

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1984 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is directed against the proceedings/notice, dated 01.07.2017 of the learned Executive Magistrate, Mellacheruvu Mandal, Suryapet District.

2. I have heard the submissions of the 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 proceedings/notice would show that for violation of the bond for security of good behaviour given by the petitioner, the said bond was forfeited and the petitioner was required to pay a penalty of Rs.1,00,000/- or to show cause within 20 days as to why he should not be adjudged for imprisonment until such bond period expires.

4. Hence, the petitioner is before this Court.

5. Learned counsel for the petitioner would submit that no enquiry as contemplated under law was conducted before issuing the impugned show cause notice/proceeding. He would also submit that huge and unreasonable penalty was demanded in the notice without affording an opportunity of hearing to the petitioner and on the assumption that the good behaviour bond conditions are violated on commission of an alleged offence punishable under Section 7(A) read

with 9(e) of Prohibition Act and on registration of crime in case No.COR 43/2017 by Prohibition and Excise Station, Kodad.

6. Learned Public Prosecutor would submit that there is no illegality in issuing the notice/proceeding and that the revision petition is liable to be dismissed as the petitioner was only required to show cause and no prejudice is caused to the petitioner by mere issuance of a show cause notice/proceeding giving 20 days time for showing cause.

7. In the instant case, the proceeding/notice was issued holding that the petitioner committed breach of the bond and therefore, he is liable to pay Rs.1,00,000/- to the Government. In the notice/proceeding, he was also asked to show cause within 20 days why he should not be adjudged for imprisonment till the bond period expires. 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. The proceeding/notice only states that the petitioner committed offences punishable under Section 7(A) read with 9(e) of Prohibition Act but does not give other details thereof except the crime number. Rules 107 to 122 postulate a procedure which the learned Executive Magistrate is required to follow in a matter of the present nature. A plain consideration of provision of Sections 107 to 122 of the Code of Criminal Procedure, 1973, makes it manifest that an opportunity shall

be given to the petitioner/accused to explain the case before any order/notice like the impugned order/notice is passed/ issued. However, the notice/proceeding does not indicate such procedure envisaged under law is followed. Thus, *prima facie*, it appears that the notice/proceeding was issued without conducting any enquiry. In that view of the matter, this Court is of the considered view that the same is liable to be set aside.

8. Learned counsel for the petitioner submits that the petitioner/accused is enlarged on bail in the aforestated crime.

9. In the result, the Criminal Revision Case is allowed setting aside the proceeding/notice in MC.No.A/226/2017, dated 01.07.2017, passed by the Executive Magistrate, Mellacheruvu, Suryapet District. And, the Executive Magistrate is now directed to proceed with the matter after giving an opportunity of hearing to the petitioner, however, in accordance with the procedure envisaged under law. It is made clear that the petitioner shall not be subjected to arrest and detention in the instant matter till such enquiry is completed and a speaking order is made. This order shall not preclude the authority concerned to proceed against the petitioner in any other case, which is unrelated to the present matter.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

14th JULY, 2017.

Note: issue c.c. by 17.07.2017.

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