

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.1923 of 2018

ORDER:

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

The present revision case is filed questioning the orders passed in CrI.M.P.No.1675 of 2018 in Crime No.43 of 2016 dated 26.06.2018 on the file of the Judicial Magistrate of First Class, Palamaner, dismissing the petition filed under Section 70(2) Cr.P.C., to recall the non-bailable warrant issued against the petitioner on 10.05.2016.

The facts in brief are that the petitioner herein is charged for the offence under Section 138 of the Negotiable Instruments Act in C.C.No.43 of 2016. In the said case, on 10.05.2016, non-bailable warrant was issued against the petitioner on the ground that in spite of service of notice, he has not appeared before the Court. However, the petitioner filed CrI.M.P.No.1675 of 2018 under Section 70(2) Cr.P.C., to recall the said non-bailable warrant on the ground that he was not served with any summons in the above calendar case and he does not know about the pendency of the proceedings. Only after coming to know about issuance of non-bailable warrant, he immediately filed the said petition. In the petition, the petitioner has categorically stated that not only on the non-service of summons in the calendar case, but due to the ill-health of his father, who is a physically challenged person, and admitted in Tirupati diagnostic Center at Tirupati, he was not aware of the proceedings. The Court below, after hearing, was pleased to dismiss the said application on 26.06.2018 holding that

the petitioner has not filed any evidence to show that his father is physically challenged and he was serving him in the hospital. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that his basic grievance before the Court below for recall of the non-bailable warrant was that the summons in the main calendar case are not served on him apart from his father's ill-health.

A perusal of the impugned order reveals that there is no mention about the grievance of the petitioner that the summons are not served on him at all. When the petitioner has specifically pleaded about the non-service of the summons, without meeting the said issue, dismissing the petition on the alternative ground of ill-health of the petitioner's father is uncalled for. In fact, with reference to the record, a finding would have been given on the main ground of non-service of summons. That being so, the impugned order is liable to be set aside.

Accordingly, the criminal revision case is allowed and the non-bailable warrant dated 10.05.2016 issued against the petitioner in C.C.No.43 of 2016 is hereby recalled.

Miscellaneous petitions, if any, shall stand closed.

P. KESHA RAO, J

Date: 19.07.2018.
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