

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CRM M-5856 of 2015

Date of Decision: February 21, 2015

Virender Singh and anr.

.....Petitioners

Vs.

State of Haryana and anr.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.B.S. Tewatia, Advocate
for the petitioners.

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M.M.S. BEDI, J. (ORAL)

Petitioners are respondents in appeal under Section 372 Cr.P.C. against order of acquittal dated August 29, 2013 passed by JMIC, Hodal. On January 20, 2015, the appeal was fixed for receipt of record from the trial Court. The petitioners being respondents moved application for exemption from personal appearance mentioning the reason that petitioner No.1 was away to Bhopal and petitioner No.2 being an old lady was unable to attend the Court. The application was dismissed on the ground that it was not supported by any medical certificate and that personal appearance cannot be exempted as a matter of routine. The observations made by learned

Appellate Court appears to be contrary to the spirit of Section 309 Cr.P.C. which enables a Court to postpone or adjourn the proceedings taking into consideration the circumstances in each case.

In my opinion, stage of the proceedings appears to be an important factor to consider application for exemption from personal appearance. As no effective hearing could be done on January 20, 2015 as trial Court record had not been received, the learned Appellate Court could have exempted the personal appearance of the petitioners. No doubt, personal appearance cannot be exempted as a matter of routine but in the present case, there does not appear to be any extraordinary exceptional circumstances which could have curtailed the Court to refrain from exercising the judicious discretion vested by the statute. At the most, as per Explanation 2 of Section 309 Cr.P.C., cost of adjournment could have been imposed upon the petitioners in case some prejudice was to be caused to any person including the complainant.

Taking into consideration the peculiar circumstances of this case that the appeal has been filed by lady i.e. wife of petitioner No.1, issuance of notice would cause further inconvenience to her, as such I intend to dispose of this petition in limine.

Order dated January 20, 2015, dismissing the application of the petitioners for personal appearance in the appeal of respondent Jagwanti is set aside being apparently improper order. The order dated January 20, 2015 is hereby set aside. It is ordered that the petitioners will appear before the

trial Court on next date of hearing i.e. February 25, 2015. Since the bail bonds furnished by them have not been cancelled, the warrants of arrest issued against them are set aside. The petitioners will continue to appear before the Appellate Court against the bail bonds already furnished. The application for exemption from personal appearance for January 20, 2015 will be deemed to have been allowed subject to payment of cost of Rs.15000/- in total to the respondent/ complainant.

Disposed of.

Since the petition has been disposed of in limine without issuing notice to the complainant, it is ordered that in case the order is not acceptable to the private respondent, it will be open to her to appear before this Court for modification/ review of the order.

February 21, 2015
sanjay

(M.M.S.BEDI)
JUDGE