

HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

Crl.R.C.No.3255 of 2018

ORDER:

This revision is arising out of docket order dated 20.11.2018 passed in C.C.No.256 of 2014 by the IV Additional Judicial First Class Magistrate, Kakinada, East Godavari District.

2. Revision petitioners herein are the accused/A-2 to A-9 in C.C.No.256 of 2014. Inspector of Police, CCS, Kakinada, has filed charge sheet against the accused/A-1 to A-9 for the offences punishable under Sections 403, 406 and 411 read with 34 IPC and 153 (3) Cr.P.C. and Section 297 of Companies Act, 1956 in Crime No.38 of 2013 of III Town, CCS, Kakinada.

3. Learned counsel for the petitioners/A-2 to A-9 submits that the case is coming up for trial and the accused/A-1 appeared before the trial Court and as far as the appearance of the petitioners/A-2 to A-9 before the trial Court is concerned, they filed a petition for dispensing with their presence.

4. As per the docket order dated 3.10.2018, 8.10.2018 and 19.10.2018, the petitioners herein have filed a petition under Section 317 Cr.P.C. dispensing with their presence and those petitions were allowed. On 30.10.2018, A-1 to A-9 were

absent and they have filed petition under Section 317 Cr.P.C. for dispensing with their presence. As stay was extended by this Court till 01.11.2018, the trial Court allowed the said petition. Thereafter, on 12.11.2018, A-1 to A-9 were absent, and therefore, another petition was filed under Section 317 Cr.P.C., and the same was also allowed, and on their request, the matter was posted to 20.11.2018. On that day, the accused/A-1 to A-9 were absent and another petition filed under Section 317 Cr.P.C. was not allowed. In spite of given directions, A-1 to A-9 remained absent, hence, the trial Court has issued NBW against A-1 to A-9, and the matter was posted to 23.11.2018.

5. Learned counsel further submits that the petitioners/A-2 to A-9 have filed Crl.P.No.1744 of 2015 under Section 482 of Cr.P.C. to quash the proceedings against the petitioners/A-2 to A-9 in C.C.No.256 of 2014, and vide order, dated 17.03.2015, this Court granted stay of appearance of the petitioners until further orders. Thereafter, on 11.10.2018 vide I.A No.1 of 2018, this Court extended the interim order granted earlier on 17.03.2015 till 01.11.2018.

6. Learned counsel further submits that the interim stay granted by this Court till 01.11.2018 could not be extended by this Court further and in the meanwhile, NBW was issued against A-1 to A-9 by the trial Court. Therefore, they are apprehending the arrest on execution of NBW.

7. The order passed by the trial Court on 20.11.2018, reads as under:

“A1 to A9 absent. Petition filed and not allowed. In spite of given direction the A1 to A9 absent. Issue NBW against A1 to A9 call on 23.11.2018.”

8. On a perusal of the above order, it reveals that it is not speaking order. It is only a docket order. The very brief note was made therein. When the petitioners have filed petition for dispensing with their appearance under Section 317 Cr.P.C., the trial Court ought to have passed a detailed order while dismissing the petition and issuing NBW against A-1 to A-9. The order passed by the trial Court is not based on any reasons except the fact that the petitioners were absent on that particular day. The purpose of filing petition under Section 317 Cr.P.C. is to dispense with the presence of the petitioners before the trial Court. The trial Court has not stated the reasons and the requirement of all the petitioners to be present before the Court on that particular day. The stage of the case is also not mentioned in the said docket order to find out whether the presence of accused is required on the particular day or not for disposal of the case.

9. In view of the foregoing reasons, it is obvious that the trial Court has not exercised its discretion while disposal of the petition filed for dispensing with the presence of the accused as per Section 317 Cr.P.C.

10. Section 317 Cr.P.C reads as under :

“ 317. Provision for inquiries and trial being held in the absence of accused in certain cases.

- (1) *At any state of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused;*
- (2) *If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourns such inquiry or trial, or order that the case of such accused be taken up or tried separately.”*

11. The said provision is made to dispense with the presence of the accused during trial. The provision for inquiries and trial being held in the absence of accused in certain cases. If the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance is not necessary in the interest of justice, may dispense with his presence, if he is represented by a pleader. In the instant case, the accused are represented by Pleader.

12. Accordingly, the Criminal Revision Case is allowed. The petitioners/A-2 to A-9 are directed to file a petition under Section 317 Cr.P.C. before the trial Court and the trial Court shall consider the same as per the provisions under Section 317 Cr.P.C. in accordance with law.

Miscellaneous Petitions, if any pending, shall stand closed.

GUDISEVA SHYAM PRASAD, J.

Date : 28-11-2018.

Gvl

