

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

Criminal Revision Case No.1701 of 2017

ORDER:

This Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, is filed by the petitioner/accused challenging the notice/proceeding, dated 31.03.2017, passed in MC.B/1517/2016 by the learned Special Executive Magistrate, Hyderabad District.

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. The facts, which are required to be stated as a preface to this order, in brief, are as follows:

The Special Executive Magistrate, Hyderabad, issued the impugned notice/proceeding to the petitioner *inter alia*, stating that he executed a bond for his good behaviour for a period of one year and bound himself to forfeit Rs.1,50,000/- from him in default of complying with the conditions in the bond and that after giving the said bond, the petitioner committed the offence of sale of ganja in the cities and that therefore, he is required to pay the penalty of Rs.1,50,000/- or to show cause before the said Executive Magistrate within a period of seven (07) working days as to why the payment of the said penalty shall not be enforced. Further, as the petitioner failed to comply with the said order/proceeding, he was adjudged for imprisonment and steps are being taken for his apprehension and confining in prison.

4. Learned counsel for the petitioner would submit that no enquiry was conducted against the petitioner and no opportunity of hearing was given before the impugned notice/proceeding was issued.

5. Learned Public Prosecutor resisted the revision case stating that there is no illegality in passing the order under challenge.

6. In the instant case, the impugned notice/proceeding was issued holding that the petitioner committed breach of the bond by committing the offence of sale of ganja in Cities and that his activities are likely to cause danger to the public health and are also hazardous to the community at large and as such, his bond is forfeited. Further, as he failed to give explanation to the notice/proceeding, he was adjudged for imprisonment and steps are initiated for his apprehension and detention. The notice/proceeding 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 sale of ganja in Cities, but does not disclose any further details thereof with regard to source of information, quantity of such contraband, place, date and time of the commission of the offence etcetera. Thus, *prima facie*, it appears that the proceeding/notice was issued without conducting proper enquiry and giving an opportunity of hearing to the petitioner and therefore, the impugned notice/proceeding is liable to be set aside.

7. In the result, the Criminal Revision Case is allowed setting aside the proceeding/notice in MC.B/1517/2016, dated 31.03.2017, 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. As a sequel to this order, 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 as required under facts and in law.

Pending miscellaneous petitions, if any, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 23rd June, 2017

Note:- Issue CC by 28.06.2017

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