

In Re: Bajee Sahib

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SooperKanoon Citation : sooperkanoon.com/814852

Court : Chennai

Decided On : Sep-30-1942

Reported in : AIR1943Mad519

Appellant : In Re: Bajee Sahib

Judgement :

ORDER

Byers, J.

1. So far as the procedure before the learned Magistrate is concerned, I am unable to see any room for interference. The petitioner had already been given time to produce the missing accused. This he did not do and was then called upon at the next hearing for his explanation. His explanation was that the missing accused had joined the army and disappeared without his knowledge. Admittedly, he was not given an adjournment for the purpose of showing cause why the penalty should not be paid but Section 514, Criminal P.C., does not entitle him to an adjournment for the purpose. It is sufficient that he was given an opportunity of showing cause. Regarding the merits, the petitioner's learned advocate relies on the decision in In re Vijayaraghavalu Naidu A.I.R. 1915 Mad. 114 but that was the case of an accused person who committed suicide, while he was on bail and the learned Judges held in that case that the fact that the sureties did not take steps to prevent the accused from committing suicide even if the possibility of his doing so may have passed through their minds did not amount to such neglect or default as

to make them liable on the bond. In the present case, the accused was absent not because he had absconded and gone into hiding but because he had joined the army. In the absence of any compulsory military service, I am unable to see any distinction between joining the army and going away beyond the jurisdiction of the Court and merely absconding in the ordinary way. Joining the army was an entirely voluntary act and I am unable to see how the petitioner cannot be made liable for the accused's absence on this score when he would certainly be liable on his bond if the accused had merely defaulted in the more usual way. I am unable to see any sufficient reason for interference in revision. The petition is dismissed.

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