

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

CRIMINAL REVISION CASE No.527 of 2019

ORDER:

This criminal revision case is filed against the order, dated 28.03.2019, passed in CrI.M.P.No.69 of 2019 in C.C.No.35 of 2012 by the Additional Judicial Magistrate of First Class at Shadnagar.

2. Heard Sri D.Vijaya Kumar, Counsel for the petitioner and the Public Prosecutor appearing for the respondent State.

3. The petitioner/accused contends that he was falsely implicated in the present criminal case for the offences punishable under Sections 324, 504, 506 & 427 of IPC and at the time of registering the said crime, the Investigating authorities have issued notice under Section 41 of Cr.P.C. to him and thereafter, he has appeared before the Investigating authorities and since the offences are bailable in nature, he was granted bail by the investigating authorities and that he further contends that the investigation was completed and charge sheet was filed *vide* Charge Sheet No.20 of 2012. He further contends that though the summons is alleged to have been sent to him, he could not receive the same. Consequently, the Judicial Magistrate of First Class, Shadnagar, had issued Non-bailable Warrant (NBW) against the petitioner on 18.12.2013. Since the petitioner was not aware of the issuance of NBW against him, he could not appear before the Court below and recently he came to know about the pendency of NBW against him and the case is posted for trial on 03.03.2019. Thereafter, the petitioner filed CrI.M.P.No.69 of 2019 in C.C.No.35 of 2012 under Section 70(2) of Cr.P.C. seeking to recall the NBW pending against him, but the Court below dismissed the said petition

vide order, dated 28.03.2019. Challenging the same, the present criminal revision case is filed.

4. Counsel for the petitioner contends that the *de facto* complainant has filed another case in C.C.No.534 of 2011 wherein he has been regularly appearing before the Court below and non-appearance of the petitioner in C.C.No.35 of 2012 is only on account of non-service of the summons. Therefore, Counsel for the petitioner prays that NBW issued against the petitioner may be recalled and he may be permitted to participate in the trial.

5. The Public Prosecutor appearing for the respondent State had contended that since the petitioner has not appeared before the Court below on the date of filing of recall petition, the trial Court has rightly rejected the said petition. He further contended that the petitioner may be directed to appear before the Court below by filing an appropriate application to recall the NBW pending against him.

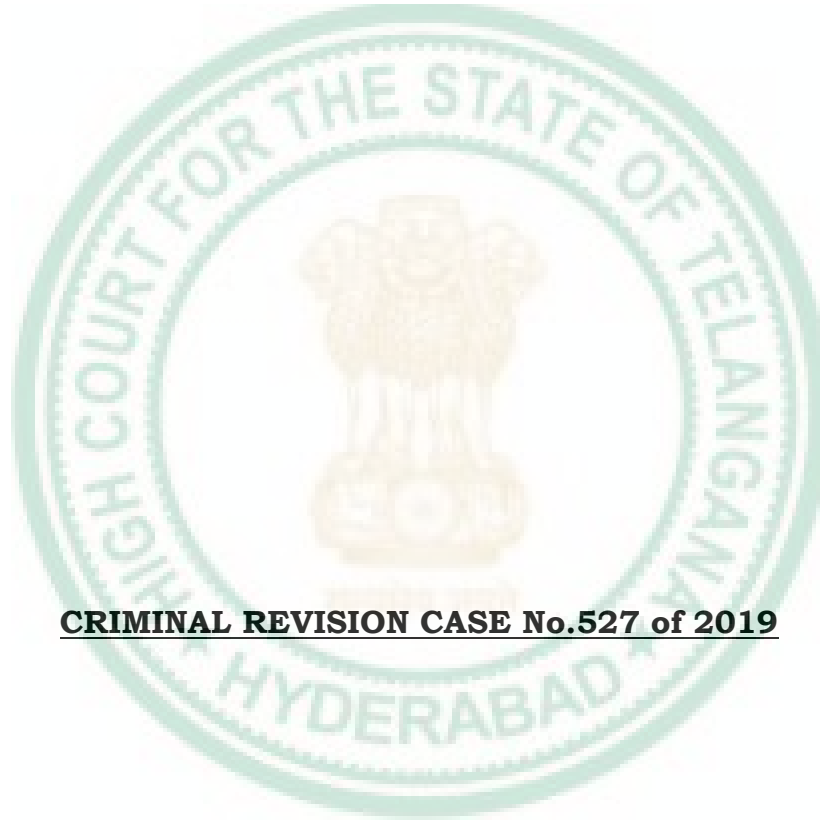
6. This Court, having considered the rival submissions made by both the parties, is of the considered view that the petitioner is directed to appear before the Court below and file an application to recall the NBW pending against him, and on such filing, the Court below shall consider the same and pass appropriate orders, in accordance with law, on the same day.

7. With the above direction, the Criminal Revision Case is disposed of.

Miscellaneous petitions pending, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 15th May, 2019
KL/SJ

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