

HONOURABLE JUSTICE G. SRI DEVI

Criminal Revision Case No.61 of 2020

ORDER:

This criminal revision case is filed against the docket order dated 24.12.2019 passed in CrI.M.P.No.2410 of 2019 in C.C.No.105 of 2018 and against the orders dated 01.11.2019, 14.11.2019, 28.11.2019, 24.12.2019 and also subsequent order dated 02.01.2020 passed in the said C.C., by the learned I Special Magistrate, Hasthinapuram, Ranga Reddy District.

2. Heard learned counsel for the petitioner/accused and learned Additional Public Prosecutor appearing for the 1st respondent-State.

3. The brief facts are that based on the complaint made by the 2nd respondent, C.C.No.105 of 2018 was registered against the petitioner for the offence under Section 138 of Negotiable Instruments Act, 1881. When the case was called on 01.11.2019, the petitioner was absent and NBW was issued against him, and subsequently, on 14.11.2019 and 28.11.2019, as the petitioner was called absent, NBW was pending against him. On 20.12.2019, the petitioner filed CrI.M.P.No.2410 of 2019 under Section 70(2) of Cr.P.C., seeking to recall the NBW pending against him. He stated therein that due to his illness, he was hospitalized and he was unable to attend the Court on the said date and his absence was neither wilful nor intentional. However, the said plea taken by the petitioner did not find his favour and the said petition was dismissed on 24.12.2019 stating that the petitioner was avoiding service and

legal process since 25.10.2019. On 02.01.2020 also, as the petitioner was called absent, the trial Court ordered to issue fresh NBW against the accused through the Commissioner of Police and posted the matter to 21.01.2020. Challenging the said docket orders, the present revision is filed.

4. Learned counsel for the petitioner/accused submits that the petitioner was attending the trial Court regularly and contesting the matter by appointing his counsel, but as his wife expired in the month of May, 2019, he suffered mental agony and that as he was suffering from health problems, like diabetes and nephro polity, he was unable to move from his house and unfortunately, his counsel was also not present before the Court on 01.11.2019, due to which, the trial Court issued NBW against the petitioner for his non-appearance and no representation. He further submits that the petition filed by the petitioner to recall NBW was dismissed on 24.12.2019. He further submits that the petitioner was regularly appearing before the Court, but due to his health problems and some unavoidable circumstances, he could not attend the Court on 01.11.2019 and his non-appearance is neither intentional nor deliberate and there was no intention on the part of the petitioner to avoid service and legal process of the Court. He further submits that the trial Court failed to consider the reasons explained by the petitioner and has erroneously dismissed the petition. Thus, he prays to set aside the docket orders passed by the trial Court on 01.11.2019, 14.11.2019, 28.11.2019, 24.12.2019 and subsequent order dated 02.01.2020.

5. A perusal of the docket order dated 01.11.2019, it reflects that the complainant was present, but the accused was absent when the case was called and therefore, the trial Court issued NBW against the petitioner and that the petition filed by the petitioner to recall the said order was dismissed and subsequently, on 02.01.2020 also, as the accused was absent, the trial Court issued fresh NBW against him through the Commissioner of Police and posted the matter to 21.01.2020. However, as per the grounds taken by the petitioner, he was attending the Court regularly through his counsel, but only on 01.11.2019, due to his absence, NBW was issued against him. The petition filed by the petitioner to recall NBW was dismissed on the ground that the petitioner was avoiding service and legal process. Without recording any submission made by the petitioner, the trial Court seems to have taken into consideration the submissions made by the complainant only. Thus, in view of the nature of offence committed by the petitioner and other facts and circumstances, without adverting to the merits of the matter, I deem it appropriate to set aside the docket order dated 01.11.2019 and subsequent orders dated 14.11.2019, 28.11.2019, 24.12.2019 and 02.01.2020 passed by the trial Court in C.C.No.105 of 2018.

6. Accordingly, the Criminal Revision Case is allowed, setting aside the docket order dated 01.11.2019 and subsequent orders dated 14.11.2019, 28.11.2019, 24.12.2019 and 02.01.2020 passed by the trial Court in C.C.No.105 of 2018. Further, the petitioner/accused is directed to appear before the trial Court on 21.01.2020 positively, and on his appearance, the trial Court shall

recall the warrant pending against the petitioner and release him on bail on his furnishing a personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties for a like sum each to the satisfaction of the trial Court. Further, the petitioner/accused shall appear personally before the trial Court on each date of hearing till conclusion of the trial.

7. Miscellaneous applications, if any pending in this revision, shall stand closed.

20th January, 2020.

Note:
Issue CC today

sj

G. SRI DEVI, J

