

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.15135 OF 2016

ORDER:

This criminal petition, under Section 482 of Code of Criminal Procedure, 1973 (for short, 'Cr.P.C. '), is filed challenging the order dated 29.08.2016 in CrI.M.P.No.469 of 2016 in C.C. No.24 of 2007 passed by the I Additional Metropolitan Sessions Judge, Nampally, whereby rejecting the petition filed under Section 205 Cr.P.C. to permit Sri. Mohd.Ismail Khan, the counsel, who was engaged by the petitioner to mark his presence in the above case.

The petitioner is working as Head Master in Government High School, Gandhi Bhavan, and he is in responsible position, and on the crucial days of academic year, where examinations are nearby, his presence in the office is necessary, and therefore authorises his counsel to represent him, to mark his presence by Advocate by filing petition under Section 205 Cr.P.C.

The trial court dismissed the petition on the ground that the counsel who filed the petition did not accept to enter into accused dock by filing affidavit which is a practice prevailing in the Metropolitan Courts at Hyderabad.

Learned counsel for the petitioner would contend that there is no practice in the Metropolitan Courts and that Section 205 Cr.P.C. did not require any such entry of Advocate in the accused dock, as accused. Therefore, the order passed by the trial court is erroneous.

Whereas Public Prosecutor supported the order passed by the trial court.

In view of the rival contentions, it is necessary to advert Section 205 Cr.P.C. which permits the Magistrate to dispense with the personal attendance of accused

“205. Magistrate may dispense with personal attendance of accused-

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.”

Section 205 Cr.P.C. did not specify the appearance of the Advocate and entry in the accused dock, and it is not mandatory. In the present case, dismissing the petition on the ground that the Advocate did not file an affidavit agreeing to enter into accused dock on behalf of the accused is an illegality and the alleged practice prevailing in the Court is unconcerned, unless Section 205 Cr.P.C. mandates such entry in the accused dock when the Advocate accept marking his appearance on behalf of his client.

Therefore, the order passed by the trial court is set aside, while allowing the petition directing the Magistrate to permit Advocate, Mohd. Ismail Khan, to mark his appearance on behalf of the accused strictly adhering to section 205 Cr.P.C.

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It is left open to the trial court to direct the appearance of the accused whenever the Court finds his presence is necessary before the court.

Miscellaneous petitions, if any, pending in this criminal petition, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 26.10.2016
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