

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM

CRIMINAL PETITION Nos.1176 and 1184 of 2019

COMMON ORDER:

CrI.P.No.1176 of 2019

The petitioner is aggrieved by the order dated 23.02.2019 passed by the Special Magistrate, Ibrahimpatnam, Ranga Reddy District (for short, 'the trial Court'), in CrI.MP.No.144 of 2018 in C.C.No.66 of 2018, taken on file for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act').

Briefly, the allegations in C.C.No.66 of 2018 are that out of acquaintance and on the request of the petitioner-accused for a hand loan of Rs.3,00,000/- with the promise to repay the loan with interest at 24% per annum, the complainant had lent Rs.3,00,000/- to the accused on 02.08.2015. In repayment of the loan amount, the accused gave a cheque bearing No.872368 dated 28.09.2017 for Rs.4,50,000/-, but the cheque was dishonoured due to insufficiency of funds in the account of the accused. The complainant informed the accused about the dishonour of cheque but the accused did not take steps to repay the amount. The complainant got issued a statutory notice to the accused on 15.10.2017 demanding to pay the amount but the notice returned "Unclaimed" on 27.10.2017. Alleging that the accused intentionally failed to discharge the legally enforceable debt, the complainant filed a private complaint before the trial Court under Sections 190 and 200 of Code of Criminal Procedure (for short, 'Cr.P.C.'), which was taken on file as C.C.No.66 of 2018 for the offence punishable under Section 138 of the NI Act.

After closing of the evidence of the complainant on 20.10.2018, when the case was coming up for examination of the accused under Section 313 Cr.P.C, the counsel for the accused filed a petition under Section 317 Cr.P.C., stating that the accused has undergone treatment for Haemorrhoids and requested to grant ten days time. The trial Court allowed the petition, however, imposed a condition to produce medical certificate and posted the matter to 03.11.2018. On 03.11.2018, the counsel for the petitioner moved a petition under Section 317 Cr.P.C., with the same cause without producing the medical certificate. The trial Court dismissed the petition and issued Non-Bailable Warrant against the petitioner. On 05.11.2018 also the petitioner was absent, the NBW was pending against him, and the trial Court forfeited the surety amount of Rs.10,000/-. On 14.02.2019, the counsel for the petitioner filed CrI.MP.No.144 of 2019 seeking recall of NBW by producing a photocopy of the medical certificate. The trial Court dismissed the petition. Hence, the petitioner is before this Court seeking recall of NBW.

Heard learned counsel for the petitioner, and the learned Public Prosecutor.

Though the learned Magistrate had written a detailed order, the fact remains that merely because the petitioner was not present on a given date, and when the petitioner is present on the next date, unless there are compelling circumstances, the pragmatic approach the learned Magistrate could have adopted is to recall the warrant and proceed with the trial of the matter. This is not a case where there is any allegation against the petitioner that he had absented himself on earlier occasions and, as a matter of fact, the record discloses that the petitioner is participating in the trial of the case and also has cross-examined witnesses.

In those circumstances, subject to the condition of the petitioner surrendering before the Court on or before 11.03.2019, the NBW shall be recalled subject to other conditions that the trial Court may deem fit to impose.

Crl.P.No.1184 of 2019

The Docket Order dated 05.11.2018 passed by the trial Court, forfeiting the surety amount of Rs.10,000/-, is challenged in this criminal petition.

In view of the order passed in Crl.P.No.1176 of 2019 with respect to recalling of NBW, the order dated 05.11.2018 with respect to forfeiture of surety amount of Rs.10,000/- is set aside.

The criminal petitions are accordingly disposed of. Miscellaneous petitions, if any pending, shall stand closed.

\_\_\_\_\_  
JUSTICE CHALLA KODANDA RAM

27<sup>th</sup> February, 2019

KSM

THE HON' BLE SRI JUSTICE CHALLA KODANDA RAM



CRIMINAL PETITION Nos.1176 and 1184 of 2019

27<sup>th</sup> February, 2019

KSM