

In the High Court of Punjab and Haryana at Chandigarh

CRM-M-32177 of 2014

Date of Decision: 27.01.2015

Paramjit Singh

---Petitioner

versus

Daljit Singh

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Siddharth Gupta, Advocate
for the petitioner**

**Mr.Naresh Jain, Advocate
for the respondent.**

- 1. Whether Reporters of local papers may be allowed to see the judgment?**
- 2. To be referred to the Reporter or not?**
- 3. Whether the judgment should be reported in the Digest?**

REKHA MITTAL, J.

The present petition filed under Section 482 of the Code of Criminal Procedure read with Article 227 of the Constitution of India lays challenge to order dated 5.8.2014 (Annexure P-6) passed by the Judicial Magistrate Ist Class, Phul, whereby the application filed by the respondent under Section 205 of the Code of Criminal Procedure (in short Cr.P.C.”) for exemption from personal appearance has been allowed.

Counsel for the petitioner would contend that the Station House Officer of the Police station has been summoned to face trial for commission of offence punishable under Sections 392, 342 and 506 of the

Indian Penal Code (in short “IPC”). The accused filed the application seeking exemption from personal appearance which has been allowed by the trial court without any terms and conditions, therefore, the order passed by the trial court would certainly create hindrance in progress of trial. It is further submitted that the mere fact that the respondent is a member of police force and thus, has to discharge official functions is no ground to grant him blanket exemption from personal appearance.

Counsel for the contesting respondent, on the other hand, would submit that the respondent has been appearing before the court despite his personal appearance being exempted. The respondent has got no objection if the order passed by the trial court is modified keeping in view the interest of justice.

I have heard counsel for the parties and perused the records.

A plain reading of the impugned order would make it manifest that personal appearance of the respondent has been exempted primarily on the ground that he being the Station House Officer has to do lot of work and his appearance in the court on each and every date will cause hindrance in performance of his duties. The mere fact that the respondent is a member of police force and therefore, has to discharge his official functions cannot be construed a valid ground to allow him exemption from personal appearance without consideration if his absence from proceedings would result in hindrance in progress of trial. Counsel for the respondent has fairly conceded that the order passed by the trial Magistrate may be modified keeping in view the interests of justice.

The Hon'ble Supreme Court of India in *TGN Kumar vs. State*

of Kerala and others 2011 AIR (SC) 708 has laid down that Section 205 Cr.P.C. confers a discretion on the court to exempt an accused from personal appearance till such time his appearance is considered by the Court to be not necessary. It is manifest from a plain reading of the provision that while considering an application under Section 205 Cr.P.C., a Magistrate has to bear in mind nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence.

In the case at hand, the learned trial court has not examined all relevant aspects of the matter and exercised its discretion on the basis of solitary consideration that as the accused is working as Station House Officer, his presence in the court will cause hindrance in performance of his duties.

In this view of the matter, the impugned order is set aside and the matter is remitted to the trial court for disposal of the application filed by the respondent afresh, in accordance with law.

(REKHA MITTAL)
JUDGE

27.01.2015

PARAMJIT