 of 2007 and he deposited F.D.R.No.927316, dated 20.06.2006, issued by Andhra Bank, St. Johns Branch, Karimnagar, for an amount of Rs.15,100/-, before the Additional Judicial Magistrate of First Class, Karimnagar. But the proceedings were stopped under Section 258 Cr.P.C., by the Magistrate on 04.04.2016 due to death of the accused on 25.02.2014. Therefore, the petitioner requested for return of F.D.R.

3. Upon hearing argument of both the counsel, the trial Court dismissed the petition on the ground that stoppage of proceedings under Section 258 of Cr.P.C., would not amount to final disposal since there is a possibility to take steps by the prosecution to reopen the case by filing appropriate application. Aggrieved by the said order, the present revision is filed on various grounds.

4. None appeared for the petitioner when the matter reached for hearing. However, this Court cannot dismiss the criminal revision

case for default, but without waiting for the counsel for petitioner, the Court can verify the record and pass appropriate orders as held by the Delhi High Court in **NISHA SHARMA v. VINOD KUMAR SHARMA**<sup>1</sup>. Following the judgment of the Delhi High Court, in case of non-appearance of the petitioner or his counsel, the Court can decide the present petition by verifying the record.

5. It is an undisputed fact that the petitioner deposited F.D.R.No.927316 dated 20.06.2006 issued by Andhra Bank, St. Johns Branch, Karimnagar, for an amount of Rs.15,100/-, before the Court as security, but the proceedings in C.C.No.504 of 2007 were stopped by exercising power under Section 258 Cr.P.C., due to death of the accused on 04.04.2016. The only reason for rejection of the petition is that there is a possibility of filing an application to reopen the case by the prosecution cannot be ruled out. When the proceedings were stopped on 04.04.2016, the question of filing a petition to reopen the case after a lapse of more than one year, normally, would not arise, except in exceptional circumstances. Therefore, retaining the F.D.R., even after stoppage of all further proceedings by exercising power under Section 258 Cr.P.C., does not arise and as such, the trial Court has committed error in retaining the said F.D.R.

6. Hence, the order passed by the Special Judicial Magistrate of First Class (Excise), Karimnagar in Crl.M.P.No.46 of 2017 in C.C.No.504 of 2007 dated 05.01.2017, is set aside, directing the

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<sup>1</sup> 1990 CrL.J.NOC 57 Delhi

Magistrate to return F.D.R.No.927316 dated 20.06.2006 to the petitioner within one month from the date of receipt of a copy of this order under due acknowledgment by petitioner, if no application is filed for reopening of the case by the prosecution.

7. With the above direction, the Criminal Revision Case is allowed. Miscellaneous petitions, if any, pending in this revision shall stand closed.

**M. SATYANARAYANA MURTHY, J**

11<sup>th</sup> September, 2017

sj

