

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

Date of decision: 11th February, 2013

+ **CRL.M.C.3538/2012**

NARENDRA KESHAVJI SHAH & ORS. Petitioners

Through: Mr. Pradeep Dewan, Senior Advocate
with Mr. Sunil Sethi and Ms. Anupam
Dhingra, Advs.

Versus

THE STATE NCT OF DELHI Respondent

Through: Mr. Prabhat K.C. and Mr. Rajpal Singh,
Advs. for R-2 with Mr. Harnam Singh,
respondent No.2 in person

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J. (ORAL)

1. The Petitioners invoke inherent powers of this Court under Section 482 of the Code of Criminal Procedure and seek exemption from their personal appearance in the complaint case No.415/1/2000 titled Prakash Kaur v. Everest Construction Company and others.

2. According to the Petitioners they are permanent residents of Mumbai. A complaint under Sections 197/198/420/467/468/471/474 of the Indian Penal Code was filed against M/s. Everest Construction Company and its partners on the premise that certain sums of money were paid by the respondent No.2 (complainant in the complaint case) for purchase of flat No.606, 6th Floor, Resham Towers at Prabha Devi, Bombay in pursuance of an agreement dated 13.10.1981. A civil suit for declaration being Suit No.82/1989 was filed by the

complainant on the original side of Delhi High Court which was subsequently transferred to the District Court. According to the allegations made in the complaint the accused persons forged/fabricated/made a false document dated 30.07.1981 and thereby the Petitioners and other accused persons committed various offences under the IPC. It is stated that an application seeking exemption from personal appearance was moved by the accused persons by an order dated 16.08.2012. The exemption from personal appearance in respect of accused Nos. 2, 4 and 10 was granted on the ground that they (accused Nos. 2 and 10) were of advanced age and accused No.4 was not medically fit. The application for exemption from personal appearance in respect of the other accused persons i.e. the Petitioners herein was rejected by the learned Metropolitan Magistrate (“MM”) on the ground that they have not been able to make out their case that they are unable to appear before the Court personally either on account of illness or on account of very old age.

3. The learned counsel for the Petitioners urges that the complaint was filed in the Court of learned “MM” sometime in the year 2000. All the Petitioners are residents of Mumbai and thus it is not practicable and rather it is very inconvenient to the Petitioners to appear in the Court at Delhi on each and every date of hearing. It is urged that since the Petitioners had undertaken to be represented through their counsel and their identity was not in dispute their request for grant of exemption from personal appearance ought to have been allowed. It is contended that an accused is expected to appear in the Court personally so that the proceedings may be conducted in his presence and no prejudice is caused to him. Once the Petitioners themselves gave an undertaking that they will be represented through their counsel there was no question of prejudice to the Petitioners and they should have been granted exemption from personal appearance. The learned senior counsel for the

Petitioners places reliance on judgments of this Court in *Chandramauli Prasad and Ors v. State of Delhi* (CrI.M.C.No.1303/2008) decided on 3.7.2008 and *Geeta Sethi v. the State (CBI), 2001 II A.D. (Cr.) DHC 331* and a report of the Supreme Court in *S.V.Muzumdar and Ors. v. Gujarat State Fertilizer Co. Ltd. and Anr.* (2005) 4 SCC 173.

4. The petition is opposed on behalf of Respondent No.2 (the complainant) on the ground that no special circumstance has been put forth by the Petitioners so as to grant them exemption from personal appearance.

5. It is not in dispute that all the Petitioners are residents of Mumbai. The criminal complaint was instituted sometime in the year 2000 and on filing of a petition under Section 482 of the Code of Criminal Procedure by the Petitioners and their co-accused the criminal complaint was quashed by a learned Single Judge of this Court by an order dated 28.05.2002. The said order was set aside by the Supreme Court by an order dated 17.08.2004 and the case was remanded back to this Court. Thereafter, by an order dated 07.12.2006 the petition under Section 482, CrPC was dismissed for want of prosecution. It is true that the accused persons who were of very advanced age and who was sick were granted exemption from personal appearance by the learned MM by an order dated 16.08.2012 whereas the Petitioners' request for exemption from personal appearance was rejected primarily on the ground that they were neither sick nor very aged.

6. In *S.V.Muzumdar (supra)* the Supreme Court held that the Court must consider whether any useful purpose would be served by requiring personal attendance of the accused or whether progress of the trial was likely to be hampered on account of their absence. The Hon'ble Supreme Court granted exemption from personal appearance with the observation that if the accused persons tried to delay the completion of the trial, the Trial Court shall be at

liberty to refuse the prayer for dispensing with personal attendance. Relevant para of the report is reproduced below:-

“Taking into account the fact that the cases have been pending for nearly a decade, we direct that the matter be taken up on 8th of August, 2005 by the trial Court. If the appellants file applications in terms of Section 205 of the Code for dispensing with their personal attendance, the trial Court will do to take note of the same and dispense with the personal attendance by stipulating conditions in terms of Section 205(2) of the Code. It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial Court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance. The trial Court would do well to complete the trial by the end of November, 2005. The parties shall co-operate in that regard. We make it clear that we have not expressed any opinion on the merits of the case.”

7. In *Chandramauli Prasad (supra)* a Coordinate Bench of this Court held that personal appearance of an accused is required in a criminal trial in order to avoid any prejudice to the accused. It was held that if the accused himself did not wish to avail the right of personal appearance on every date and reposed full confidence in the Court and in his advocate it is not necessary for the Trial Court to insist on his presence. Paras 13 and 14 of the report in *Chandramauli Prasad (supra)* are extracted hereunder:-

“Provisions requiring the presence of the accused which mandate that the trial be held in his presence are enacted for the benefit of the accused and have their genesis in the limited approach of the legal system in England of the late 16th and

early 17th Centuries that operated to the prejudice of the accused, such as the court of the Star Chamber. If the accused person himself does not wish to avail of the right of personal appearance on every date; if he reposes the fullest confidence in the court and in his advocate, and is confident that justice will be meted out to him even in his absence, then, provided his absence does not prejudice him in any way or hinder the progress of the trial, it is not necessary for the Trial Court to insist on his presence.

In the case at hand, as already pointed out, the accused have undertaken not to raise any issues with regard to their identification, and also that they will present themselves whenever their personal appearance is required. They have also categorically stated that they have no objection in the court taking evidence in their absence.”

8. In view of the above, the petition is allowed. The Petitioners are exempted from their personal appearance subject to their filing an undertaking that they shall appear before the Trial Court through their counsel duly authorized. On this behalf and that they shall appear in the Court at the time of framing of the charges and for recording of their statements under Section 313 of the Code of Criminal Procedure (if required) or on any other date when specifically directed by the Trial Court.

9. Pending applications stand disposed of.

10. A copy of the order be transmitted to the trial court for information and compliance.

(G.P. MITTAL)
JUDGE

FEBRUARY 11, 2013

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