

HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.790 OF 2017

ORDER:

Heard before admission and before notice to 1st respondent/complainant and perused the impugned docket order.

2. The C.C.No.537 of 2015 was outcome of a private complaint case under Section 138 of Negotiable Instrument Act, 1881 (for short, 'the N.I.Act'), after full-fledged trial, by judgment dated 01.03.2017, the trial court found the accused guilty for the said offence under Section 138 of the N.I.Act and convicted him. For his absence, as hearing on sentence is since mandatory as per the settled expressions, the trial court issued N.B.W. to secure presence of the accused for hearing of him on sentence. Hearing on sentence is in fact to the benefit of the accused.

3. No doubt, under Section 353 of Cr.P.C., the accused must present at the time of pronouncement of judgment, particularly from clause (6) and its *Proviso*, without presence of even one of several accused, the judgment shall not be pronounced for absence of accused, where there are several accused.

4. Thus, the N.B.W. should have been issued before pronouncement of the judgment, instead of by pronouncing

the judgment, for securing accused to hear on sentence. However, once that is not the impugment in the revision and that no way caused prejudice to the accused there is nothing to discuss further on the legality of the conviction judgment, but for left open to avail right of appeal if aggrieved.

5. So far as issuing of N.B.W. to secure accused for hearing on sentence concerned, the trial Court got discretion as it is the duty of the accused to appear when the matter is posted for judgment. Any inconvenience expressed cannot be countenanced as it is his duty when date fixed for pronouncement of judgment to express on that day any inconvenience to post to some other date and cannot take a chance despite the mandatory provision.

6. It is not a case of accused avoiding appearance, for he faced trial. Having regard to the above, the issuing of N.B.W. is though correct, to sub-serve the ends of justice, by exercising inherent power conferred on the Court under Section 482 Cr.P.C., the N.B.W. is suspended with a direction to the accused to appear before the trial Court on 03.04.2017 without fail and if he appears, pursuant to this order, the trial Court shall cancel the N.B.W. and hear on sentence and pass sentence on the same day.

7. Needless to say, if the hearing date of the case fixed is to some other date, pursuant to this order, the trial court shall

advance the hearing to that date. It is needless to say, if at all there is any sentence passed is prone for suspension under Section 389(3) Cr.P.C., the trial Court can consider with necessary conditions.

8. Accordingly, the Criminal Revision case is disposed of with above direction. Miscellaneous petitions pending, if any, in this case shall stand closed.

DR.B.SIVA SANKARA RAO,J

22.03.2017

*Note: issue C.C. by tomorrow.
B/o.SS*

