

SMT JUSTICE T. RAJANI

CRIMINAL PETITION No.5585 of 2011

ORDER:

This petition is filed by the petitioner, who is the accused, seeking to quash the order, dated 09.06.2011, passed by the court of VII Additional Chief Metropolitan Magistrate, Hyderabad, in CrI.M.P.No.1937 of 2011 in PRC No.27 of 2011, by virtue of which the court below dismissed the petition, which was filed under Section 70(2) CrPC seeking to recall NBW issued against the petitioner.

2. Heard the counsel for the petitioner and the Public Prosecutor appearing for the 1st respondent. None appears for the 2nd respondent in spite of notice.

3. The counsel for the petitioner brings to the notice of this court that this court by virtue of the order, dated 03.02.2011, passed in CrI.P.No.2088 of 2009 stayed the arrest of the petitioner in this crime until filing of the charge sheet. After filing of the charge sheet, the police appeared to have requested the court to issue NBW and thereby, the court issued NBW. The counsel further submits that as per the judgment of this court in BHAGAWAN PREMCHANDANI V. THE STATE OF ANDHRA PRADESH¹ the Magistrate has ample power to dismiss the petition.

4. The order passed by this court in the aforesaid criminal petition shows that there was stay of arrest till filing of the

¹ 1998(1) ALT (CrI.) 110 (AP)

charge sheet and the police were given liberty to effect the arrest of the petitioner after filing of the charge sheet. But this court opines that it does not mean that the court can exercise such power and can oblige the police in securing the presence of the petitioner by way of NBW.

5. In view of the above, this court opines that this is a fit case for quashing the impugned order.

6. With the above observations, the Criminal Petition is allowed and the order, dated 09.06.2011, passed by the court of VII Additional Chief Metropolitan Magistrate, Hyderabad, issuing NBW against the petitioner, is hereby quashed.

As a sequel, the miscellaneous applications pending, if any, shall stand closed.

November 12, 2018
LMV

T. RAJANI, J

