

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1920 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is directed against the proceeding/ notice, dated 22.06.2017, of the learned Mandal Executive Magistrate, Kesamudram.

2. I have heard the submissions of the learned counsel for the petitioner and of the learned Public Prosecutor, State of Telangana. I have perused the material record.

3. A perusal of the impugned proceeding/ notice would show that by the said order/ notice, the Executive Magistrate, while forfeiting the bond of the surety, Azmeera Srinu, for a sum of Rs.50,000/-, furnished by the said surety, required the surety to pay a penalty of Rs.50,000/- or to show cause to the said Executive Magistrate within seven working days as to why the same should not be paid and further directed to cause production of the accused, Vankudoth Mangilal, before the said authority. The said bond of the surety was forfeited for the reason that the petitioner-accused, for whom the said surety was offered, committed breach of his bond and committed an offence punishable under Section 7(A) read with 8(e) of Prohibition Act, 1995, and that a case in C&O.R.No.89 of 2017 was registered against him.

4. Learned counsel for the petitioner-accused mainly contends that the said notice was issued without conducting any enquiry as contemplated under the provisions of the Code and, therefore, the said order is illegal and unsustainable. He would also submit that as a sequel to the impugned order/ notice, the petitioner-accused was apprehended and was lodged in prison. It is also his submission that the petitioner was enlarged on bail in the afore-sated crime.

5. Learned Public Prosecutor opposed the revision case stating that there is no illegality in passing/ issuing the order/ notice under challenge.

6. A plain consideration of the provisions of the Code, particularly, Sections 107 to 122 make it manifest that an opportunity shall be given to the petitioner-accused as well as the surety to explain their cases before any order or notice like the impugned order/ notice is passed/ issued. A plain reading of the impugned order/ notice indicates that the said order/ notice came to be passed/ issued only on the ground that the petitioner-accused committed offences punishable under the provisions of A.P. Prohibition Act and as such the bond of the surety is liable to be forfeited and accordingly, the bond of the surety was forfeited requiring the surety to pay the penalty of Rs.50,000/- or show cause within seven days as to why the amount shall not be paid. *Ex facie*, no enquiry was conducted and the order/ notice came to be passed/ issued without conducting an enquiry. The impugned order/ notice also does not indicate that an opportunity has been given to the petitioner-accused or the surety before the said order was passed or notice was issued. In that view of the matter, this Court is of the considered view that the order/ notice impugned is liable to be set aside.

7. In the result, the Criminal Revision Case is allowed setting aside the proceeding/ notice in MC.No.70/ 2017, dated 22.06.2017, passed by the Mandal Executive Magistrate, Kesamudram; and, the Executive Magistrate is now directed to proceed with the matter after giving an opportunity of hearing to the petitioner as well as the surety, however, in accordance with the procedure envisaged under law. It is made clear that the petitioner shall be set at liberty forthwith if his detention/ confinement is not required in any other case and that he shall not be subjected to detention in the instant matter till such enquiry is completed and a speaking order is made in the matter.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

10.07.2017

Note:- Issue copy by 11.07.2017

(B/o)

Vjl