

THE HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE NO.850 OF 2018

ORDER:

Heard the learned counsel for the petitioner and the learned Public prosecutor appearing for the respondent State.

2. The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.924 of 2018 in CC.No.166 of 2006 dated 21.2.2018 on the file of the Court of VI Additional Chief Metropolitan Magistrate, Hyderabad in issuing non-bailable warrant against the petitioner.

3. The facts in brief are that the petitioner herein is charged for the offence under Section 309 IPC on the file of the above said Court. In fact, after commencement of trial in C.C.No.543 of 2006 where the prosecution has already commenced its evidence which is connected to and based on the allegations made therein, the present C.C.No.166 of 2006 has been registered. The Court below, on 27.6.2017, stopped the proceedings under Section 258 Cr.P.C. When once the proceedings are stopped, as per Section 258 Cr.P.C., on stoppage of the said proceedings, the Court below has to pronounce the judgment of acquittal and in any other case, release the accused and such release shall have the effect of discharge.

4. In the case on hand, when once an order of stoppage of proceedings have been issued, the learned Magistrate ought to have either passed orders of acquittal or release the petitioner by discharging him for the offence charged against him. However, the learned Magistrate, neither passed orders of acquittal nor discharged the petitioner. On the other hand, on 21.2.2018, on a petition filed by the prosecution, issued NBWs against the petitioner. Aggrieved by the same, the present Criminal Revision Case is filed.

5. Learned counsel for the petitioner would contend that when once the Court below stopped the proceedings under Section 258 Cr.P.C., it amounts to either acquittal or discharge of the petitioner. In such an event, when once the Magistrate wants to revive the proceedings, he ought to have issued summons apart from giving a reasoned order for re-opening the proceedings. As such, the issuance of NBWs against the petitioner, is against the procedure contemplated under the mandatory provisions of Cr.P.C. and the same are liable to be recalled.

6. Having heard both the counsel and from the perusal of the material on record, it is revealed that when once the learned Magistrate, has passed orders under Section 258 Cr.P.C., before issuance of the NBWs, the Magistrate, is

obligated to issue summons, if he is the opinion that the proceedings in the Calendar Case have to be re-opened. But, in the case on hand, on a petition filed by the prosecution, non-bailable warrant has been issued straightaway. To the extent of issuance of the NBW is concerned, the procedure followed by the learned Magistrate is unsustainable in law.

7. Accordingly, the Criminal Revision Case is allowed and the non-bailable warrant dated 21.2.2018 issued against the petitioner is hereby recalled.

Pending miscellaneous petitions, if any, shall stand closed.

Date: 6.8.2018

KPM



P. KESHA RAO,J