

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**CRIMINAL REVISION CASE No.3368 of 2018****ORDER:**

Heard Sri V.V.Narayana Rao, Advocate, representing Sri V.V.N..Narasimham, learned counsel for the petitioner.

The Petitioner is the accused in C.C.No.68 of 2017. The petitioner has filed a petition under Section 70 (2) Cr.P.C., for recalling of N.B.W., issued against him on 24.08.2018 in a private complaint filed under Section 138 of NI Act. The trial Court, on consideration of the material, has passed an Order stating that the summons were served on the accused through registered post and the same was returned with an endorsement stating that the petitioner consistently absent to his office. The trial Court, after making efforts of service of summons on the petitioner by sending the summons to his office as they could not be served, has passed the impugned Order. The trial Court also stated in the Order that the petitioner was working in ONGC Department in Kothuru Village. On return of summons, NBW was issued on 24.08.2018. As per

the direction of the District Judge for execution of NBW, the same was sent to the Superintendent of Police. In spite of best efforts of the Police, they could not trace out the accused. It is further observed by the trial Court that the petitioner was regularly attending the Office, but the Police could not produce him on execution of NBW till the date. The trial Court further stated that the petitioner has not mentioned from which date he was on leave or from which date he was attending to the duty regularly. Though it is observed that the medical certificate is not enclosed to the petition that he was suffering from disk problem, the trial Court has come to a conclusion that as the work place of the accused was very near to the Court, which is at a distance of 2 km to Alamuru Court, the accused intentionally avoided attending to the Court personally. Therefore, keeping in view the attitude of the accused, the trial Court comes to a conclusion that the accused has no respect for the orders of the Court. The accused has filed a petition for

recall of NBW, and even on that date he was not present before the Court to explain the reasons for recall of NBW.

The learned counsel for the petitioner submits that this Court has rendered a judgment to the effect that even in the absence of the accused, a petition under Section 70 (2) Cr.P.C., can be considered.

The contention of the learned counsel for the petitioner that recall of NBW petition was dismissed as the accused was not present is not the sole ground as seen from the Order passed by the trial Court.

This Petition is filed by the petitioner having disobeyed the Orders of the Court without making himself available for execution of NBW. The order of the trial Court reveals that the petitioner/ Accused has continuously avoiding to receive summons, and after issuance of NBW, he filed a petition before the trial Court for recall of NBW, but he did not choose to appear before the Court, nor he filed any proof showing that he was medically not well. The order of the trial Court referred

above clearly show that the petitioner was avoiding to receive summons and therefore NBW was issued and even after issuing of NBW petitioner did not choose to appear before the Court.

On the other hand, the petitioner files the present revision before this Court which is nothing but abuse of process of Court. Hence the petitioner is directed to pay exemplary costs of Rs.5,000/- (Rupees five thousand only) to the Legal Services Committee at Alamuru, or to the District Legal Services Authority, East Godavari District.

With these observations, this Criminal Revision Case is dismissed. The petitioner/accused is directed to surrender before the trial Court within three days from the date of this Order and pay costs of Rs.5000/- to the Legal Services Committee at Alamuru, or to the District Legal Services Authority, East Godavari District. On such surrender, the Petitioner may move for recall of NBW before the trial Court and the same may be considered in accordance with law.

Miscellaneous Petition, if any pending, in this case, shall stand dismissed.

GUDI SEVA SHYAM PRASAD, J

Date: 10-12-2018

Note: Issue C.C. by 12-12-2018
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