

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CRIMINAL REVISION CASE No.1888 of 2017

ORDER:

The Criminal Revision Case, under Sections 397 and 401 of the Code of Criminal Procedure, 1973, ('the Code', for brevity), is filed by the petitioner-sole accused, having been aggrieved of the docket order, dated 15.06.2017, of the learned IX Metropolitan Magistrate, Cyberabad, Kukatpally, passed in CrI.M.P.No.1796 of 2017 in S.T.C.No.1177 of 2008.

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

3. The facts, as stated by the learned counsel for the petitioner and as borne out by the record, are as follows:

The petitioner is an accused in the above stated S.T.C., which was taken on file for the offences punishable 174 & 182 of IPC. On the date the case was posted before the trial Court, the petitioner-accused failed to appear before the trial Court and on his behalf, an application under Section 317 of the Code was filed requesting to dispense with his presence before the trial Court. The trial Court, without passing any orders on that petition, returned the same to the relative of the petitioner, who is present in the Court. Eventually, as the petitioner-accused and his Advocate were not present on that day, a Non-Bailable Warrant was issued. Subsequently, by the impugned orders, the trial Court dismissed the petition filed for recall of NBW without passing a speaking order. Therefore, the aggrieved petitioner-accused is before this Court.

4. Learned counsel for the petitioner-accused, while stating the facts and the chronology of events, which are stated *supra*, would further submit as follows: “As the petitioner is involved in several cases and as his presence was required on that day in another Court, he could not appear in the case on the file of the Court of the learned Magistrate. Therefore, an application was filed to condone his absence and dispense with his presence before the said Court. The learned Magistrate ought to have entertained the application filed under Section 317 of the Code instead of returning the same to the relative of the petitioner present in Court. On that day, the learned counsel for the petitioner could not appear before the Court as he could not reach the Court in time on account of the rain in the morning hours of that day; by the time he reached the Court by 1.00 p.m., NBW was already issued against the petitioner after returning the above said petition to the relative of the petitioner present in Court. In the circumstances, the trial Court ought to have recalled the warrant.

5. Learned Public Prosecutor supported the orders of the trial Court *inter alia* stating that when the trial Court declined to entertain the petition filed under Section 317 of the Code, either the accused or his Advocate ought to have appeared before the trial Court and, therefore, the order impugned does not warrant interference.

6. Having regard to the facts and submissions, this Court is of the considered view that the order impugned can be set aside and one more opportunity may be given to the petitioner to mend his ways and appear, without fail, before the trial Court on the next date of hearing and on all future dates of hearings in the aforestated case.

7. In the result, the Criminal Revision Case is allowed and the docket order, dated 15.06.2017, of the learned IX Metropolitan Magistrate, Cyberabad, Kukatpally, passed in Crl.M.P.No.1796 of 2017 in S.T.C.No.1177 of 2008, is set aside, subject to the condition that the petitioner shall appear before the trial Court on 14.07.2017 in the aforestated case without fail. The NBW issued against the petitioner is hereby recalled.

Pending miscellaneous petitions, if any, in this Criminal Revision Case, shall stand closed.

JUSTICE M. SEETHARAMA MURTI

Date: 6th July, 2017

Note:- Issue CC by 14.07.2017
(B/o)
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