

THE HONOURABLE SMT. JUSTICE T. MADHAVI DEVI

CRIMINAL PETITION NO.12140 OF 2023

ORDER

In this Criminal Petition, the petitioner is seeking quashing of the Docket Order dt.05.12.2023 in CrI.M.P.No.1114 of 2023 in C.C.No.4637 of 2022 on the file of the Judicial Magistrate of First Class, Special (Mobile) Court under PCR Act, Ranga Reddy-cum-IV Additional Metropolitan Magistrate-cum-IV Additional Junior Civil Judge, Ranga Reddy District at L.B.Nagar (hereinafter referred to as 'the trial Court').

2. Learned counsel for the petitioner submitted that in C.C.No.4637 of 2022, the petitioner/accused had engaged a counsel and when the matter came up for hearing on 06.09.2023, the trial Court has observed that the accused was called absent and there was no representation on behalf of the accused and therefore, the Court had issued an NBW (Non-Bailable Warrant) against the accused and posted the matter for hearing on 05.10.2023. It is stated that again on 05.10.2023, the accused was called absent and that no representation was made on his behalf and

therefore, an NBW was issued against the accused. The contention of the petitioner/accused is that he was not aware of the dates of hearing as his counsel had not informed him about the same and on coming to know about the NBW, he had filed an application in Crl.M.P.No.1114 of 2023 for recall of the NBW. It is submitted that the petitioner had also relied upon a decision of the Madurai Bench of Madras High Court in the case of **R.Sundar Vs. The Sub Inspector of Police, Lalgudi Police Station, Lalgudi, Lalgudi Taluk, Trichy District**¹. He submitted that the petitioner had also submitted a medical certificate to substantiate his inability to appear before the Court on the dates fixed for hearing. It is submitted that the trial Court without considering the said evidence and without any reason, had kept the application for recall of NBW pending for more than a week and thereafter, has dismissed the said application on 05.12.2023 only on the ground that the accused was not present during the course of the proceedings when his application for recall of NBW was being considered.

3. The learned counsel for the petitioner submitted that without any reasonable cause, the petitioner has been punished and he also alleged that on the guise of the NBW, the petitioner was picked up by the police

¹ Crl.R.C.(MD) No.1105 of 2023 and Crl.M.P.(MD) No.14125 of 2023 dt.26.10.2023

and the accused was made to pay some amount to the complainant through digital mode. He therefore seeks recall of the NBW pending against the petitioner/accused and also for suitable action for the loss suffered by the petitioner.

4. Learned Assistant Public Prosecutor is also heard.

5. Having regard to the rival contentions and the material on record, this Court finds that under Section 70 of the Code of Criminal Procedure ('Cr.P.C.' in short), the Court can issue a warrant in writing and under sub-section (2) thereof, every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed. The petitioner claims to have filed the application for recall of the NBW and it is his case that the accused can be represented by his counsel and he need not be present physically during the proceedings when the application for recall of NBW is being considered. In support of this contention, he placed reliance upon the judgment of Madurai Bench of Madras High Court in the case of **R.Sundar Vs. The Sub Inspector of Police** (1 supra), wherein the Hon'ble High Court has observed that the presence of the accused need not be insisted upon during the proceedings for recall of NBW.

6. This Court has also perused the medical certificate submitted by the petitioner for his not being able to be present before the trial Court on the dates fixed for his appearance and hearing.

7. In view of the same, this Court is inclined to recall the NBW issued on 05.10.2023 against the petitioner/accused by the trial Court and it is accordingly recalled and the Docket order dt.05.12.2023 in Crl.M.P.No.1114 of 2023 in C.C.No.4637 of 2022 passed by the trial Court is quashed. The trial Court is at liberty to proceed with the matter in accordance with law.

8. The Criminal Petition is accordingly allowed.

9. Pending miscellaneous petitions, if any, in this Criminal Petition shall stand closed.

JUSTICE T. MADHAVI DEVI

Date: 20.12.2023

Note: Issue C.C. today.
B/o SvV