

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.24597 OF 2017

ORDER:

This petition is filed under Section 482 of the Code of Criminal Procedure (Cr.P.C.) to quash the order dated 24.11.2017 passed by the Metropolitan Sessions Judge, Vijayawada in CrI.MP.No.1984 of 2017 in Crime No.117 of 2016 of the Station House Officer, Machavaram Police Station, Vijayawada, registered for the offences punishable under Sections 120-B, 384, 385, 386, 450, 452 and 506 read with Section 34 of the Indian Penal Code and Section 5 of A.P.P.D.F.E. Act, whereby the petition filed under Section 70(2) Cr.P.C. read with Rule 30 of the A.P. Criminal Rules of Practice to recall non-bailable warrant (NBW) issued against the petitioner was dismissed.

The main ground urged before this Court is that the petitioner was bound over to appear before the Court below after charge sheet is filed and summons were served on him. It is not necessary for him to appear before the Court below on every date of adjournment. It is specifically contended that the petitioner was enlarged on bail on 27.05.2016 imposing certain conditions but the conditions were relaxed by order dated 15.07.2016 by the Metropolitan Sessions Judge, Vijayawada and later, on 10.11.2016, NBW was issued against this petitioner and the Court below is incompetent to issue NBW and sought to quash the order dated 10.11.2016 passed by the Court below.

Admittedly, petitioner is arrayed as accused No.1 in Crime No.117 of 2016 of Machavaram Police Station for the offences punishable under Sections 120-B, 384, 385, 386, 450, 452 and 506 read with Section 34 of the IPC and Section 5 of the APPDFE Act. Petitioner filed an application for grant of bail and the same was granted subject to certain conditions vide order dated 27.05.2016 enlarging the petitioner on executing a bond for Rs.20,000/- with two sureties for a like sum and on condition that the petitioner shall report to the Station House Officer on every Sunday between 10 am to 1 pm, till further orders. The condition imposed by the Court below was released by order dated 15.07.2016 in Crl.MP.No.948 of 2016. But the Court below issued NBW on 10.11.2016 though the petitioner is not required to appear before the Court below before filing of the charge sheet, as he was bound over and merely on the ground that the petitioner was absent before the Court, a Magistrate or a Sessions Judge cannot act contrary to law i.e. Rule 30 of the A.P. Criminal Rules of Practice.

Though the petitioner was not required and already bound over before the Court below even before filing of charge sheet, due to absence of the petitioner, the Court below issued NBW on the ground that the petitioner was not present along with the petition under Section 70(2) Cr.P.C. The order passed by the Court below issuing NBW is contrary to Rule 30 of the A.P. Criminal Rules of Practice. On this ground alone, the order passed by the Court below issuing NBW is liable to be set aside. The petitioner did not seek for quashment of the order dated 10.11.2016 ordering issue of NBW against this petitioner for his

failure to appear before the Court below in contravention of Rule 30 of the A.P. Criminal Rules of Practice. The petitioner only sought the order dated 24.11.2017 passed by the Court below to be quashed. The order under challenge is one in the nature of interlocutory against which no revision is not maintainable as per Section 397(2) Cr.P.C. The Full Bench of the Apex Court in **Girish Kumar Suneja v. CBI**¹ held as under.

“...when Section 397(2) prohibits interference in respect of interlocutory orders, Section 482, cannot be availed of to achieve same objective. In other words, since Section 397(2) prohibits interference with interlocutory orders, it would not be permissible to resort to Section 482. To set aside an interlocutory order prohibition in Section 397 will govern Section 482 thereof...”.

When no revision is maintainable, in view of the statutory bar as mentioned in **Girish Kumar Suneja** (1 supra), this Court cannot entertain the petition under Section 482 Cr.P.C. Hence, the present petition under Section 482 Cr.P.C. against the order passed by the Court below is not maintainable. However, liberty is given to the petitioner to file appropriate petition under any other provision for appropriate order, challenging order dated 10.11.2016 ordering issuance of NBW or to file a fresh application before the Magistrate under Section 70(2) Cr.P.C. to recall the NBW issued before the Court below. In view of my foregoing discussion, I find no ground to quash the order dated 24.11.2017 in CrI.MP.No.1984 of 2017 in Crime No.117 of 2016

¹ AIR 2017 SC 3620

on the file of the Station House Officer, Machavaram Police Station, Vijayawada.

The Criminal Petition is dismissed. Miscellaneous petitions, if any, pending shall stand dismissed.

(M.SATYANARAYANA MURTHY, J)

2nd January 2018
RRB

