**THE HON'BLE SRI JUSTICE P.KESHAVA RAO**

**CRIMINAL REVISION CASE No.2040 OF 2018**

**ORDER**:

This Criminal Revision Case is filed questioning the orders passed in Crl.M.P.No.547 of 2018 in L.P.C.No.1 of 2013, dated 26.04.2018 on the file of the II Additional Judicial Magistrate of First Class, Machilipatnam, dismissing the petition filed under Section 70(2) of Cr.P.C. to recall the Non-Bailable Warrants issued against the petitioner.

Heard the learned counsel for the petitioner as well as the learned Public Prosecutor appearing for the first respondent-State.

The facts of the case are that the petitioner herein is charged for the offence under Section 420 I.P.C. in L.P.C.No.1 of 2013 on the file of the II Additional Judicial Magistrate of First Class, Machilipatnam. During the course of trial, since the petitioner was suffering from ill-health, he could not appear before the Court below and hence, Non-Bailable Warrant was issued against him on 20.05.2014. To recall the said N.B.Ws., the petitioner filed a petition vide Crl.M.P.No.547 of 2018 under Section 70(2) of Cr.P.C. In the said petition, the petitioner has categorically stated that he was suffering from kidney disease as well as jaundice. To that effect, medical report was also produced from Anu Hospitals. However, the Court below dismissed the said petition on 26.04.2018 by observing that since it is a long pending case, in the absence of the petitioner appearing before the Court, there is no genuine reason to recall the N.B.Ws. issued against the petitioner. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner would contend that the Court below having regard to the facts of the case that the petitioner was suffering from Jaundice and kidney problems, ought to have recalled the Non-Bailable Warrants issued on 20.05.2014, in the interest of justice. The Court below ought to have dispensed with the presence of the petitioner since the matter is coming up for trial only. The absence of the petitioner is not wilful or negligent and that he was under the impression that the case was closed. However, the petitioner came to know about the issuance of N.B.Ws. recently and immediately, he moved the application for recall of the N.B.Ws.

*Per contra*, the learned Public Prosecutor appearing for the first respondent-State would submit that since the petitioner herein was not appearing before the Court below, the trial could not take place and warrants were issued. Taking the said facts and circumstances into consideration, the Court below dismissed the recall petition treating the matter as long pending case.

Having heard both the counsel and from a perusal of the material on record, it is disclosed that the petitioner herein is charged for an offence under Section 420 of I.P.C. The N.B.Ws. were issued against the petitioner on 20.05.2014. It is the case of the petitioner that he was under the impression that the case was already closed and therefore, he could not appear before the Court below. Apart from that, since he was being transferred from one place to another place, he lost the contact with the counsel. Further, in the recall petition vide Crl.M.P.No.547 of 2018, he has enclosed the medical certificates showing that he is suffering with

kidney disease and jaundice. The Court below dismissed the recall petition on the ground that it is a long pending case. Merely because the matter is a long pending one, without appreciating the material placed on record, the Court below ought not to have dismissed the recall petition. In these circumstances, this Court is inclined to interfere with the orders passed by the Court below.

Accordingly, the Criminal Revision Case is allowed setting aside the orders passed in Crl.M.P.No.547 of 2018 in L.P.C.No.1 of 2013 dated 26.04.2018 on the file of II Additional Judicial Magistrate of First Class, Machilipatnam and consequently, the N.B.Ws. dated 20.05.2014 issued against the petitioner is hereby recalled. However, the petitioner is directed to appear before the Court below in L.P.C.No.1 of 2013 on every date of hearing and cooperate with the trial. In the event of non-appearance of the petitioner before the Court below on any date, it is open for the learned Magistrate to pass appropriate orders to secure the presence of the petitioner, as per law.

Pending miscellaneous petitions, if any, shall also stand closed.

**P.KESHAVA RAO,J**

01st AUGUST 2018.
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