

Andhra High Court

Bhagwan Premchandani vs State Of A.P. And Anr. on 4 November, 1997

Equivalent citations: 1998 (1) ALD 494, 1998 (1) ALD Cri 41, 1998 (1) ALT Cri 110

Bench: B Swamy

ORDER

1. This criminal petition is filed under Section 482 of the Criminal Procedure Code for quashing the order of the V Metropolitan Magistrate, Hyderabad in CrI.M.P.No.1469 of 1997 in C.C.No.714 of 1996 filed for dispensing with the presence of the petitioner-accused under Section 317 of the Criminal Procedure Code and in issuing the Non-bailable Warrant for securing his presence.
2. It is the case of the petitioner that in pursuance of the summons received by him, he requested his Counsel to file an application for dispensing with his presence for that day as he was otherwise busy. But, the learned Magistrate dismissed the application and issued N.B.W.
3. I have already taken a view that the trial Court can proceed with the case without insisting for the presence of the accused vide CrI.M.P.Nos.4424/97 and 4422/97 dated 29-10-1997. Further, the action of the Magistrate in issuing N.B.W. having dismissed the application filed for dispensing with his presence cannot be appreciated by this Court.

As per Section 73 of the Criminal Procedure Code an N.B.W. can be issued only to secure the presence of any escaped convict, proclaimed offender or the person who is evading the arrest. In the instant case, being summons case, the question of arrest also will not arise. Further, the petitioner filed an application seeking dispensation of his presence on that day for the reasons slated in the affidavit. Instead of allowing the application, the learned Magistrate not only dismissed the application, but also even without giving time for his appearance issued N.B.W. Such conduct on the part of the Magistrate is deprecated. The discretion vested in them should be properly exercised to secure the ends of justice but not to penalise or harass an individual with the procedural wrangles of the Court more so without visualising the evil consequences that will flow from the order that is going to be passed. This Court is often coming across with such type of orders passed by the Magistrates. Hence this Court would like to emphasize that the Magistrates should shed the wrong practice of issuing N.B.Ws. the moment the accused fail to appear in the Court without giving an opportunity to explain the circumstances under which the accused failed to appear in the Court and in the light of the language employed in Section 73 of Criminal Procedure Code an N.B.W. can be issued sparingly that to after coming to the conclusion that there is no other way to secure the presence of the accused. In fact in Ramojt Rao v.V.V. Rajam in Cr.M.P.No.4424/97 dated 29-10-1997 this Court explained the legal position with regard to the appearance of the accused before a Magistrate and held that the Magistrate is having ample power to proceed with the case by dispensing with the presence of the accused even in a warrant case.

4. In the result, the petition is allowed and the impugned order in issuing N.B.W. for appearance of the petitioner in the Court is quashed.