

(1956) 12 AP CK 0010
In the Andhra Pradesh High Court

Nawab Zain Yar Jung and Others

APPELLANT

Vs

Dr. Raghotam Rao

RESPONDENT

Date of Decision : 26-12-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 205, 353, 438
Penal Code, 1860 (IPC) — Section 500

Citation : AIR 1957 AP 468 : (1957) CriLJ 935

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Judgement

Satyanarayana Raju, J.—This is a reference made by the District Magistrate, Hyderabad City, u/s 438 of the Criminal P. C.

2. On the 10th of June, 1955, a complaint was laid against the petitioners alleging an offence u/s 500 of the Indian Penal Code, Summonses were issued by the City Magistrate wherein the, petitioners were asked to appear before the Court of the City Magistrate on the 27th June, 1955. On that date, the learned advocate for the four petitioners filed an application before the City Magistrate for exempting the attendance of the petitioners. The City Magistrate passed an order on the 27th June, 1955, directing the petitioners to attend the Court in person on the next hearing day and execute personal bonds.

This, according to the City Magistrate, was "with a view to impress upon the people that justice is not only being done but it is done to the satisfaction of all." As against the said order of the City Magistrate, the petitioners preferred a revision to the District Magistrate. The District Magistrate, on a consideration of the material circumstances of the case, came to the conclusion that the petitioners' attendance might be dispensed with and the revision petitions be allowed. Hence this reference.

3. Learned Counsel for the petitioners is absent, both on Monday when this reference came up for hearing and also today. Mr. Sudarna Rao Dixit, learned Counsel appearing for the respondent, submitted that he had no objection to the

petitioners being exempted from personal attendance but that the Magistrate's order directing them to execute bonds was proper, having regard to the fact that on the date of the third hearing (27th July, 1955) neither the petitioners nor their Advocate were present in Court.

4. Mr. Dixit also argued that the provisions of Section 205. Criminal P. C., under which the application was filed empower the Magistrate to dispense with the initial appearance of the accused person before the Magistrate and that that section could not be invoked after summons have been served. Mr. Dixit is right in this contention. Section 205 of the Criminal P. C., applies only to cases in which the Magistrate has issued summons in the first instance. There is a difference between the stage contemplated by Section 205 and that contemplated by Section 353 of the Criminal P. C. The latter section confers a power on the presiding officer, whether he is a Magistrate or a Sessions Judge or a Judge of the High Court to dispense with the personal attendance of an accused person. While Section 205 deals with the initial appearance of the accused person before the Magistrate, Section 353 deals with the presence of the accused person during the trial of the case. Vide *In Re: Ummal Hasanath*, . The sole reason given by the City Magistrate for directing the petitioners to execute security bonds is that it is necessary to impress upon the people that justice is not only being done but it is done to the satisfaction of all.

5. The Magistrate should in the exercise of his discretion find whether the ends of justice required that the accused should be granted the exemption and not base his decision solely on the ground that it is necessary to impress upon the public that justice is being done. The District Magistrate concluded that on the facts placed before him, it was a case where exemption should have been granted. I think, the District Magistrate is right in his conclusion.

6. The learned Counsel for the respondent, however, complains that neither the Advocate nor the petitioners were present in Court on the third hearing date and this is likely to happen again. If so, it is, of course open to the Magistrate to cancel the exemption or to insist on the petitioners executing a bond for their personal appearance, It is also open to the Magistrate to insist upon the presence of the petitioners whenever it appears to him to be necessary. There cannot be any restriction on the discretion of the Magistrate to direct the petitioners to personally appear, if he deems it necessary to do so.

7. This reference is therefore accepted.