

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.3380 OF 2017

ORDER:

The present petition is filed under Section 482 of the Code of Criminal Procedure, 1973(for short, 'the Code') requesting to quash the order, dated 16.03.2017, passed by the learned X-Additional District and Sessions Judge, Visakhapatnam at Anakapalle, in CrI.M.P.No.44 of 2017 in S.C.No.152 of 2015.

2. Heard Ms. Vasudha Nagaraj, learned counsel for the petitioner.
3. Learned counsel for the petitioner would submit that the petitioner could not attend the Court on 16.03.2017, due to menstrual cycle and the same, she could not convey being modest as the learned counsel on record before the Court below was not of the same gender. Learned counsel further submits that when an application under Section 70(2) of the Code was intended to be filed, the learned Sessions Judge insisted for appearance. The learned counsel is fair enough to say, on the date when the order in CrI.M.P.No.44 of 2017 was passed by the learned Sessions Judge, the sessions case was coming up for charges.
4. It is true, irrespective of submission made by the learned counsel for the petitioner, since any Sessions Court follows the procedure laid down by the Code, if at all accused does not appear on the date fixed for framing of charges, the Court invariably dismisses the petition filed under Section 317 of the Code, unless convincing reasons are shown. Admittedly, no reason was assigned.

5. Now, the second aspect raised is that insisting the presence of the petitioner when an application under Section 70(2) of the Code was intended to file and it was difficult for the petitioner to be present is concerned, certainly, leaving five days period (during menstrual cycle), the petitioner ought to attend the Court on the remaining days, in which case, the learned Sessions Judge would have been liberal in granting the relief under Section 70(2) of the Code. Since the petitioner is a woman and if she approaches the learned Sessions Court and makes an application under Section 70(2) of the Code by presenting herself before the Court, in which event, the learned Sessions Judge is directed to dispose of the petition on that day itself, in accordance with law, considering the request that would be assigned for her absence on the day the present impugned order was passed.

6. Accordingly, the criminal petition is disposed of.

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

A. SHANKAR NARAYANA, J

28th April 2017

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