

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVISION CASE No.615 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is directed against the proceedings/notice, dated 04.03.2017, of the learned Special Executive Magistrate, Hyderabad District.

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

3. A perusal of the impugned proceedings/notice would show that for violation of the conditions of the surety bond given by the petitioner, the said bond was forfeited and the petitioner was required to pay a penalty of Rs.50,000/- or to show cause to the said Special Executive Magistrate within seven working days as to why payment should not be enforced against the petitioner.

4. As the petitioner failed to comply with the proceeding/notice, it appears that he has been adjudged for imprisonment and steps are being initiated for his arrest and remand to prison.

Hence, the petitioner is before this Court.

5. Learned counsel for the petitioner would submit that no enquiry as contemplated under law was conducted either before issuing the show cause notice/proceeding or after the alleged violation on the part of the petitioner to comply with the proceeding/show cause notice. He would

also submit that the time of seven days as mentioned in the notice is not a sufficient time and that no sufficient opportunity was afforded to the petitioner to offer his explanation or to pay the huge and unreasonable penalty demanded in the notice and that the notice does not disclose any material or the basis on which it was assumed that the petitioner violated the conditions of the surety bond.

6. Learned Public Prosecutor would submit that the instant revision on the ground that there is illegality in issuing the impugned notice is not maintainable, as, in fact, there is no illegality in issuing the notice under challenge and that the petitioner was given an opportunity to show cause within seven working days, but, he failed either to show any cause or pay the penalty demanded and that therefore, the revision petition is liable to be dismissed.

7. In the instant case, the impugned proceeding/notice was issued holding that the petitioner committed breach of the surety bond and therefore, he is liable to pay the penalty of Rs.50,000/- or show cause within seven working days as to why payment of the same should not be enforced against him. The order does not indicate specifically anything as to any prior enquiry has been made for ascertaining the truth and for formulating an opinion that the conditions of the bond are violated and that there are valid grounds for forfeiting the bond. The proceeding/notice impugned only states that there was a violation by commission of an offence of sale of illicitly distilled country liquor, but, does not disclose any further details thereof with regard to the source of information, quantity of such liquor, if any, place, date & time of alleged

offence etcetera. Thus, *prima facie*, it appears that the proceeding/notice was issued without conducting proper enquiry and therefore, the same is liable to be set aside.

8. In the result, the Criminal Revision Case is allowed setting aside the proceeding/notice in MC.B/1071/2016, dated 04.03.2017, passed by the Special Executive Magistrate, Hyderabad District. And, the Special Executive Magistrate is now directed to proceed with the matter after giving an opportunity of hearing to the petitioner, however, in accordance with the procedure envisaged under law. It is made clear that the petitioner shall not be subjected to arrest and 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.

09th March, 2017

M.Seetharama Murthi, J

Note:-

Furnish C.C. by 10.03.2017
(B/O) Bv