

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C.No.2352 of 2017

ORDER:

This revision case is filed under Sections 397 and 401 of Cr.P.C questioning the propriety, legality and regularity of the order, dated 10.08.2017 in C.C.No.798 of 2016 passed by the XII Additional Chief Metropolitan Magistrate, Mahila Court, Nampally, Hyderabad directing the petitioner to appear before the Court on 28.08.2017 to comply the assurance given before the Supreme Court.

The petitioner is A1 in C.C.No.798 of 2016 filed for the offence punishable under Sections 494 and 109 of IPC and A2 is the alleged second wife. The petitioner is permanent resident of USA and he allegedly married the second accused for certain time during subsistence of first marriage with the *de-facto* complainant. But, during prosecution of the proceedings, the petitioner filed S.L.P.(Crl) No.7704 of 2016, before the Supreme Court, and the Supreme Court dispensed with his presence on all the dates of adjournments except for examination under Section 313 of Cr.P.C. In Crl.M.P.No.21302 of 2016 in S.L.P. (Crl.) No.7704 of 2016, Sri Jayant Bhushan, learned senior counsel appearing for the petitioner, assured that the petitioner would facilitate service of charge-sheet upon A2. But, the petitioner did not comply with the said assurance given to the Supreme Court. Therefore, the Court below was forced to issue the direction, impugned in this revision.

The main contention of the learned counsel for petitioner before this Court is that when the presence of the petitioner is dispensed with by the Supreme Court in Crl.M.P.No.21302 of 2016, the order insisting him to appear before the Court below is illegal and requested to set aside the same.

Undoubtedly, the Supreme Court while exercising power under Section 205(1) Cr.P.C. dispensed with the appearance of the petitioner on all dates of adjournment except for examination under Section 313 Cr.P.C. But, it does not mean that the Magistrate is denuded to exercise power under Section 204(2) Cr.P.C. As per Clause (2) of Section 205 of Cr.P.C., the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided. Therefore, there is absolutely no illegality in the direction since the Magistrate has passed the said order by exercising power under Section 205(2) Cr.P.C.

At this stage, learned counsel for the petitioner requested the Court to grant two months time for compliance of the said direction or to get the charge sheet served on the second accused.

Acceding to the request of the petitioner and considering the difficulty of the petitioner, being non-resident of India and permanent resident of USA, implementation of the order passed by the Court below is postponed for two months from today and in case, the petitioner failed to comply with the assurance given to the Supreme Court by his counsel Jayant Bhushan, the Court below is at liberty to force him to appear before it, in exercise of power under Section 205(2) Cr.P.C.

With the above direction, the Criminal Revision Case is disposed of.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 24.08.2017

Note : issue c.c. by Monday

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