

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.3094 OF 2017

ORDER:

This Criminal Petition under Sections 439(1)(b) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), is filed by the petitioner/A-1 to relax the condition imposed by the Principal Sessions Judge, at Mahaboobnagar while granting bail in CrI.M.P.No.109 of 2017,dt.09.02.2017 in Crime No.157 of 2013 of Gadwal Town Police Station.

The petitioner without filing any application before the Court which imposed the conditions approached this Court for relaxation of conditions.

Whereas, learned Public Prosecutor for the State of Telangana opposed the petition on the ground that the petitioner did not approach the Sessions Court and straightaway approached this Court and this Court can exercise its discretion either to entertain the bail application or to direct the petitioner to approach the Sessions Court, by placing reliance on the judgment of the Division Bench of this Court in Y. Chendrasekhara Rao and others v. Y.V. Kamala Kumari and others¹.

The first and foremost objection of the learned Public Prosecutor is regarding entertainment of the application straightaway by this Court without approaching the Sessions

¹ 1993 CrI.L.J.3508

Court by the petitioner. This Court in Chendrasekhara Rao case had an occasion to deal with the scope of Section 438 Cr.P.C, jurisdiction of this Court and Sessions Court and held that the jurisdiction of the High Court and Sessions Court under Section 438 Cr.P.C is concurrent. It was also further held that the High Court cannot compel the parties to approach the Sessions Court and after dismissal of the petition, permit them to approach the High Court. But, held in paragraph 28 of the judgment as follows:

“For the foregoing reasons we hold that it is not obligatory under Section 438 to move the Court of Session in the first instance. It is always open to this Court when an application is filed under Section 438, without first moving the Court of Session, to consider all the circumstances, and if the situation warrants, this Court can direct the party to move the Court of Session. Passing of such an order in consequence of exercise of discretion is different from insisting upon the party to move the Court of Session in the first instance as an inflexible rule of practice. The existing practice of the Registry in returning applications filed under Section 438 on the ground that the Court of Session is not moved in the first instance, is clearly impermissible in law”

In view of the law declared by the Division Bench of this Court in Chendrasekhara Rao case, it is purely discretion of the Court to exercise such power under Section 438 of Cr.P.C.

Therefore, taking into consideration, the facts and circumstances of the case and the conduct of the petitioner, I find that it is not a fit case to relax the conditions imposed by the lower Court. Therefore, the petitioner is given liberty to

move appropriate application before the Sessions Court which imposed such conditions.

With the above direction, the criminal petition is disposed of.

Consequently, miscellaneous applications pending if any, shall also stand dismissed.

JUSTICE M. SATYANARAYANA MURTHY

Date: 24.04.2017
Ccm



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