

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.5963 of 2018

ORDER:

This Criminal Petition, under Section 482 Cr.P.C., is filed questioning the Order dt.15.05.2018 in CrI.R.C.No.02 of 2018 passed by X Additional District and Sessions Judge, Anakapalli, Visakhapatnam, whereby the Appellate Court confirmed the Order, dt.22.01.2018 in CrI.M.P.No.71 of 2018 in C.C.No.251 of 2010 passed by Additional Metropolitan Magistrate, Anakapalli (for short 'trial Court') .

The petitioner is the accused in C.C.No.251 of 2010 and for his absence, the trial Court issued NBW against this Petitioner and thereupon, the petitioner filed a petition under Section 70(2) Cr.P.C. to recall the warrant, but the petition was dismissed by the trial Court and aggrieved by the said Order, he preferred Criminal Revision No.02 of 2018 before X Additional District and Sessions Judge, Anakapalli and the same was also dismissed by the appellate Court.

The Order passed by the trial Court is in interlocutory in nature and against such order, the revision is not maintainable in view of the law declared by the Apex Court in *Sethuraman v Rajamanickam*¹, wherein the Apex Court held that a revision against the interlocutory order is not maintainable in view of the bar under Section 397(2) Cr.P.C. Therefore, entertaining revision by the District Court is a grave error as it is contrary to the Apex Court Judgment referred above. On this ground alone, the Order dt.15.05.2018 passed by X Additional District and Sessions Judge, Visakhapatnam at Anakapalle, is set aside. However, the petitioner is permitted to appear before the trial Court and file an

¹ 2009 CrI.L.J 2247

application under Section 70 (2) Cr.P.C. after serving notice on respondent and on filing such application, the Magistrate concerned is directed to dispose of the application on the same day in accordance with law.

With the above direction, this Criminal Petition is allowed.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

M. SATYANARAYANA MURTHY, J

Date: 13-06-2018
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