

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1856 of 2017

ORDER:-

This Criminal Revision Case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 ('Cr.P.C.', for brevity), is filed by the petitioner/accused, questioning the propriety and legality of the docket order, dated 12.04.2017, passed in CrI.M.P.No.608 of 2017 in P.R.C.No.11 of 2016, by the VI Metropolitan Magistrate, Cyberabad at Medchal, dismissing the petition filed under Section 70(2) of Cr.P.C., for recall of the Non Bailable Warrant issued against the petitioner herein/accused.

2. The petitioner herein is the accused in Crime No.59 of 2011 registered for the offences punishable under Sections 340, 361, 376 of IPC & Sections 3, 4, 5 and 6 of the Child Marriage Act. During the proceedings before the Court below, the petitioner did not appear before the Court below and, therefore, a Non Bailable Warrant was issued against him on 02.02.2017. Then the petitioner filed a petition under Section 70(2) of Cr.P.C., before the Court below to recall the Non Bailable Warrant issued against him on 02.02.2017, on the ground that the summons were not served on him and thereby, he could not appear before the Court below and that his absence before the Court below is neither willful nor intentional and sought for recalling the Non Bailable Warrant.

3. The Court below passed the order under challenge dismissing the petition, observing that that the

petitioner/accused was called absent and the counsel for the petitioner/accused requested to dismiss the petition and accepting the request of the counsel for the petitioner, the petition is dismissed. Aggrieved by the said order, the present Revision is filed.

4. Though the matter reached for admission, Smt. A. Varalakshmi, learned counsel for the petitioner/accused did not appear before this Court and advance any argument. However, this Court cannot dismiss the Criminal Revision Case for default, but without waiting for the counsel for the petitioner, this Court can verify the material on record and pass appropriate orders, in view of the law declared by the Delhi High Court in Misha Sharma Vs. Vinod Kumar Sharma¹. Persuaded by the law declared by the Delhi High Court, I would like to verify the material on record and decide the appeal in accordance with the law.

5. The main contention of the counsel for the petitioner/accused in the proceedings before the Court below was that the summons were not served on the petitioner/accused to appear before the Court on that day and, therefore, he could not appear before Court below, and therefore, he filed the petition to recall the Non Bailable Warrant issued against him. In such a case, the petitioner has to appear before the Court below and request the Court to pass appropriate order, recalling the Non Bailable Warrant issued against him. But conveniently, the counsel for

¹ 1990 Cr.LJ. (NOC) 57 (Del)

the petitioner requested the Court below to dismiss the petition since the petitioner did not appear before the Court. When the counsel appearing for the petitioner/accused before the Court below himself requested the Court below to dismiss the petition, the Court below was left with no other option except to accede to the request made the counsel for the petitioner.

6. Moreover, the jurisdiction of this Court exercising power under Sections 397 & 401 of Cr.P.C. is limited and this Court cannot interfere with the order passed by the Court below unless it is found that there is a manifest perversity or apparent error in the order passed by the Court below, and I do not find any manifest perversity or apparent error in the order under challenge.

7. In view of the above discussion, I find no merit in the present Criminal Revision Case. The Criminal Revision Case is de void of merit and is liable to be dismissed.

8. In the result, the Criminal Revision Case is dismissed.

Miscellaneous petitions, if any, pending in this Criminal Revision Case, shall stand closed.

M. Satyanarayana Murthy, J

11th October, 2017
Bvv