

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRM-M-22542 of 2015.

Decided on:-August 20, 2015.

Vikas Dadwal.

.....Petitioner.

Versus

State of Punjab and another

.....Respondents.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

1. Whether reporters of local newspapers may be allowed to see judgment? Yes
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

Present:- Mr. Satbir Rathore, Advocate
for the petitioner.

HARI PAL VERMA, J. (ORAL)

Challenge in the present petition is to the judgment dated 28.5.2015 (Annexure P-4) passed by learned Additional Sessions Judge, Hoshiarpur whereby the application filed by respondent No.2 Baljit Kumar for exemption of his personal appearance was allowed and order dated 18.4.2015 (Annexure P-3) passed by learned Judicial Magistrate 1st Class, Dasuya vide which the said application was dismissed, was set aside.

Learned counsel for the petitioner contends that the trial Court vide order dated 18.4.2015 had dismissed the application under Section 205 Cr.P.C. filed by respondent No.2 Baljit Kumar seeking permanent exemption from his personal appearance. The said application was dismissed by the trial Court mainly on the ground that the same was not supported by any

document or affidavit to substantiate that the respondent No.2 is posted in the Indian Army and is stated to be the main accused. However, vide impugned judgment dated 28.5.2015, the revisional Court has set aside the order of the trial Court and has granted exemption to the respondent-accused.

Learned counsel for the petitioner has further submitted that the offence committed by the respondent-accused is serious in nature and, therefore, his personal appearance is necessary before the trial Court. Respondent Baljit Kumar is the main accused and for having committed the offence under Sections 326, 324, 323 IPC, he has been charge-sheeted accordingly. There is hardly any ground for exemption of his personal appearance which is otherwise discretionary power with the Court. However, such discretionary powers are required to be used judiciously and sparingly. The respondent-accused has miserably failed to make out a case for his exemption from personal appearance.

I have considered the arguments raised by learned counsel for the petitioner.

The relevant para No.6 of the impugned judgment passed by the revisional Court is reproduced as below:

“6. After hearing the learned counsel for the parties and going through the material on record, grounds of revision, impugned order, this Court is of the opinion that the order passed by the learned trial court under revision dated

18.04.2015 by declining the application filed by the revisionist under Section 205 Cr.P.C. is wrong, incorrect, improper and which is liable to be set aside because this court has found that the trial court in the impugned order has observed that the application of the revisionist has not been supported by any affidavit by the accused Baljit Kumar, which is not required to deal with the application under Section 205 Cr.P.C. This court is further of the opinion that the observations of the learned trial court that the application is not supported by any document from where it can be ascertained that the applicant Baljit Kumar is presently posted in the Indian Army, is also not sustainable. However this fact has been made ground by the revisionist-accused Baljit Kumar for seeking permanent exemption from personal appearance before the learned trial court and this fact has not been denied by the prosecution while filing the reply to the said application of the revisionist. Meaning thereby it is admitted fact that Baljit Kumar is presently serving in the Indian Army and now he is on emergency duty and further more now before this court a letter from S.S. Negi Major Adjutant for officiating Commanding Officer showing that Baljit Kumar is serving as soldier and presently serving with 16 Punjab (Patiala) the Battalion is deployed in Counter Terrorist operational Area along the line of Control in far flung areas of Jammu & Kashmir and service of soldier allegedly required by the Battalion and in the letter also requested for exemption of the individual for the hearing and afforded facility to appoint an attorney to an Advocate which is on record. Further observation of the learned trial court that Baljit Kumar is made accused and offence for which

he has been charged is under Sections 326,324,323 IPC, which is also wrong one and without any force because the trial court had not considered the order dated 22.5.2014 passed by the court of Sh. Jaspal Verma, the then learned Addl. Sessions Judge (FTC), Hoshiarpur vide which the trial court was directed to hear the parties afresh on the point of framing the charge and then pass a speaking order after going through the documents placed on the file in accordance with law and had set aside the order dated 18.11.2013 passed by the trial court vide which the accused were charge sheeted for the commission of offence under Section 326, 324, 323, 34 IPC but the trial court till today has not heard the parties on the point of fresh framing of charge against the accused persons including the revisionist despite the order of the court of Sh. Jaspal Verma, the then learned Addl. Sessions Judge (FTC), Hoshiarpur and accordingly the further observation of the trial court that Baljit Kumar has charged of an offence, which is grievous in nature and does not deserve the concession of personal exemption automatically in view of above observations has become without any force. This court is further of the opinion that the observation of trial court that there is every apprehension that the applicant-accused Baljit Kumar may abscond to avoid the proceedings, is also without any force and substance because there is nothing alleged before the trial court nor before this court by the learned Addl. PP that in case the permanent exemption of the applicant is allowed then he may abscond from the proceedings. Furthermore Baljit Kumar is admittedly a Sepoy in the Indian Army which is disciplined force and till today there is nothing on record to show that revisionist has or

may absconded from the proceedings before the trial court. This court is further of the opinion that it is not disputed that powers under Section 205 Cr.P.C. are discretionary powers and required to be used sparingly but it is a fit case of the revisionist in which discretionary relief and use of power sparingly by allowing revisionist for permanently exemption from personal appearance before the trial court can be exercised in his favour because firstly revisionist is a Sepoy serving in Indian Army as well as in the emergency duty and the same has been recommended by Major S.S. Negi Adjutant for officiating Commanding Officer with his letter and furthermore there is also copy of discharge slip of the hospital on record regarding the medical treatment of Baljit Kumar about his head in which the doctor has called Baljit Kumar patient for further follow up of his treatment after six weeks and these are sufficient to permanently exempting the revisionist from his personal appearance before the trial court in his case and accordingly revisionist through his counsel is directed to appear before the trial court on the date fixed i.e. 5.6.2015 which is pending for the consideration of charge, so that the trial court after hearing the parties on the point of charge may able to frame fresh charge on the revisionist, if any and for that purpose the presence of Baljit Kumar revisionist shall be required before the trial court and accordingly revisionist shall remain present on the said date or other date till the date of framing of charge against the revisionist by the learned trial court and further direction is made to the trial court that on the filing of fresh application by the revisionist for his permanent exemption before the trial court after framing of charge, the same shall be

allowed by the trial court subject to his furnishing an undertaking before the trial court that his counsel shall be present on his behalf and he will not raise any objection qua the evidence that may recorded during his absence before the trial court and would be present in the trial court as and when directed by the trial court.”

A perusal of the records reveals that respondent No.2-accused is admittedly a Sepoy working in the Indian Army. No details are coming forward to establish that he has ever absconded from the proceedings before the trial Court. The plea of the petitioner that the trial has yet not been commenced and, therefore, in case the respondent-accused is granted exemption from personal appearance, it will hamper the trial, is without any basis. The impugned judgment dated 28.5.2015 passed by learned Additional Sessions Judge accepting the revision petition filed by the respondent-accused does not warrant any interference whereby the respondent-accused has been allowed permanent exemption from personal appearance before the trial Court. The respondent-accused is working in the Indian Army and may be even on emergency duty. The respondent has also been reported to be getting some treatment from hospital. Moreover, he has been directed to remain present in the Court on the date when the charge has been framed against him. The learned Additional Sessions Judge has further imposed the condition that the respondent-accused shall furnish an undertaking before the trial Court that his counsel shall be present on his behalf and he will not

raise any objection qua the evidence that may be recorded in his absence during the trial.

Accordingly, the present petition is dismissed being devoid of any merits.

August 20, 2015
'Yag Dutt'

(HARI PAL VERMA)
JUDGE