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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.M.C. 266/2012

SUSENJIT MALLICK & ORS Petitioners

Through : Mr.Vikramit Banerjee, Adv.

versus

STATE & ANR Respondents

Through : Ms.Rajdipa Behura, APP for State –
R-1.

Mr.Anuj Jain, Adv. for R-2.

AND

+ CRL.M.C. 267/2012

SUSENJIT MALLICK & ORS Petitioners

Through : Mr.Vikramjit Banerjee, Adv.

versus

STATE & ANR Respondent

Through : Ms.Rajdipa Behura, APP for State –
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Mr.Anuj Jain, Adv. for R-2.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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10.10.2012

These two petitions have been moved by the petitioners under Section 482 CrPC seeking quashing of proceedings and order dated 22.11.2011 passed in two complaint cases i.e. CC No.20397/2010 & CC No.20396/2010

filed by the complainant Bank i.e. respondent No.2 herein under Section 138 read with Sections 141 & 142 of Negotiable Instrument Act.

2. Arguments heard.

3. On behalf of petitioners, it has been submitted that while moving an application under Section 145 (2) NI Act, a plea was taken that accused No.5 and 6 are not involved in the day to day business and affairs of the company and have no knowledge about the alleged transaction between the complainant bank and accused company.

4. It is submitted by learned counsel for the petitioners that all the three petitioners are from Kolkata, West Bengal and though these petitions were filed praying for quashing the proceedings in Complaint Cases No.20397/2010 & CC No.20396/2010 and setting aside the order dated 22.11.2011, the petitioners intend to move appropriate application before learned Trial Court and though not specifically prayed, the personal appearance of the petitioners may be exempted before learned Trial court during the pendency of the aforesaid complaint cases.

5. On behalf of respondent No.2, it is submitted that though these petitions were not filed for seeking exemption from personal appearance, still respondent No.2 has no objection if personal appearance of petitioners No.2 and 3 is permanently exempted through counsel but has objection regarding exemption to be granted to petitioner No.1.

6. All the petitioners are resident of Kolkata, West Bengal. They are seeking exemption from personal appearance before learned Trial Court with assurance that they will be represented by their counsel in the Trial Court which will not in any case affect the speedy disposal of these summary trial cases.

7. Permanent exemption from personal appearance of petitioners No. 2 and 3 being not opposed, they are granted permanent exemption from personal appearance before learned Trial Court during trial of Complaint Cases No.20397/2010 & CC No.20396/2010 provided that they are duly represented through their counsel on each and every date of hearing without any dispute regarding their identity being raised before learned Trial Court.

8. So far as permanent exemption sought for on behalf of petitioner No.1 Susenjit Mallick is concerned, it has been opposed on the ground that he is the main accused but that itself is no ground to decline the prayer.

9. In the case *M/s Bhaskar Industries Ltd. vs. M/s Bhiwani Denim & Apparels Ltd. & Ors. (2201) 7 SCC 401*, The Apex court has dealt with grant of exemption particularly in the context of cases under Section 138 NI Act and observed as under :-

'14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be presence in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeking him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case.

15. These are days when prosecutions for the offence under Section 138 are galloping up in criminal courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the

accused might belong to a different State, sometimes a far distant State. Not very rarely such accused would be ladies also. For prosecution under Section 138 of the NI Act the trial should be that of summons case. When a magistrate feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings.'

The position was summarized in para 19 of the report as under :-

'19. The position, therefore, bogs down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.'

10. The petitioners have faced this hardship as reflected in the proceedings dated 22.11.2011 of the Trial Court, which is extracted as under :-

An application for exemption is moved on behalf of accused No.2, 5 & 6 on the ground that the accused are residents of Kolkata and could

not arrange for the tickets. In view of the submissions made, exemption is allowed for today only.'

11. Taking into consideration the hardship the petitioner No.1 is likely to face by putting in appearance before learned Trial Court on each and every date of hearing, in view of the nature of offence, at least that hardship can be curtailed on undertaking by the petitioner No.1 that he shall not dispute his identity and his counsel would be there on each and every date of hearing to represent him during the trial and also to cross examine the witnesses. Rather this will facilitate in expeditious disposal of the complaint cases.

12. Petitioner No.1 is granted permanent exemption from personal appearance before learned Trial Court during trial of Complaint Cases No.20397/2010 & CC No.20396/2010 subject to the condition that he is duly represented through his counsel on each and every date of hearing without any dispute regarding his identity being raised before learned Trial Court.

13. However, if at any stage of the proceedings, the learned Trial Court is of the view that at some stage, personal appearance of petitioners is required, the Trial Court may secure their presence.

14. No other relief has been prayed for.

15. In terms of above directions, both the petitions stand disposed of.

16. All pending applications also stand disposed of.

17. Copy of the order be given dasti.


PRATIBHA RANI, J

OCTOBER 10, 2012

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