

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.8442 OF 2017

ORDER:

Heard learned counsel for the petitioner, who is appellant No.3 of CrI.A.No.16 of 2017 on the file of the II Additional District and Sessions Judge, Parvathipuram, which is outcome of the impugned order in D.V.C.No.5 of 2012 dated 29.06.2016 and the appeal is pending to decide the correctness of the said D.V.C. order passed by the Additional Judicial Magistrate of First Class, Parvathipuram, Vizianagaram District.

It is the pending appeal, the learned Sessions Judge issued N.B.W. by docket order dated 18.04.2017 and the petitioner filed warrant recall petition vide CrI.M.P.No.32 of 2017 on 19.06.2017 and for the absence of the petitioner/ appellant No.3, the warrant recall petition was dismissed. It is the same impugned herein. Needless to say, even for the D.V.C. proceedings quasi civil in nature, irrespective of no application filed under Section 205 Cr.P.C. to represent through special vakalat holder, a provision similar to Section 126(2) Cr.P.C. enables the learned Magistrate once representing through advocate including in the enquiry to dispense with the personal appearance of the respondents and coming to the appeal stage, even there is no need of giving warrant for absence of the appellant by virtue of Section 386 r/w 390 Cr.P.C. as also held by the three Judge Bench of the Apex

Court in Bani Singh v. State of Uttar Pradesh¹ to proceed with the appeal.

Accordingly, the Criminal Petition is disposed of cancelling the warrant.

Miscellaneous petitions pending if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Date: 03-10-2017

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¹ AIR 1996 SC 2439