

**The State Vs. Laxminarayan and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/343210](http://sooperkanoon.com/343210)

**Court :** Mumbai

**Decided On :** Apr-10-1951

**Reported in :** 1952CriLJ109

**Judge :** Hemeon, J.

**Appellant :** The State

**Respondent :** Laxminarayan and anr.

**Judgement :**

ORDER

**Hemeon, J.**

1. On 10.10.1949, the accused was absent and the First Class Magistrate, Bilaspur, ordered him to pay at the next hearing the diet-money and travelling allowance of all the complainant's witnesses who were present on that date. The accused made a representation against that order but it was rejected, and the Extra-Additional Sessions Judge, Bilaspur, has now reported the case under Section 438, Criminal P.C., with a recommendation that the order be set aside as contrary to law.

2. In the course of arguments my attention was drawn to Sorabji v. Erachshaw A.I.R. 1932 Bom. 470, in which it was held that an order requiring an accused to pay the costs of an adjournment is one which a Magistrate in his discretion may

make under Section 344, Criminal P.C. In *Mohanlal v. Mohini Mohan* : AIR1948 Cal194 , however, the view taken was that when an accused is absent on the date of hearing, the Court is bound to give an adjournment and has no power to award adjournment costs against him, as there is no provision in the Code of Criminal Procedure for compelling an accused to give the complainant adjournment costs, although adjournment costs can be given to an accused under Section 344 of the Code. If he is absent, the proper procedure is to call upon him to show cause why he should not pay the penalty provided in his bail bond.

3. The Division Bench in that case followed *Ichab Sheikh v. Khirode Kumar Ghose* 48 CW.N. 684, in which Henderson J. held that a Court has no power to make an order for costs when the accused at whose instance the adjournment is granted is absent so that the Court is bound to adjourn the case. A Division Bench of the Punjab Chief Court in *Grown v. Chanda Singh* 4 Cri. L j 78 made the following observations:

The Court could not proceed with the trial or record evidence in the absence of the accused, It was therefore, necessary to adjourn the case under any circumstances, and we think it would be entirely opposed to the spirit of Section 314. that the Magistrate could, under such circumstances, Pass orders awarding costs in addition to the order of arrest of accused by warrant.

4. This view was followed in Allahabad by Gokul Prasad J. in *Beedha v. Emperor* 23 Cri. L. J. 243 and in Lahore by Addison J., in *Gulab Singh v. Inder Singh* 86 Cr. L. J 101 The ratio in these cases is that in the absence of an accused an adjournment is inevitable and while proceedings can be taken against him for the forfeiture of his bail bond, it would not be proper to expose him also to a different penalty. I am in respectful agreement with this view for those reasons.

5. The reference is accepted and the magisterial order in question is set aside.