

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1575 of 2018

AND

I.A.No.1 of 2018

COMMON ORDER:

Heard the learned counsel for the petitioner and the learned Public Prosecutor appearing for the 2nd respondent State.

The present criminal revision case is filed against the orders dated 08.06.2018 passed in CrI.M.P.No.101 of 2018 in CrI.A.No.78 of 2018 on the file of the Court of the I Additional Sessions Judge at Kurnool.

The facts of the case are that the petitioner herein has been charged for the offence under Section 138 of the Negotiable Instruments Act. On the date of judgment i.e., 14.11.2017, the petitioner did not appear before the learned Judicial Magistrate of First Class (Special Mobile Court), Kurnool. Though the judgment was pronounced on the same day, sentence was not imposed, as the petitioner has not attended the Court, but, NBWs were issued against him. On 16.04.2018, an application for recall of NBWs was filed. However, the Court below posted the matter on 04.06.2018 for appearance of the petitioner. Meanwhile, the petitioner was arrested on 17.05.2018 at Chennai in execution of the NBWs issued on 14.11.2017. Pursuant to the judgment passed in C.C.No.229 of 2016 dated 14.11.2017, on 21.05.2018, the trial Court imposed sentence of simple

imprisonment for a period of two years. Immediately, thereafter, the petitioner filed an appeal vide CrI.A.No.78 of 2018 on the file of the I Additional Sessions Judge, Kurnool. Pending the appeal, he filed CrI.M.P.No.101 of 2018 seeking suspension of the sentence imposed in the above said C.C. The said petition was dismissed by orders dated 08.06.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would submit that the petitioner is a law abiding citizen and shall appear before the Court as and when required and shall not frustrate the process of Court. He also would submit that the petitioner is suffering with heart disease. To prove the same, he filed a discharge summary issued by B.M. Birla Heart Research Centre, Kolkatta. That apart, he also would submit that due to the on going strike for establishing a separate High Court in Rayalaseema, the petitioner could not move an application for recall of the NBWs.

Learned Public Prosecutor appearing for the 2nd respondent State opposed the revision and contended *inter alia* that in view of the past conduct of the petitioner, he is not entitled for any sympathy from this Court. He also would submit that the appeal itself may be directed to be disposed of since there is every apprehension that once the petitioner is released on bail, he may not appear before the Court and there is every possibility of avoiding the process of the Court. On this, learned counsel for the petitioner would submit that

the petitioner is ready to abide by any of the stringent conditions that may be imposed by this Court.

Having heard both the counsel and perusal of the material on record, it is revealed that the petitioner is sentenced to undergo simple imprisonment for a period of two years. The proceedings under the Negotiable Instruments Act are civil in nature. The offence for which the petitioner is charged is not a grave and serious offence. Though the previous conduct of the petitioner appears to be evasive, but on that ground the personal liberty of the petitioner cannot be jeopardized putting him in judicial custody on an apprehension that in the event of grant of bail, he may evade the process of the Court. Looking into these aspects, this Court deems it appropriate to balance the rights of the complainant as well as the petitioner/accused by imposing appropriate conditions. In these circumstances, the order passed by the Court below in CrI.M.P.No.101 of 2018 in CrI.A.No.78 of 2018 dated 08.06.2018 is liable to be set aside since it affects the fundamental right of the petitioner i.e., personal liberty.

Accordingly, the criminal revision case is allowed setting aside the sentence imposed in C.C.No.229 of 2016 dated 21.05.2018. Consequently, I.A.No.1 of 2018 is ordered and the petitioner shall be enlarged on bail subject to executing a personal bond for a sum of Rs.2,00,000/- (Rupees Two lakhs) with two sureties each for a like sum to the satisfaction of the

Judicial Magistrate of First Class (Special Mobile Court), Kurnool. However, in the peculiar facts and circumstances of the case, the learned I Additional Sessions Judge, Kurnool, is directed to dispose of the appeal within a period of eight weeks from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 21.06.2018.
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