

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

CRIMINAL REVISION CASE NO.3074 OF 2018

ORDER:

This revision is filed under Sections 397 and 401 Cr.P.C. challenging the docket order, dated 27.09.2018 in CrI.M.P.No.2950 of 2018 in Cr.No.209 of 2017 on the file of the XIV Metropolitan Magistrate, Cyberabad at L.B. Nagar.

2. Heard the learned counsel for the petitioner and perused the material on record.

3. Learned counsel for the petitioner-A1 submits that the petitioner filed a petition to re-call N.B.Ws issued against him. As he was working in BSF, he could not get leave to attend the Court. Therefore, he has filed a petition under Rule 37 of Criminal Rules of Practice for dispensing with his presence, and the same was allowed. A5 has been appearing on his behalf and on 18.09.2018, the special vakalat holder could not attend the Court. As no petition was filed to dispense with the presence of A1 further and A3 who has been appearing on behalf of A1 has been absent on several adjournments, the trial Court has dismissed the re-call petition. He further submits that A3 who was representing A1 could not attend the Court due to ailments and the petitioner is working in BSF and as he could not get leave to attend before the Court, he authorized A3 to attend before the Court and due to the ailments of A3, he was not present and therefore, N.B.W. was issued against A1. He further submits that since A3 is suffering from ailments, A5 may be permitted to appear on behalf of A1 for conducting the trial.

4. On consideration of facts and circumstances of the case, the trial Court may consider the petition for

dispensing with the presence of A1 and may order A5 in his place to attend the trial.

5. The purpose of filing of dispense with petition by the accused is to give permission to the other accused to appear before the Court on his behalf. The petitioner-A1 would not have any grievance if the trial is conducted in his absence as he voluntarily filed the petition for dispensing with his presence. It is understandable that the petitioner-A1 is working in BSF, he will not be able to secure leave frequently to attend the trial. Therefore, he filed the petition for dispensing with his presence and it was allowed. The trial Court authorized A3 to appear on behalf of A1. Due to reasons stated by the petitioner, A3 could not appear before the Court on several occasions. Therefore, the trial Court has rightly dismissed the re-call petition filed by the petitioner. However, in the light of the facts and circumstances of the case, the petitioner-A1 is given liberty to file a petition before the trial Court for re-call of N.B.W. and also for dispensing with his presence during the trial, except on the dates, when his presence is required. The trial Court is directed to consider the petition filed to re-call N.B.W. under Section 70 (2) Cr.P.C. and also petition for dispensing with his presence in view of the fact that the petitioner is working in BSF.

6. Accordingly, the Criminal Revision Case is dismissed at the stage of admission. Miscellaneous petitions, if any pending in this revision shall stand closed.

GUDISEVA SHYAM PRASAD, J

DATED: 12-11-2018

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