

THE HON'BLE JUSTICE G.SRI DEVI

CRIMINAL PETITION No.4796 of 2019

ORDER:

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioner/Accused seeking to quash the order, dated 28.03.2019 in CrI.R.P.No.76 of 2018 in P.R.C.No.01 of 2013 on the file of Principal Sessions Court, Khammam, by recalling the NBWs issued against the petitioner in the aforesaid case.

2. Heard the learned counsel for the petitioner/Accused, the learned Additional Public Prosecutor representing the respondents and perused the record.

3. The petitioner is arrayed as an accused in Crime No.86 of 2013 of R.P.S police, Khammam; that the respondent-police after completion of investigation in the aforesaid crime, filed final report, which was numbered as P.R.C.No.1 of 2013 for the offences punishable under Sections 354 and 509 I.P.C; that the committal order was passed on 19.11.2015 and for the last three years, as the case file was not sent to the Court, the attendance of the petitioner to the proceedings could not be secured. In the said circumstances, by docket order, dated 30.11.2018, the Principal Sessions Judge, Khammam, directed the Judicial Magistrate of First Class for Railways, Warangal, to submit the remarks for the delay. Pursuant to the same, the police issued notices to the petitioner and the sureties. Thereafter, the Court issued summons to the petitioner and though he received the same, he did not appear before the Court, the Court below issued Non-Bailable Warrant against the petitioner on 18.03.2019. Thereafter, the petitioner filed CrI.M.P.No.317 of 2019 in

Crl.R.P.No.76 of 2018, seeking to recall the NBW issued against him. The Court below by docket order, dated 28.03.2019, the passed the following order:

“Surety No.2 discharged on his request after imposing penalty by forfeiting bond. Therefore, the accused shall personally present before the Court on the next date of hearing. Call on 15.04.2019.”

4. Learned counsel for the petitioner would submit that the docket order, dated 18.03.2019, passed by the Court below is contrary to law and facts and that due to wrong entry made by the police authorities stating that summons were served to the petitioner. In fact, no summons whatsoever were served on the petitioner; as such the petitioner filed an application to recall the NBW issued against him stating that summons were never served on him, but, the learned Principal Sessions Judge without looking into the said aspect, has directed to issue NBW against the petitioner vide order, dated 18.03.2019 and subsequently when the petitioner has filed application to recall the NBW, instead of recalling the NBW, has directed the petitioner to personally present before the Court on the next date of hearing i.e., on 15.04.2019, which is contrary to the facts available on record and also against the settled principles of law. Thus, it is prayed to stay the order, dated 18.03.2019 passed in Crl.R.P.No.76 of 2018.

5. A perusal of the material on record would show that on 28.03.2019 an order was passed in Crl.R.P.No.76 of 2018 stating that “NBW pending against the accused, call on 15.04.2019” where as in the application filed to recall N.B.W. ie. Crl.M.P.No.317 of 2019 another order was passed on the same day stating “the petitioner/accused shall personally present before the Court on the

next date of hearing. Call on 15.04.2019". However, a perusal of the report of the Station House Officer, Government Railway Police, Khammam, shows that though it is mentioned in the said report that summons were served on the petitioner to the address R/o P-84, Galli/Street No.6, Shankar Nagar, extension Krishnagar, New Delhi-51, but, a perusal of the report shows, nowhere the signature of the petitioner appeared. But, actually the summons were not served on the petitioner. However, learned Principal Sessions Judge, Khammam, basing on the report of the Station House Officer, issued NBW against the petitioner.

6. There is nothing on record to show that summons were served on the petitioner directing him to appear before the Court concerned. Therefore, the order passed by the learned Principal Sessions Judge, Khammam on 18.03.2019 directing to issue NBW against the petitioner and subsequent order, dated 28.03.2019 are liable to be set aside.

7. Accordingly, the Criminal Petition is allowed setting aside the docket orders, dated 18.03.2019 and 28.03.2019 passed by the Principal Sessions Judge, Khammam. At this stage, learned counsel for the petitioner would submit that a fresh N.B.W. was issued against the petitioner on 15.07.2019 and prayed to recall the same.

8. Having regard to the facts and circumstances of the case, the non-bailable warrant issued against the petitioner on 15.07.2019 shall be stayed for a period of two (02) weeks from today. Meanwhile, the petitioner shall appear before the Court concerned and make suitable application if so, advised for recalling of non-bailable warrant, pending, if any, which shall be considered in accordance with law.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

JUSTICE G.SRI DEVI

AUGUST 20, 2019

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Date:20.08.2019

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