

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO.1632 OF 2018

ORDER:

1. Heard the learned counsel for the petitioner as well as the learned counsel for respondent No.2.
2. The present Criminal Revision Case is filed challenging the orders passed in CrI.M.P.No.9 of 2018 in C.C.No.50 of 2013 dated 25.01.2018 on the file of the Court of Judicial First Class Magistrate, Penukonda (FAC Judicial First Class Magistrate, Puttaparthi), dismissing the petition filed under Section 70 (2) of Cr.P.C. to recall the non bailable warrant dated 13.4.2017 issued against the petitioner herein.
3. The facts, in brief, are that respondent No.2 herein filed C.C.No.50 of 2013 against the petitioner for the offence under Section 138 of Negotiable instructions Act, on the file of the above said Court. After undergoing several adjournments, on 09.12.2014, the petitioner appeared before the Court and filed Memo of appearance by his counsel and he did not appear before the court for examination under Section 239 Cr.P.C. From 12.01.2015 to 13.04.2017, the petitioner has not appeared before the Court below. Consequently, on 13.4.2017, non bailable warrants were issued against him. However, he filed CrI.M.P.No.8 of 2018 under Section 70 (2) of Cr.P.C. to recall the non bailable warrants issued against him.

4. Respondent No.2 herein filed counter denying the averments made in the petition and contended inter-alia that the petitioner has not even appeared once in the proceedings before the learned Magistrate. The petitioner is hale and healthy and the reasons mentioned in the petition about the ill-health are not correct and no medical certificates are produced to that effect. Respondent No.2 also stated that the petitioner is in the habit of borrowing amounts from innocent people and issuing the cheques, and in default he is facing more than ten criminal cases as of now.

5. Learned Magistrate, after hearing, was pleased to dismiss the petition on 25.01.2018. Aggrieved by the same, the present Criminal Revision Case is filed.

6. Learned counsel for the petitioner, vehemently argued that since the petitioner was not keeping good health, he could not appear before the Court below. In fact, he is ready to appear before the Court below and participate in the trial.

7. Per contra, learned counsel for respondent No.2 submitted that the petitioner has not appeared before the Court below even on a single occasion. He is a very highly influenced person and for the last more than 1 ½ years, the non bailable warrants issued against the petitioner are not executed and that itself demonstrates the influence of the petitioner. He also brought to the notice of this Court that more than ten similar cases are pending against the petitioner. He also submitted that even if this Court is inclined to

recall the non bailable warrants issued against the petitioner herein, heavy terms should be imposed.

8. Having heard both the counsel and on perusal of the material on record, it is revealed that though the petitioner has been arrayed as an accused in C.C.No.50 of 2013 for the offence under Section 138 of Negotiable Instruments Act, he has not appeared before the Court below either before or after transfer of the case to the present Court.

9. From a perusal of the order, it is revealed that from the stage of issuance of process, the accused has not appeared before the Court, except when the memo of appearance has been filed. The C.C. has been filed in the year 2013 and now the matter is at the stage of examination under Section 239 Cr.P.C. As such, this Court feels that no indulgence can be shown to the petitioner. However, once the petitioner has been arrayed as accused, his substantial right of facing the trial, cannot be defeated. Therefore, this Court is inclined to give an opportunity to the petitioner to participate in the proceedings by recalling the NBWs issued against him on 13.04.2017 subject to the petitioner depositing a sum of Rs.2,50,000/-, within a period of four weeks from today.

10. Accordingly, the Criminal Revision Case is allowed by setting aside the orders passed in CrI.M.P.No.9 of 2018 in C.C.No.50 of 2013 dated 25.01.2018 in recalling the non bailable warrants dated 13.04.2017 issued against the petitioner, subject to the condition

that the petitioner deposits Rs.2,50,000/- to the credit of C.C.No.50 of 2013 within a period of four weeks from today. In the peculiar facts and circumstances of this case, learned Judicial Magistrate of First Class, Penukonda, is directed to dispose of C.C.No.50 of 2013, within a period of two months from the date of receipt of a copy of this order.

Miscellaneous petitions, if any, shall stand closed. No order as to costs.

Date: 26.7.2018

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P. KESHAVA RAO, J

