

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.1731 of 2017

ORDER:

The case of the petitioner is that a private complaint was filed by the third respondent. But, the petitioner was acquitted in the said case in C.C.No.246 of 2012 dated 07.11.2014 filed under Section 138 of the Negotiable Instruments Act by the learned Judicial Magistrate of First Class, Special Mobile Court, Nellore. Against the same, the complainant preferred an appeal before the learned IV Additional District and Sessions Judge, Nellore, and the same was numbered as Criminal Appeal No.273 of 2014. The learned IV Additional District and Sessions Judge, Nellore, by his judgment dated 01.12.2016 allowed the case by setting aside the judgment dated 07.11.2014 in C.C.No.246 of 2012 of the learned Judicial Magistrate of First Class, Special Mobile Court, Nellore, and found the petitioner guilty for the offence punishable under Section 138 of the Negotiable Instruments Act, and accordingly, he was convicted but no sentence was imposed on the petitioner. While so, when Non Bailable Warrant was issued to the petitioner and the petitioner was ready to appear before the Court, the present Writ Petition is filed for recalling the Non Bailable Warrant and seeking permission to file an application under Section 389(3) Cr.P.C for suspension of sentence.

Learned Counsel for the petitioner brought to the notice of this Court an order passed by this Court in identical circumstances in W.P.No.36884 of 2016 dated 31.10.2016, wherein it was observed as follows:

“5. The main grievance of the petitioners is that the docket order passed by the appellate Court on 19.10.2016 does not disclose the quantum of sentence and that the second petitioner apprehends his arrest in view of

the N.B.W issued by the said Court on 19.10.2016. Further it is the apprehension of the second petitioner that if any sentence of imprisonment is imposed by the appellate Court, he may not get the benefit of invoking the provision under Section 389(3) Cr.P.C.

6. This Court considered the above said submissions of the learned counsel for the petitioners. As observed earlier, the N.B.W issued by the appellate Court is for the appearance of the second petitioner before the Court. Since it is informed by the learned counsel for the petitioners that the second petitioner is ready to appear before this Court, the N.B.W issued against the second petitioner is hereby recalled with a direction to surrender before the appellate Court on or before 14.11.2016. On such appearance, any sentence of imprisonment is imposed by the Court, the second petitioner is at liberty to file an application under Section 389(3) Cr.P.C., for suspension of sentence. Further this Court is of the view that in an order of conviction by the appellate Court, the provision under Section 389(3) Cr.P.C., is also applicable for suspension of sentence. Hence, on filing an application by the second petitioner seeking suspension of sentence, the said Court is directed to pass appropriate orders as per the provision under Section 389(3) Cr.P.C.

7. With the above directions, the writ petition is disposed of. No costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.”

In view of the aforesaid order, this Writ Petition is also disposed of in similar terms. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

19.01.2017

Note: Registry is directed to circulate a copy of the judgment in Criminal Appeal No.273 of 2014 to the concerned Court's Administrative Judge for examining the propriety of passing such an order.

B/o.
vs