

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL PETITION NO.5592 OF 2017

ORDER:

This petition is filed by the petitioner-de facto complainant under Section 439 (2) r/w 482 Cr.P.C. to cancel the bail granted to the respondent Nos.2 and 3 herein-A1 and A2 by the VI Addl. District and Sessions Judge, Markapur, Prakasam District, by order, dated 01.06.2017 in CrI.M.P.No.156 of 2017 (Cr.No.107 of 2016 of Markapur Town P.S.).

2. Heard the learned counsel for the petitioners, learned counsel for the respondent Nos.2 and 3 and the learned Additional Public Prosecutor representing the State.

3. A perusal of the record reveals that the respondent Nos.2 and 3 herein are A1 and A2 in Cr.No.107 of 2016 of Markapur Town Police Station, which was registered for the offence punishable under Section 324 r/w 34 IPC. A1 and A2 surrendered before the learned Magistrate and filed CrI.M.P.No.672 of 2016 seeking bail and the same was allowed on 22.08.2016. Subsequently, police filed a memo for alteration of Section of law from 324 r/w 34 IPC to 307 IPC. After completion of investigation, the Investigating Agency filed charge sheet against the respondent Nos.2 and 3 under Section 307 r/w 34 IPC.

4. While things stood thus, the petitioner herein-de facto complainant filed CrI.M.P.No.156 of 2017 on the file of the VI Addl. District and Sessions Judge, Prakasam at Markapur, under Section 439 (2) Cr.P.C. for cancellation of bail granted in favour of respondent Nos.2 and 3 and the same was dismissed, by order, dated 01.06.2017.

5. Learned counsel for the petitioner-de facto complainant submitted that the learned Magistrate granted bail to respondent Nos.2 and 3 under Section 324 r/w 34 IPC, but not

under Section 307 r/w 34 IPC; therefore, it is a fit case to allow the petition.

6. Learned counsel for the respondent Nos.2 and 3 submitted that the petitioner has not satisfied the ingredients of Section 439 (2) Cr.P.C.

7. The learned VI Addl. District and Sessions Judge, Prakasam at Markapur in para 5 of the order, categorically observed that the petitioner failed to satisfy the ingredients of Section 439 (2) Cr.P.C. As rightly pointed out by the learned counsel for respondent Nos.2 and 3, merely because police filed a memo to alter Section of law from 324 r/w 34 IPC to 307 r/w 34 IPC, that itself is not a valid ground for cancellation of bail.

8. I have carefully perused the material placed before the Court in order to ascertain whether the petitioner has satisfied the ingredients of Section 439 (2) Cr.P.C. It is not the case of the petitioner herein that the respondent Nos.2 and 3 violated the conditions imposed by the Court below while releasing them on bail. It is not the case of the petitioner that the respondent Nos.2 and 3-A1 and A2 will commit similar type of offences. The averments made in the petition are bereft of basic ingredients of Section 439 (2) Cr.P.C. I am fully agreeing with the findings recorded by the Court below while dismissing the petition. The petitioner miserably failed to prove the ingredients of Section 439 (2) Cr.P.C. Therefore, this petition lacks merits and bona fides and is liable to be dismissed.

9. Accordingly, the Criminal Petition is dismissed.

T.SUNIL CHOWDARY, J

DATED: 18-09-2017.

Hsd