HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No.2155 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 docket order passed in Crl.M.P.No.3722 of 2018 in M.C.No.13 of 2012 dated 06.06.2018 on the file of the learned Judicial Magistrate of First Class, Dhone, dismissing the petition filed under Section 70 (2) Cr.P.C., to recall the Non-bailable Warrant (for short, 'NBW') dated 30.04.2018 issued against the petitioner.

The facts in brief are that the 1st respondent filed M.C.No.13 of 2012 against the petitioner herein on the file of the learned Judicial Magistrate of First Class, Dhone. During the course of hearing, the matter was posted to 30.04.2018 for enquiry and appearance of the petitioner. Since the petitioner is aged about 65 years and suffering from age related diseases, he could not present before the Court on that date. The counsel appearing for the petitioner also could not represent the matter. In those circumstances, NBW was issued against the petitioner. Immediately, after coming to know about issuance of NBW, the petitioner filed Crl.M.P.No.3722 of 2018 under Section 70 (2) Cr.P.C. to recall the same. The learned Magistrate, after hearing, vide docket

order dated 06.06.2018 dismissed the said petition against which the present revision case is filed.

Learned counsel appearing for the petitioner would submit that the petitioner's age is 65 years and is suffering with age related problems. His absence on the said day is neither intentional nor deliberate. On the other hand, learned counsel informed the Court that the petitioner would appear before the learned Magistrate on every date of hearing and requested the Court to take a lenient view and recall the NBW.

Learned Public Prosecutor appearing for the 2nd respondent State though have not opposed the present case, requested the Court to give a direction to the petitioner to cooperate with the proceedings in the maintenance case.

Having heard both the counsel and a perusal of the material on record, this Court deems it appropriate to recall the NBW dated 30.04.2018 on the premise that a perusal of the impugned order would not indicate that the petitioner is a chronic defaulter or not cooperating with the trial at all. The impugned order would indicate that the petitioner was absent only on 30.04.2018. If that be so, this Court is of the opinion that the NBW issued against the petitioner can be recalled.

Accordingly, the criminal revision case is allowed and the NBW dated 30.04.2018 issued against the petitioner in M.C.No.13 of 2012 on the file of the learned Judicial Magistrate of First Class, Dhone, is hereby recalled. The

petitioner is directed to appear on every date of hearing till the conclusion of the proceedings in M.C.No.13 of 2012. Failing which, the learned Magistrate may proceed against the petitioner in accordance with law.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 09.08.2018.

Note: Furnish C.C. by tomorrow.
(B/o.)
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