

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

Criminal Revision Case No.2852 of 2017

JUDGMENT:

The petitioner herein aggrieved over the order dated 13.10.2017 passed in Criminal M.P. No.2047 of 2017 in C.C. No.1248 of 2002 on the file of XIV-Additional Chief Metropolitan Magistrate, Hyderabad, (originally New C.C. No. 876 of 2017 on the file of I-Additional Chief Metropolitan Magistrate, Hyderabad, under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'the Code') refusing to recall Non-bailable warrant.

2. Learned I-Additional Chief Metropolitan Magistrate, Hyderabad, has assigned certain reasons as to the manner in which the petitioner has conducted in attending and finally disbelieved the medical certificate filed by her stating that the Doctor/Assistant Civil Surgeon who issued the said certificate did not even note the O.P. number and the date, and the petitioner is intentionally avoiding the court proceedings to drag the matter indefinitely.

3. Heard Mrs. R.N. Padma, learned counsel for the petitioner

4. In fact, the Criminal Petition No.3427 of 20017 was filed in which this Court by order dated 28.4.2017 directed the revision petitioner to be physically present and make an application under Section 70 (2) of the Code before the learned Magistrate, and, in such

an event, the learned Magistrate was directed to dispose of the same on the same day looking into the reasons assigned and in accordance with law.

5. The decision relied on by the learned counsel in **Prabhu Chawla v. State of Rajasthan and another**¹ is in the context of dismissal of an application filed under Section 482 of the Code by a common order rendered by the High Court of Rajasthan holding that the remedy under Section 482 of the Code was not maintainable on the ground of availability of remedy under Section 397 of the Code, and, therefore, the same was erroneous and was set aside, is not applicable to the fact-situation herein.

6. The order, which is under challenge in the Criminal Revision Case, in fact, is not maintainable under Sections 397 and 401 of the Code, as it can neither be construed as a final order nor an intermediary order. The only course open to the petitioner is to pursue other remedy, which the petitioner earlier resorted to.

7. With the said observation, the Criminal Revision Case is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

A. SHANKAR NARAYANA

Dt. 30.11.2017

¹ 2016 (2) ALD (CrI.) 882 (SC)

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