

HON'BLE SRI JUSTICE P.KESHAHA RAO

CRIMINAL REVISION CASE No.109 of 2017

ORDER

Heard the learned counsel for the petitioners as well as the learned Public Prosecutor.

2. The present Criminal R.C. is filed by the Petitioners / A.3 and A.4 to set aside the order dated 27.12.2016 passed in Criminal M.P.No. 5394/2016 in C.C.No. 242 of 2014 by the Trial Court - Special Magistrate, Nandyal, Kurnool district.

3. Brief facts of the case are that originally the Petitioners filed Criminal Petition No. 5899 of 2016 to quash the proceedings initiated against them in C.C. No. 242 of 2014 on the file of the Court of the Judicial Special Magistrate, at Nandyal, Kurnool District, arising out a private complaint filed under Section 138 read with Section 142 of the Negotiable Instruments Act, 1988. This Court after hearing the parties, was pleased to dispose of the said Criminal Petition on 22.04.2016, by observing that the offence alleged against the petitioners is punishable under Section 138 read with Section 142 of the Negotiable Instruments Act and since the material on record, *prima facie*, reveals allegations against the petitioners, this Court was not inclined to interfere with the trial at that stage. But considering the nature of the allegations, wherein the question of identity of the petitioners /A-3 and A-4 does not arise, the presence of the petitioners before the trial court was dispensed with, except on

the dates when their presence was specifically required for the purpose of examination under Section 251 Cr.P.C., examination under Section 313 Cr.P.C. and also on the date of pronouncement of judgment.

4. However, the C.CNo. 242 of 2014 was taken up for trial by the Court below on 23.05.2016. On that date, since the petitioners have not appeared before the Court below, NBWs were issued against them. Aggrieved by the said orders, the petitioners herein filed criminal petition No.15842/2016. This Court after hearing, on 09.12.2016, dismissed the criminal petition by observing that there is no error in the order passed by the learned Magistrate. However, the petitioners were given liberty to file appropriate application before the Magistrate concerned to recall NBWs, intimating about the order passed by this Court on 22.04.2016. Accordingly, the petitioners filed an application in CrI.M.P. No. 5394/2016 to recall the N.B.W. issued on 23.05.2016. The Court below after hearing both sides recalled the N.B.Ws issued on 23.05.2016 against the petitioners herein. However, they were directed to furnish sureties to an extent of half of the cheque amount with two sureties for likesum each by order dated 27.12.2016. Aggrieved by the order dated 27.12.2016, as far as directing the petitioners to furnish sureties to an extent of half of the cheque amount with two sureties for likesum each is concerned, the present Criminal Revision Case is filed.

5. The counsel appearing for the petitioners submitted that on 22.04.2016 itself, this court has dispensed with the personal appearance of the petitioners except on the relevant days mentioned therein, without any conditions, more particularly, with regard to furnishing sureties. That being the case, the counsel would submit that while passing orders on 27.12.2016, the Court below ought not to have imposed any conditions contrary to the orders passed by this Court in Criminal Petition No.5899 of 2016.

6. Per contra, the learned Public Prosecutor fairly states that when this Court has already dispensed with the presence/appearance of the petitioners without any conditions, the Court below cannot direct the petitioners to furnish sureties to an extent of half of the cheque amount with two sureties for likesum each.

7. A perusal of the facts and the contentions raised by both the counsel would reveal that, it is an undisputed fact that this court on 22.04.2016, dispensed with the personal appearance of the petitioners in C.C.No. 242/2014, except on the dates of examination under Section 251 and 313 Cr.P.C and also on the date of pronouncement of the judgment. If that being the case, the Court below cannot impose any conditions more particularly with regard to furnishing sureties, contrary to the orders passed by this Court. Therefore, the order dated 27.12.2016 in CrI.M.P.No.5394/2016 in C.C.No. 242/2014 passed by the Judicial Magistrate of First Class at Nandyal, as far as directing the petitioners to furnish sureties to an

extent of half of the cheque amount with two sureties for the likesum each is set aside. The Criminal Revision Case is allowed to the extent as indicated above.

8. The Miscellaneous Petitions pending, if any, shall stand closed.

P. KESHAVA RAO, J

Dated: 05.01.2018

JR

