

HON'BLE SRI JUSTICE P. KESHA RAO

CRIMINAL REVISION CASE No.2176 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as 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.569 of 2018 in C.C.No.495 of 2017 dated 21.06.2018 on the file of the XIX Special Magistrate, Hyderabad, dismissing the petition filed under Section 205 Cr.P.C., seeking permission of the Court to permit Ms. S.Sruthi, Advocate, to appear and answer the questions put to the petitioner under Sections 251 and 313 Cr.P.C., in the interest of justice.

Since the issue of permitting the petitioner to be represented by her counsel is between herself and the Court, the present revision case is being disposed of without issuing notice to the 1st respondent herein.

The facts in brief are that the petitioner is the sole accused in C.C.No.495 of 2017 for the offence under Section 138 of the Negotiable Instruments Act (for short, "the Act"), on the file of the XIX Special Magistrate, Hyderabad. The petitioner is aged about 81 years. Her date of birth is 16.01.1938. Because of the age, she is immobilized and due to ailments, she cannot attend the Court in-person on every date of hearing. In those circumstances, she filed

Crl.M.P.No.569 of 2018 seeking permission of the Court below to allow Ms. S. Shruti, her counsel, as a special vakalat holder to appear on her behalf. Along with the petition, she filed the Xerox copy of her Aadhar card as well as the entire medical record pertaining to her health. The learned Magistrate, while appreciating the contentions raised in the petition, disbelieved that the petitioner is 81 years old and also observed that the medical certificate produced appears to be a certificate taken only for the purpose of the case and as such dismissed the petition by orders dated 21.06.2018. Aggrieved by the same, the present revision case is filed.

Learned counsel appearing for the petitioner would contend that the petitioner at present is aged about 81 years. Even the Aadhar card produced along with the petition clinchingly evidence that the year of birth is 1938. That apart, the documents filed along with the petition, which includes the medical certificate, reveal that the petitioner is a known case of having uncontrolled blood sugar and accelerated H + N and she is advised absolute bed rest. Even on earlier occasion, the petitioner filed Crl.P.No.2493 of 2018 before this Court to quash the proceedings initiated against her. This Court while dismissing the said petition, considering the age of the petitioner, observed that she is entitled to file a petition under Section 205 Cr.P.C., seeking dispensing with her presence by orders dated 28.02.2018. Accordingly, the petition was filed before the Court below.

However, the learned Magistrate, without appreciating the facts and documentary evidence in proper perspective, dismissed the petition. Learned counsel informed this Court that after disposal of the said petition, on 20.07.2018, non-bailable warrant has been issued against the petitioner and the next date of hearing is 13.08.2018 before the Court below. Therefore, he requested the Court to dispense with the presence of the petitioner by allowing her counsel to appear on her behalf.

Learned Public Prosecutor appearing for the 2nd respondent State fairly conceded that as per the Aadhar card the age of the petitioner is about 81 years at present. The medical record produced along with the petition also indicates that the petitioner is suffering with age related problems and she has been advised absolute bed rest.

Having heard both the counsel and from a perusal of the material on record, it is revealed that the petitioner is an accused for the offence under Section 138 of the Act in C.C.No.495 of 2017. Since she is suffering with severe age related ailments, she filed a petition under Section 205 Cr.P.C., seeking permission of the Court to allow Ms. S.Sruthi, Advocate, to appear on her behalf and answer the questions put to her under Sections 251 and 313 Cr.P.C., in the interest of justice. The said application has been dismissed basically on two grounds, namely, that the petitioner failed to establish that she is aged about 80 years

and the medical certificate does not appear to be genuine, but brought into existence only for the purpose of the case. This Court, after perusal the Aadhar card as well as the medical record is convinced that the petitioner is aged about 81 years and is suffering with severe age related problems as mentioned in the medical certificate dated 05.07.2018. In these circumstances, this Court deems it appropriate to interfere with the impugned orders passed by the Court below and permit the petitioner to be represented by her counsel.

Accordingly, the criminal revision case is allowed, setting aside the orders passed in CrI.M.P.No.569 of 2018 in C.C.No.495 of 2017 on the file of the XIX Special Magistrate, Hyderabad. Consequently, the petitioner is permitted to appear before the Court below through Ms. S. Sruthi, Advocate. Since it is brought to the notice of the Court that non-bailable warrant has been issued against the petitioner on 20.07.2018, in the peculiar facts and circumstances of the case, the same is hereby recalled.

Miscellaneous petitions, if any, shall stand closed.

P. KESHAVA RAO, J

Date: 10.08.2018.

Note: Furnish C.C. today.

(B/o.)
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