

**HON'BLE JUSTICE G. SRI DEVI**

**CRIMINAL REVISION CASE No.1075 of 2019**

**ORDER :**

This Criminal Revision Case under Sections 397 and 401 of Cr.P.C. is filed by the petitioner/Accused seeking to set aside the docket order dt.26.07.2019 in CrI.M.P.No.958 of 2019 in C.C.No.432 of 2018 (Huzurabad Police Station) passed by the learned I Additional Judicial Magistrate of First Class, Huzurabad, Karimnagar District, whereby the petition filed by the petitioner seeking to recall the Non-bailable Warrant issued against him was dismissed for default.

Heard Sri Gajanand Chakravarthy, learned counsel for the petitioner/Accused and the learned Additional Public Prosecutor appearing for the respondent – State. Perused the material on record.

Learned counsel for the petitioner submits that the impugned docket order passed by the Court below is contrary to law, probabilities of the case and it amounts to grave miscarriage of justice. It is further contended that the Court below erred in dismissing CrI.MP.No.958 of 2019 filed by the petitioner to recall the NBW issued against him without proper appreciation of the facts of the case. Learned counsel also contends that the Court below ought to have seen that there was no willful or deliberate negligence on the part of the petitioner in not attending the Court on 20.05.2019 and it

only occurred due to his ill-health. It is also contended that even if the petition to recall the NBW is allowed, no prejudice will be caused to the prosecution.

On the other hand, the learned Additional Public Prosecutor appearing for the respondent – State opposed the relief sought in this revision.

As seen from the docket order dt.20.05.2019, it is evident that the Court below observed that NBW issued against the petitioner/Accused is pending and accordingly posted the matter to 19.03.2020. Subsequently, the petitioner has filed Crl.M.P.No.958 of 2019 in C.C.No.432 of 2018 under Section 70(2) of Cr.P.C. stating that he could not attend the Court on 20.05.2019 due to ill-health and hence prayed to recall the NBW issued against him. However, on 26.07.2019 when the case was called, the petitioner was absent and there was no representation on his behalf. Therefore, the Court below, while observing that though the matter was called many times, there was no representation for the petitioner, and accordingly dismissed the petition for default.

From the impugned docket order dt.26.07.2019, it is evident that since the petitioner was not present when the case was called, there was no occasion for the Court below to allow the petition filed by the petitioner to recall the NBW issued against him in his absence.

Therefore, looking into facts and circumstances of the case, as it is contended that absence of the petitioner was not intentional but only due to unavoidable circumstances, impugned docket order dt.26.07.2019 in Crl.M.P.No.958 of 2019 in C.C.No.432 of 2018 passed by the Court below is set aside and the petitioner/Accused is directed to surrender before the Court below positively at 10.30 a.m. on 30.09.2019 and move an application to recall the NBW issued against him. On such application being filed, the Court below shall consider and dispose of the same in accordance with law on the same day itself, directing the petitioner/Accused to furnish a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two local sureties for a like sum each to the satisfaction of the said Court. The Court below is also directed to conclude the trial as expeditiously as possible, preferably within a period of three months from the date of this order, without giving any unnecessary adjournments to either of the parties. Till conclusion of trial, the petitioner/Accused shall appear before the Court below on each date of hearing without fail.

Accordingly, this Criminal Revision Case is disposed of, at the admission stage.

As a sequel, miscellaneous petitions pending, if any, shall stand closed.

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25.09.2019.  
Msr

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