HONOURABLE SRI JUSTICE N. BALAYOGI

CRIMINAL REVISION CASE No.2743 of 2018

ORDER:

Since this Revision is against the orders on a petition filed under section 70(2) Cr.P.C., to recall the non-bailable warrant issued, with the consent of the learned Counsel for the petitioner and the learned Public Prosecutor, it is more desirable to dispose of the main Criminal Revision Case itself.

2. The contention of the petitioner is that the Trial Court dismissed the petition as the petitioner was not present and also the original medical certificates are not filed.

3. Whereas, the learned Public Prosecutor opposed and contended that the petitioner may be directed to appear before the Trial Court and to co-operate the trial of the C.C.No.635/2017.

4. A perusal of the record goes to show that the petitioner filed Criminal M.P.No.4859/2018 to recall the non-bailable warrant issued against him. The order of the Trial Court dated:05.10.2018 in Criminal M.P. No.4859/2018 in C.C.No.635/2017 reads as under:

> "Petitioner absent, as the petitioner has not complied with the orders of this Court, even no original documents are produced before court as directed by this court, hence petition is dismissed for not complying the conditions of this court."

5. From the above, it is clear that since the petitioner was absent and even no original documents i.e., medical certificates of which photostat filed are not produced, so the petition was dismissed.

6. It is a settled law that in an application to recall non-bailable warrant, the presence of the accused need not be necessary and the Trial Court should have considered the photostat copies of the medical certificates filed when they were not objected. Therefore, the order dismissing the Criminal M.P. No.4859/2018 is erroneous and it is set aside.

Accordingly, while setting aside the order dated:05.10.2018 in Criminal M.P. No.4859/2018 in C.C.No.635/2017, it is ordered to recall the non-bailable warrant issued to the petitioner / accused No.1 and the petitioner/accused No.1 is directed to appear before the Trial Court on the next date of hearing and co-operate for trial of the C.C.No.635 of 2017.

7. The Criminal Revision Case is disposed of with the above observation.

Pending Miscellaneous Petition/s, if any, shall stand closed.

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JUSTICE N. BALAYOGI

Dated:12-10-2018

(Issue c.c today)

(B/O)

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CRIMINAL REVISION CASE No.2743 of 2018

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