

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3340 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'the Code') requesting to quash the order dated 14.03.2017 in CrI.M.P.No.792 of 2017, whereby and whereunder the learned Judicial Magistrate of First Class, Tadipatri, Anantapur District, rejected the request of the petitioner made under Section 70(2) of the Code. The order reads thus:

“The accused was not found for service of S/S., in the given two address. This court feels that his presence is required for this petition. Further no cogent reasons are forthcoming for his absence today. Hence, this Court finds it difficult to allow this petition.

In the result, the petition is dismissed”

2. Sri R.Siva Sai Swaroop, learned counsel for the petitioner, fairly submits that when the application under Section 70(2) of the Code in CrI.M.P.No.792 of 2017 was filed in C.C.No.695 of 2014, the petitioner was not present along with the application and that, that was the reason, the learned Magistrate has rejected the request by dismissing the application.

3. When an application under Section 70(2) of the Code is made, certainly, the petitioner should have been present, more so, when the service was not effected, as the petitioner was not found, as could be

seen from the order passed by the learned Magistrate. Even otherwise, the petitioner is not prevented from filing the petition once again under Section 70(2) of the Code.

4. Hence, the petitioner is at liberty to file a petition under Section 70(2) of the Code afresh and he shall be personally present before the Court below. On filing such petition, the learned Magistrate is hereby directed to dispose of the same, in accordance with law, on the same day and the learned Magistrate is also at liberty even to grant bail with conditions, if he finds reasons.

5. With the above direction, the criminal petition is disposed of.

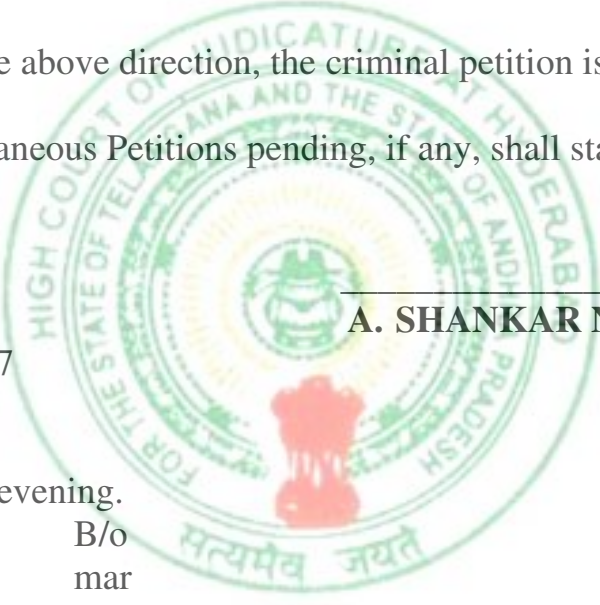
6. Miscellaneous Petitions pending, if any, shall stand closed.

28th April 2017

Note:

Issue C.C. by evening.

B/o
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A. SHANKAR NARAYANA, J