

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.2259 OF 2018

ORDER:

This Criminal Revision case is filed by the petitioners-A3 and A4 challenging the impugned order, dated 05.07.2018 passed in CrI.M.P.No.3620 of 2018 in C.C.No.285 of 2016 by the VI Addl. Chief Metropolitan Magistrate, Hyderabad.

2. The trial Court dismissed the petition filed under Section 70 (2) Cr.P.C. for recalling of N.B.Ws. issued against the petitioners-A3 and A4.

3. Originally, C.C.No.285 of 2016 is arising out of Cr.No.270 of 2015, dated 28.07.2015 basing on the report lodged by the 2nd respondent herein-de facto complainant alleging that the accused have committed the offence punishable under Section 324 r/w 34 IPC and subsequently, charge sheet was filed by the police for the offence punishable under Section 326 r/w 34 IPC. The de facto complainant is son-in-law of the petitioners-A3 and A4. During the pendency of trial, the petitioners could not appear before the trial Court as they were suffering from ill-health. The petitioners have filed medical certificate issued by a private clinic, dated 20.10.2017 and Xerox copy of some of medical reports pertaining to A4 on various years i.e., 2013, 2014, 2015, 2016 and 2017. The trial Court observed that medical report pertaining to the year 2018 has not been filed and dismissed the petition filed for re-calling of N.B.Ws.

4. Learned counsel for the petitioners submits that the petitioners are old age persons. The 2nd petitioner has also filed Xerox copy of medical reports pertaining to the year 2017 and previous years. In spit of filing medical reports, the

trial Court did not consider them and issued N.B.Ws. against the petitioners.

5. Learned Public Prosecutor submits that basing on the material, the trial Court issued N.B.Ws. against the petitioners.

6. Having regard to the facts and circumstances of the case, the present revision filed challenging the order passed in an application filed under Section 70 (2) Cr.P.C. is not maintainable for the reason that it is an interlocutory order. The petitioners have remedy to file a petition under Section 70 (2) Cr.P.C. along with certificates, which were sought by the trial Court while disposing of the petition. Section 397 (2) Cr.P.C. reads thus:

“The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.”

The order passed by the trial Court in this case is interlocutory in nature. The revision filed by the petitioners is to set aside the order passed in an application filed under Section 70 (2) Cr.P.C. Section 70 (2) Cr.P.C. is in respect of warrant of arrest, which reads thus:

“Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed”

Issuing warrant of arrest by the trial Court is only process of securing the presence of the accused for conducting trial. The order passed by the trial Court is almost interlocutory in nature. The contention of the petitioners is that the 1st petitioner was suffering from serious ill-health and therefore, he could not appear before the trial Court and as such, N.B.W. was not re-called. In view of the facts and circumstances of the case, the

petitioners have got remedy before the trial Court for filing a fresh petition under Section 70 (2) Cr.P.C. for re-calling of warrant along with the medical reports. On filing such an application, the learned Magistrate may consider the application of the petitioners and dispose of the same on the same day by considering the age and the medical conditions of the petitioners.

7. With the above observation, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 13-11-2018
Hsd

