

THE HON'BLE SRI JUSTICE A.SHANKAR NARAYANA

CRIMINAL PETITION No.2728 of 2017

ORDER:

The present petition, under Section 428 of the Code of Criminal Procedure, 1973 (for short, 'the Code'), is filed to quash the order, dated 20.03.2017, in C.C.No.153 of 2015 (Old C.C.No.1309 of 2012 on the file of the X Metropolitan Magistrate, Malkajgiri) passed by the learned XX Metropolitan Magistrate, Cyberabad at Malkajgiri, whereby and whereunder, the learned Magistrate has issued non-bailable warrants to the petitioners, who are arraigned as accused Nos.2 to 4, as they were not present on that day when the Calender Case was coming up for examination of the accused under Section 313 of the Code.

Heard Sri M.Rathan Singh, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Telangana.

Learned counsel for the petitioners would contend that accused Nos.2 & 3, who are petitioner Nos.1 and 2 herein, are absolutely unable to move on account of their ill-health and they have been undergoing treatment in Care Hospital and Yashoda Hospitals and they even made an application before the Court below to dispense with their presence when examination under Section 313 of the Code is done by the Court, but, however, that application was dismissed by

order, dated 17.03.2017, and thereafter, the impugned order was passed for their non-appearance.

Learned counsel for the petitioners places reliance on a ruling of this Court in **Injeti Venkata Rami Reddy v. State of A.P**¹ and contends that unless summons were issued, no non-bailable warrant can be issued by the learned Magistrate.

Having gone through the fact-situation occurring in the aforesaid ruling, certainly, it is to be said that it does not apply to the fact-situation herein and the petitioners cannot derive any benefit by placing reliance on the said ruling.

Learned counsel for the petitioners finally requests to dispose of the petition by giving a direction to the petitioners to attend the Court below and file an appropriate application for recalling non-bailable warrants issued against them and also a direction to the Court below to dispose of the said application on the same day.

The last submission made by the learned counsel for the petitioners is reasonable and, therefore, acceded to. Therefore, the petitioners are at liberty to appear before the learned XX Metropolitan Magistrate, Cyberabad at Malkajgiri, and make an application under Section 70 (2) of the Code and, in such an event, the learned Magistrate is directed to dispose of the said application on the same day in accordance with law.

¹ CrI.R.C.No.401 of 2013, dated 05.03.2013

Accordingly, the Criminal Petition is disposed of at the stage of admission itself.

Miscellaneous applications, if any, pending in the present petition stand closed.

JUSTICE A.SHANKAR NARAYANA

04.04.2017
v v

