

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.10667 of 2017

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C., by the petitioners/A.5 and A.6 aggrieved by the order, dated 26.10.2017, in CrI.M.P.No.1429 of 2017 in C.C.No.133 of 2017 (old C.C.No.35 of 2011) on the file of II Additional Chief Metropolitan Magistrate, Vijayawada.

2. The petitioners herein filed the aforesaid application under Section 70 (2) Cr.P.C., to recall the NBWs issued against them. The Court below, after considering the material available on record, dismissed the application.

3. The main contention of learned counsel for the petitioners is that the petitioners filed CrI.P.No.960 of 2011 before this Court to dispense with their presence before the trial Court and this Court allowed the same. He further submits that when this Court dispensed with the appearance of the petitioners before trial Court, issued NBWs against the petitioners is erroneous. He further submits that the petitioners are working in film industry and it would cause inconvenience to them to appear before the Court below and that too the Calendar Case was ended in acquittal by judgment, dated 31.10.2017 and prays to recall the NBWs.

4. As seen from the impugned order, the learned Magistrate disbelieved the reason assigned by the petitioners, while observing that the petitioners did not appear before the Court even on the date of filing of a petition to recall the NBWs and dismissed the petition. Learned counsel for the petitioners asserted that the

main Calendar Case was ended in acquittal, but copy of the same is not filed. Moreover, this Court dispensed with the appearance only during trial, except for examination under Sections 251 and 313 Cr.P.C., and on date of judgment, as such, the contention that appearance is exempted before the trial Court is without substance.

5. Considering the facts and circumstances of the case, it is appropriate to direct the petitioners to appear before the Court below and file an application under Section 70 (2) Cr.P.C., and in the event of filing of the same, the learned Magistrate is directed to consider the same keeping in view that the Calendar Case was ended in acquittal.

6. With the above direction, the Criminal Petition is disposed of. Miscellaneous petitions, if any, pending in this petition shall stand closed.

M. SATYANARAYANA MURTHY, J

NOVEMBER 15, 2017

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Date: 15.11.2017

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