

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL PETITION No. 7402 of 2019

ORDER:-

1. The present Criminal Petition is filed under Section 482 of Cr.P.C., questioning the order, dated 31.07.2019, passed in CrI.M.P.No.409 of 2019 in C.C.No.22 of 2017 on the file of the XV Special Magistrate, Hyderabad, whereby the learned Magistrate dismissed the petition filed by the petitioner under Section 70 (2) of Cr.P.C.

2. The brief facts of the case are that the 1st respondent herein filed a complaint against the petitioner/accused for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, which is pending before the XV Special Magistrate at Erramanzil, Hyderabad. On 10.01.2019, when the matter was posted for trial, the petitioner/accused could not appear before the trial Court due to ill health. Seeing the absence of the petitioner, the trial Court issued non-bailable warrant against the petitioner on 10.01.2019 and again issued non-bailable warrant on 12.03.2019. The petitioner filed an application under Section 70 (2) of Cr.P.C., seeking recall of the non-bailable warrants, which was rejected on 31.07.2019. Questioning the same, the present Criminal Petition is filed.

3. Heard both sides and perused the impugned order.

4. The contentions raised in this petition are that the petitioner filed Criminal Petition No.4759 of 2017 before this Court, seeking

quashing of the entire proceedings in the above C.C. By an order, dated 23.06.2017, this Court granted stay of all further proceedings in the above C.C. until further orders. The stay was expired after six months in view of the guidelines of the Apex Court. Thereafter, on the applications filed by the petitioner, this Court extended the stay on 23.04.2019, again on 01.07.2019 and on 13.09.2019. The petitioner submits that on 10.01.2019 when the said C.C. was posted, the petitioner could not attend the Court as he was suffering with ill health. The petitioner was under the impression that stay was pending, he could not appear on 12.03.2019. Seeing his absence, the learned Magistrate issued non-bailable warrants on 10.01.2019 and on 12.03.2019. After coming to know about the issuance of non-bailable warrants, the petitioner filed a petition under Section 70 (2) of Cr.P.C. to recall the warrants vide CrI.M.P.No.409 of 2019, but the learned Magistrate dismissed the said petition on the ground that the case is to be disposed of within six months as per Section 143 (3) of the Negotiable Instruments Act, 1881, but the trial has not even started for the last two and half years due to non-appearance of the petitioner.

5. A perusal of the impugned order would show that out of 35 adjournments the petitioner has appeared only on four adjournments and there is no progress in the case due to the attitude of the petitioner, therefore, the trial Court has refused to recall the non-bailable warrant and dismissed the application filed by the petitioner. In the said circumstances, I do not find any

illegality or infirmity in the order passed by the trial Court warranting interference by this Court under Section 482 of Cr.P.C. However, this is a case under Section 138 of the Negotiable Instruments Act, 1881, and it appears from the impugned order that the complainant is a senior citizen aged about 74 years, the interest of justice would be met if the petitioner surrenders before the trial Court.

6. Accordingly, the Criminal Petition is disposed of, directing the petitioner to surrender before the trial Court within 15 days from today and on such surrender, the petitioner shall be released on bail on his executing a personal bond for a sum of Rs.50,000/- with two sureties for a like sum each to the satisfaction of the trial Court. The petitioner is further directed to appear before the trial Court on each and every date of hearing till conclusion of the trial, without fail.

7. Consequently, miscellaneous petitions, if any, pending shall stand closed.

JUSTICE G. SRI DEVI

19.11.2019
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