

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION Nos.1396 & 618 OF 2017

COMMON ORDER :

The former Criminal Petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Cr.P.C.') requesting to modify the order, dated 18.01.2017, in CrI.M.P.Nos.145 of 2017 in Crime No.7 of 2017 of Narsipatnam Town Police Station, passed by the learned Metropolitan Sessions Judge – cum - I Additional District and Sessions Judge, Visakhapatnam, by reducing surety amount of sureties' fixed deposit from Rs.1,00,000/- to Rs.5,000/- each and pass such other order or orders as this Court deems fit and proper. Whereas, the latter Criminal Petition is filed by the petitioners requesting to modify the order, dated 27.12.2016, passed by the aforesaid Sessions Court in CrI.M.P. Nos.4312 of 2016 and 4313 of 2016 in Crime No.89 of 2016 of K. Kotapadu Police Station by reducing surety amount of sureties' fixed deposit from Rs.50,000/- to Rs.5,000/- each.

2. Heard, Sri Sravan Kumar Naidana, learned counsel for the petitioners in both the petitions, and learned Additional Public Prosecutor for the State of Andhra Pradesh.

3. When maintainability of a petition of this nature under Section 482 of the Cr.P.C. is questioned, the learned counsel would represent that, in fact, the respective petitioners originally filed the

present petitions under Section 440(2) read with Section 482 of the Cr.P.C., the Registry asked him to confine the provision of law to Section 482 of the Cr.P.C. and thereby, he has struck off the provision of Section 440(2) of the Cr.P.C. The learned counsel would represent that in fact the present petitions would not come under the purview of Section 482 of the Cr.P.C.

4. Interesting question would arise as to when there is a specific provision in the Code, whether a party is left with the choice to invoke the extraordinary power under Section 482 of the Cr.P.C. Irrespective of referring to the catena of decisions on this aspect, it would suffice to state at this stage that there are two provisions under the Code, which govern the present situation.

The first provision is Section 439 clause (1) (a) of the Cr.P.C. and the second is sub-section 2 of Section 440 of the Cr.P.C. It would be appropriate to refer to what Section 439 of the Cr.P.C. would connote.

Section 439 of the Cr.P.C. deals with Special powers of High Court or Court of Sessions regarding bail. Section 439 (1)(b) of the Cr.P.C. reads thus:

“that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified”

So far as the condition imposed by a Magistrate is concerned, the same may be set aside or modified by the High Court or Court of

Sessions while exercising special power under Section 439 of the Cr.P.C.

Turning to the second situation, sub-section 2 of Section 440 of the Cr.P.C. is concerned, it would govern the present situation also. Section 440 (2) of the Cr.P.C. deals with amount of bond and reduction thereof, which reads thus:

“The High Court or the Court of Sessions may direct that the bail required by a police officer or Magistrate be reduced.”

Now, turning to the request made, the petitioners is seeking to reduce the surety amounts of sureties fixed deposit from Rs.1,00,000/- to Rs.5,000/- each in the former petition and Rs.50,000/- to Rs.5,000/- each in the latter petition, which reliefs falling under Section 440 (2) of the Cr.P.C.

5. The provisions of Section 439 (1) (b) and Section 440 92) of Cr.P.C., extracted in the above. Thus, it is clear that the relief as regards relaxation of any of the conditions imposed by the Courts below require to be dealt with under the provisions of Section 439 (1) (b) of Cr.P.C. or under Section 440 of Cr.P.C. depending on the nature of condition imposed and the relief that is to be sought for.

Therefore, both the Criminal Petitions are disposed of, leaving it open to the petitioners to invoke the relevant provision of the Code

in seeking appropriate relief. As a sequel thereto, miscellaneous petitions, if any, pending in the petitions, stand closed.

A. SHANKAR NARAYANA, J

February 27, 2017.

Note:- (1) Registry is directed to return the original certified copies of the impugned orders forthwith to the learned counsel for the petitioners without any delay.

(2) Issue CC today.

(B/O)
MAR/Mgr

