

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

CRIMINAL PETITION No.3371 of 2018

ORDER:

Heard Sri D.V.Reddy, learned counsel for petitioner and learned Addl. Public Prosecutor for the State (A.P)

2) Learned counsel for petitioner submits that S.C.No.6 of 2009 pending on the file of Special Judge for SC and ST Cases, Visakhapatnam, was posted from 20.02.2018 to 06.04.2018. However, strangely the matter was called on 26.02.2018 and NBW was issued against him as the petitioner is not present on that day because of the fact that the matter was originally posted to 06.04.2018. Learned counsel would further submit that when a petition under Section 70(2) Cr.P.C was filed, the Court returned the said petition on the ground that petition is not maintainable without the appearance of the accused.

3) As can be seen from the copy of the 'B' diary dt.20.02.2018, S.C.No.6/2009 was posted to 06.04.2018 on the endorsement that accused absent and his absence condoned on petition for consideration, call on 06.04.2018. However, as per the submission of learned counsel for petitioner, the matter was called on 26.02.2018 instead of 06.04.2018 and thereby the petitioner could not attend the Court. Taking the submission of learned counsel for petitioner into consideration, this Court is of the view that NBW issued against the

petitioner can be recalled. So far as non-presence of the petitioner to file the petition under Section 70(2) Cr.P.C is concerned, the petitioner relied upon the decision reported in *Dr.Zubaida Begum v. State represented by The Inspector of Police, District Crime branch, Kancheepuram*¹.

4) In that view of the matter, this petition is allowed and NBW dated 26.02.2018 issued by the Trial Court against the petitioner is recalled. The petitioner/accused is directed to appear before the Trial Court on the next date of hearing and assist the Court for smooth completion of the trial.

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

Date: 17.04.2018

scs

U. DURGA PRASAD RAO, J

¹ (2016) 2 MLJ (Cri) 490