

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

**CRIMINAL PETITION No.7116 of 2019**

**ORDER:**

This Criminal Petition, under Section 482 of Code of Criminal Procedure, 1973, is filed by the petitioner/accused aggrieved by the order, dated 30.07.2018 passed in C.C.No.15 of 2018 by the I Additional Judicial Magistrate of First Class, Huzurabad.

2. Heard the learned counsel for the petitioner, learned Additional Public Prosecutor for the 1<sup>st</sup> respondent-State and perused the record.

3. Brief facts of the case are that the 2<sup>nd</sup> respondent filed a private complaint alleging that the petitioner borrowed a sum of Rs.3,00,000/- from him in the first week of June, 2017. While so, when the 2<sup>nd</sup> respondent asked the petitioner for repayment of the said amount, the petitioner issued a cheque bearing No.973906, dated 08.07.2017, for Rs.3,00,000/-, drawn on State Bank of Hyderabad, Hanamkonda Branch; that when the said cheque was presented in Karimnagar District Cooperative Central Bank, Shankarpatnam, for realization, the same was returned with an endorsement "unable to fetch the account details". Thereafter, the 2<sup>nd</sup> respondent issued a legal notice on 06.10.2017, demanding the petitioner to pay the amount covered by cheque within 15 days from the date of receipt of notice. Having acknowledged the said legal notice, the petitioner did not choose to pay the amount or give any reply. Hence, the 2<sup>nd</sup> respondent filed a complaint under Section 200 Cr.P.C. before the Court of I Additional Judicial Magistrate of First Class, Huzurabad, who has taken cognizance of the case for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short 'the Act'), and issued summons to the petitioner.

4. The order, dated 30.07.2018, which was obtained by the petitioner from e-Courts Services is reads as under:

“Complainant absent on petition. Accused called absent.  
No representation. Hence issue NBW against sole accused on  
payment of process. Call on 27.10.2018”

5. Learned counsel for the petitioner would submit that the petitioner has not committed any offence as alleged in the complaint; that the offence under Section 138 of the Act is a bailable offence; that due to absence of the petitioner on 30.07.2018, the Court below instead of issuing bailable warrant issued non-bailable warrant against the petitioner; that the petitioner is suffering from heart problem and other diseases and hence, he prays to set aside the impugned order.

6. During the course of arguments, it is brought to the notice of this Court that the case is at the stage of examination of the petitioner under Section 251 Cr.P.C. As seen from the impugned order, dated 30.07.2018, the 2<sup>nd</sup> respondent-complainant is also absent on that date. The contention of learned counsel for the petitioner is that the petitioner is suffering from ill-health, as such he could not attend Court on that day. He further given an undertaking that the petitioner will surrender before the Court below and files an application for recall of the warrant issued against him and hence, a direction may be given to the Court below to consider the same.

7. Having regard to the submissions made by learned counsel for the petitioner and taking into consideration the age of the petitioner and ailments, the ends of justice would be met if a direction is given to the petitioner to file an application before the Court below for recall of NBW issued against him.

8. Accordingly, the Criminal Petition is allowed setting aside the order, dated 30.07.2018, passed in C.C.No.15 of 2018 by the I

Additional Judicial Magistrate of First Class, Huzurabad, and the petitioner is directed to surrender before the Court below within fifteen (15) days from today and file an application for recall of Non-Bailable warrant issued against him. On filing of such application, the learned Magistrate shall recall the N.B.W issued against the petitioner and release him on bail on his executing a personal bond for the sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties for a like sum each to the satisfaction of Court concerned.

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

**7<sup>th</sup> November, 2019**  
**YVL**

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**Date:07.11.2019**

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