

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2672 OF 2017

AND

TRANSFER CRIMINAL PETITION Nos.14, 16, 17, 18 & 19 OF 2017

COMMON ORDER:

Since subject matter in all these petitions and the parties are one and the same, they are disposed of by this common order.

2. Heard Sri B. Venkata Rama Rao, learned counsel for the petitioners in all these petitions, and perused the material available on record.

3. Precisely, the request in the present Criminal Petition No.2672 of 2017, laid under Section 482 of the Code of Criminal Procedure, 1973 (Code), is to recall Non-Bailable Warrant, which was passed on 24.03.2017 in Criminal M.P. No.1245 of 2017 in C.C. No.203 of 2015 by the learned VI Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, against the petitioner - accused viz., Jupudi Suresh Babu. Thus, quashment of the order dated 24.03.2017 is the relief specifically pleaded.

4. The learned counsel for the petitioner has tendered elaborate arguments as to how the non-bailable warrant came to be issued by the learned Magistrate with relevant details. In fact, the present petition (Criminal Petition No.2672 of 2017) has got nexus with

Transfer Criminal Petition No.14 of 2017 and four more petitions i.e., Transfer Criminal Petition Nos.16, 17, 18 and 19 of 2017. In all, these five (5) transfer criminal petitions, no interim order was granted. Three (3) of these petitions arise from the complaint of one N. Anil Kumar. The other two (2) petitions i.e., Transfer Criminal Petition Nos.16 and 19 of 2017 are based on the complaint filed by one P. Suryaprakasa Rao. The other three (3) Criminal Petitions, where the complainant is one N. Anil Kumar are Transfer Criminal Petition Nos.14, 17 and 18 of 2017. The relevant Calendar Case numbers have been mentioned, from which these Transfer Criminal Petitions have arisen.

5. The learned counsel for the petitioner would submit that so far as Criminal Petition Nos.14, 17 and 18 of 2017 are concerned, service was effected on the 1st respondent - complainant as ordered by this Court and has filed memos in U.S.R. Nos.684, 685, and 686, respectively, with proof as to service.

6. However, none appears for the complainant.

7. Admittedly, the State has no role to play, and, therefore, respondent No.2 would become a neutral party as the *lis* is between the petitioner and the complainant - respondent No.1 in the Transfer Criminal Petitions.

8. The stage of the Calendar Cases (C.Cs.) before the learned Magistrate, is, according to the learned counsel, PWs.1 and 2 have examined in C.C. No.203 of 2015.

9. All the five (5) C.Cs. have been clubbed as per the orders passed by the learned Principal District and Sessions Judge, Rajamahendravaram, on 08.05.2016, in Transfer Criminal Petition M.P. No.53 of 2016 by withdrawing the same from various files and transferring them to the file of VI Additional Judicial Magistrate of First Class, Rajamahendravaram.

10. While the things stood thus, it appears, the petitioner herein, on 07.06.2016, brought to the notice of the learned VI Additional Judicial Magistrate of First Class, about the records being tampered.

11. The learned Magistrate has reported it to the learned District Judge, and, therefore, an action was initiated on administrative side, in the direction of initiating disciplinary proceedings. It appears, enquiry is going on with regard thereto and the learned Magistrate has directed that the relevant case bundles ought to be in the custody of Chief Ministerial Officer thenceforth.

12. The learned counsel would submit that on 30.08.2016, the petitioner has filed a memo requesting the learned Magistrate to stay trial in all the five C.Cs. till the enquiry is completed. That memo was

not accepted. Thereafter, in C.C. No.203 of 2015, the petitioner herein, who is the petitioner in all the five transfer criminal petitions, failed to appear on 23.09.2016, before the learned Magistrate and the same resulted in issue of non-bailable warrant against him. He made an application to recall the same, but, when he presented himself along with the petition under Section 70(2) of the Code, the said applications were returned. When the same was challenged before this Court in Criminal Petition No.14926 of 2016, 927, 928, 929 and 15315 of 2016, a common order was passed by this Court disposing of the same on 20.10.2016 and 27.10.2016 permitting the petitioner to move appropriate application before the Court concerned for recall of the non-bailable warrants and on appearance of the petitioner, the learned Judicial Magistrate was directed to decide the matter on the same day itself. Thus, the Criminal Petitions were disposed of by this Court; similar order was passed in Criminal Petition No.15315 of 2016, extracting the objections raised by the Court on the petition filed by the petitioner under Section 70 (2) of the Code. Obeying the orders of this Court, petitioner, when intended to appear before the learned Magistrate along with the applications, as directed for recalling the warrants, he was arrested on 03.11.2016, even before the copies of the orders were made ready and supplied to the petitioner and he was produced before the learned Magistrate, who sent him to judicial remand and only, on 09.11.2016, he was enlarged on bail in all the C.Cs.

13. The learned counsel would also submit that the petitioner had made an attempt on 05.12.2016, by filing Transfer Criminal Petition No.1538 of 2016 on the file of Principal Sessions Judge, Rajamahendravaram, requesting to withdraw all the five (5) Calendar Cases and to transfer them to any other Court of Judicial Magistrate of First Class, locally. Though, initially stay was granted in all the C.Cs., ultimately, the very Transfer C.M.P. was dismissed on 28.12.2016. That has been the reason how, all the Transfer Criminal Petitions came to be filed before this Court.

14. This has been the story preceding the presentation of all these five Transfer Criminal Petitions.

15. Thereafter, on 23.03.2017, as the petitioner could not appear before the learned Magistrate and got filed an application under Section 317 of the Code, the learned Magistrate having allowed four, out of five petitions, dismissed the petition in C.C. No.203 of 2015. The petitioner has made an application under Section 70(2) of the Code on the next immediate day for recalling the warrant. But, the learned Magistrate has not satisfied with the reason assigned and dismissed the petition and ordered non-bailable warrant. Thus, challenging the dismissal order dated 24.03.2017, Criminal Petition No.2672 of 2017 is filed.

16. The learned counsel for the petitioner would submit that the learned Magistrate was not right in dismissing application to recall the non-bailable warrant and the reasons assigned in rejecting the request under Section 70(2) of the Code are not sound according to him.

17. Perused the order dated 24.03.2017. The learned Magistrate has recorded that though, PW.3 was examined, the petitioner has taken five months for cross-examination of PW.3 and despite giving specific directions, violated the same and as there was no other go, non-bailable warrant was issued, opining that the reason assigned by the petitioner was not convincing, rejected the request under Section 70(2) of the Code made by the petitioner weighing the inconvenience that would occasion to PW.3 in attending the Court for cross-examination on five occasions greater compared to the request made by the petitioner.

18. Now, the short question that arises for consideration is whether the request to recall non-bailable warrant issued by the learned Magistrate can be acceded to?

19. The two circumstances on record would favour the petitioner in dispensing with the passing of usual order of directing him to appear before the learned Magistrate by filing an application under Section 70(2) of the Code. The first has been that earlier, similar direction was given in all the five transfer criminal petitions, directing him to appear before the trial Court in all the five matters to

recall; but, even before he did so, he was arrested and produced before the learned Magistrate and the learned Magistrate remanded him to judicial custody on 03.11.2016 and he was released only on 09.11.2016 on bail petition being filed.

20. This Court is not inclined to refer to the conditions imposed as to furnishing security which the learned counsel for the petitioner has projected, while stating that arduous conditions have been imposed by the learned Magistrate. Be that as it may, the very fact that the petitioner was in judicial remand from 03.11.2016 to 09.11.2016, is one circumstance that entitles the petitioner for the relief sought for herein.

21. The second circumstance is, the very manner in which the warrant was issued in C.C. No.203 of 2015 when the petitioner was absent on 23.03.2017. The petitioner filed petition in all the five C.Cs. to dispense with his presence under Section 317 of the Code, and the learned Magistrate while allowing the petitions in four of the cases, dismissed the petition in C.C. No.203 of 2015, thus, reflecting as to how the learned Magistrate has acted, which led to issue of non-bailable warrant; and the petitioner presenting yet another application under Section 70(2) of the Code, but, of course, he did not present himself before the learned Magistrate physically along with the said petition. Of course, the petitioner was not supposed to do so. He ought to have presented himself before the Court. Even otherwise, giving some allowance, his non-appearance on 24.03.2017, when

looked at allowing the petitions under Section 317 of the Code in four of the C.Cs., and dismissing in one of the C.Cs., is sufficient to show, how the learned Magistrate conducted the proceedings, though, not required to comment as such, but constrained to make such a comment in the present order. This, certainly, compels this Court to accede to the request made in Criminal Petition No.2672 of 2017. Therefore, the request is acceded to treating it as a special case, where typical fact-situation is occurring unlike in other cases, where usual orders would be passed by this Court directing the petitioners to appear before the Court concerned and to make an application under Section 70(2) of the Code.

22. Therefore, Criminal Petition No.2672 of 2017 is allowed, at the admission stage itself, quashing the order dated 24.03.2017 passed in Criminal M.P. No.1245 of 2017 in C.C. No.203 of 2015 recalling the non-bailable warrant pending against the petitioner.

23. Turning to Transfer Criminal Petition Nos.14, 17 and 18 of 2017, where the *de facto* complainant is one Anil Kumar, as already mentioned hereinabove, service was effected, but, none appears.

24. So far as Transfer Criminal Petition Nos.16 and 19 of 2017 are concerned, though, service was taken, respondent No.1 Suryaprakasa Rao, the complainant, was not available for three days continuously as could be seen from the endorsement contained in the notice.

25. It is needless to observe that service in Transfer Criminal Petition Nos.14, 17, and 18 of 2017, enables this Court to dispose of these Transfer Criminal Petitions since Transfer Criminal Petition Nos.16 and 19 of 2017 are also to be dealt with for the reason, all the C.Cs., from which these criminal petitions would arise were already ordered to be clubbed and evidence being recorded commencing in C.C. No.203 of 2015, as mentioned in the above, which necessitates to dispose of all these Transfer Criminal Petitions.

26. Now, the short question is whether the request of the petitioner to withdraw all these cases from the file of VI Additional Judicial Magistrate of First Class, Rajamahendravaram, and transfer the same to any other local Court, can be acceded to?

27. Nothing more is required to elucidate as every detail has been mentioned hereinabove with sequence of events that transpired. Therefore, the request made by the petitioner in all these Transfer Criminal Petitions to withdraw the C.Cs. referred to above from the file of VI Additional Judicial Magistrate of First Class, Rajamahendravaram, is just and reasonable for the reasons assigned while dealing with the submissions made by the learned counsel based on the events that transpired, referred to in the above, and are convincing to accede to the relief herein.

28. Hence, C.C. Nos.203 of 2015, 269 of 2016, 647 of 2015, 479 of 2014 and 190 of 2016, from which the present Transfer Criminal Petitions arose, are hereby withdrawn from the file of the learned VI Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, and transferred to the Court of the III Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, who shall proceed with recording of evidence from the stage, where it was stopped before the learned VI Additional Judicial Magistrate of First Class. The learned VI Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, is directed to transmit the record in all the above C.Cs., to the Court of III Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, within seven (7) days from the date of receipt of a copy of this order. The petitioner shall make his appearance before the learned III Additional Judicial Magistrate of First Class, Rajamahendravaram, East Godavari District, on 05.06.2017.

29. With the above directions, all these Transfer Criminal Petitions are allowed, at the admission stage itself. It is made clear that the petitioner herein shall cooperate with the Court concerned for disposal of the C.Cs. and attend the Court on the date on which the C.Cs. would be posted, unless, he is prevented by any such extraordinary circumstances to attend the Court, in which case, he may resort to the procedure prescribed in the Code.

As a sequel thereto, Miscellaneous Petitions, if any, pending in these Transfer Criminal Petitions and the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

March 31, 2017.

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NOTE:

1. Dispatch the order forthwith.
2. Communicate copy of the order to the Courts concerned forthwith.

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