

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.5076 OF 2018

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. by the petitioner/ A3, to quash the order dated 08.03.2018 in CrI.MP.No.375 of 2018 in C.C.No.398 of 2012 passed by the V Additional Judicial Magistrate of First Class, Tirupati.

Heard learned counsel for the petitioner and learned Public Prosecutor appearing for the State in opposing the criminal petition, before ordering notice to respondent No.2/ de facto complainant and perused the material on record.

On perusal of the impugned order of the learned Magistrate dated 08.03.2018 in dismissal of CrI.MP.No.375 of 2018 in C.C.No.398 of 2012, which is an application to recall NBW without presence and NBW issued was for non-appearance to face Section 313 Cr.P.C. examination despite adjournments including on consideration of applications under Section 317 Cr.P.C. The presence of accused is mandatory for Section 313 Cr.P.C. examination. Once such is the case, there is nothing to interfere with the impugned order including with say of no application to the facts on hand. The expression of this Court in Ramakrishna Agencies, Guntur v. State of A.P.¹ of accused need not even present in recall of NBW, for same only speaks the Magistrate got a discretion depending upon facts to consider.

¹ 2000(1) LS78

Having regard to the above, there is nothing to interfere with the order of the lower Court but for to say if at all the petitioner can file recall application on his appearance before the Magistrate to consider by allowing the same, subject to earlier bail if any and for the disobedience of the earlier bail condition if any by imposing penalty without need of cancellation of bonds.

Miscellaneous petitions pending if any, shall stand closed.

Date:04.12.2018
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Dr. B. SIVA SANKARA RAO, J

