

\$~37

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

Date of Decision: May 19, 2015

+ CRL.M.C.2000/2015 & Crl.M.A.Nos.7553-54/2015

STATE TRADING CORPORATION OF INDIA LTD.

..... Petitioner

Through: Mr. R.K.Anand, Mr. Madhu Sudan
Bhayana, Mr. R.N.Yadav, Mr.
Chetan Anand & Ms. Payal Ahuja,
Advocates

versus

M/S GLOBAL STEEL HOLDING LIMITED & ORS.

.... Respondents

Through: Mr. Sidharth Luthra, Sr. Advocate
with Mr. Vijay Aggarwal, Mr.
Gaurav, Mr. Pankaj Baghla, Ms.
Reha Mitra, Ms. Deepali Dwivedi
& Mr. Tanveer, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

%

In the above-captioned petition, quashing of order of 12th March, 2015 passed by trial court in proceedings under Section 138 of *Negotiable Instruments Act, 1881* is sought. Vide aforesaid order, trial court has admitted respondents-accused to bail subject to their furnishing bail-bonds in the sum of ₹5 lac each as the offence in question is bailable

one. One of the respondents-accused, who is said to be aged 90 years, has been granted exemption from personal appearance for the said date while relying upon medical certificate. It is noted in the impugned order that the respondent-accused, who is aged 90 years is currently residing in London.

The grievance of petitioner is that no conditions have been put on respondents-accused while granting them bail and since respondents-accused are frequently undertaking foreign travel therefore, they should be subjected to the condition of obtaining leave of court prior to travelling abroad and respondent No.3-*Pramod Mittal* and Respondent No.7-*Vinod Mittal* be directed to surrender their passports.

This petition is strongly opposed by learned Senior Counsel for respondent-accused by submitting that impugned order of 12th March, 2015 suffers from no illegality as while exercising jurisdiction under Section 436 Cr.P.C., no conditions are required to be put and personal exemption has been rightly granted to respondent-accused, who is aged 90 years on the strength of the medical certificate. This is seriously disputed by learned counsel for petitioner, who submits that it is this very respondent-accused, who had earlier filed an application for exemption on earlier date and which was declined and so, there was no justification to grant him exemption from personal appearance on 12th March, 2015. It was pointed out by learned counsel for petitioner that the cheques in question relate to crores of rupees and the endeavour of respondents-accused is to delay these proceedings. Attention of this Court was drawn to order of Apex Court in Special Leave to Appeal (Crl.) 4935/2014 in *State Trading Corporation v. Uday Pratap Singh & Anr.* rendered on 9th

February, 2015 wherein Apex Court had vacated this Court's order granting exemption from personal appearance to co-accused Uday Pratap Singh in these proceedings.

While entertaining this petition, operation of the impugned order was stayed and application for vacation of the stay of the impugned order has been filed by the respondent-accused. Instead of deciding the application of respondent-accused, it was deemed appropriate to hear the main petition itself. Both the sides agreed to finally argue this matter today. In view thereof, hearing was pre-poned from 30th September, 2015 to today and the date fixed i.e. 30th September, 2015 is cancelled.

After having heard both the sides and on perusal of impugned order, the Apex Court's order of 9th February, 2015 as well as this Court's order of 24th February, 2015 in CrI.M.C.No. 2707/2014 titled *The State Trading Corporation v. Global Steel Holding Ltd. Etc.*, I find that the exemption from personal appearance granted by this Court in proceedings under Section 138 of *Negotiable Instruments Act, 1881* pertaining to dishonor of cheques running into crores of rupees, Apex Court had vacated exemption from personal appearance granted to respondents-accused till framing of Notice under Section 251 Cr.P.C. However, Apex Court vide order of 9th February, 2015 had nowhere directed that under no circumstances application for exemption for a particular date would be entertained by the trial court. Vide order of 24th February, 2015 in CrI.M.C.No.2707/2014 even this Court had clarified that the said respondent-accused was at liberty to file an application before the trial court for exemption for a particular date and if the court finds valid reason then exemption from personal appearance could be granted.

In view of the aforesaid, I find no illegality or infirmity in the order of 12th May, 2015 granting exemption to respondent-accused, who is aged 90 years of age on the basis of medical certificate as the said exemption was granted only for the said date i.e. 12th March, 2015. Needless to say the mandate of the law has to be followed and an accused has to appear before the Court on each and every date of hearing. There cannot be any permanent exemption in view of Apex Court order of 9th February, 2014. However, trial court would be well within its right to grant exemption from personal appearance to any respondent-accused on particular date for good reasons. However, trial court shall ensure that granting of exemption should not delay the proceedings. So far as imposition of conditions on the grant of bail to respondent-accused is concerned, I find that Section 436 of Cr.P.C. does not provide for imposition of any such condition. Petitioner's prayer for direction to respondent to surrender their passport cannot be accepted in view of dictum of Apex Court in *Suresh Nanda v. CBI* (2008) 3 SCC 674. The pertinent observations made in *Suresh Nanda* (supra) are as under:-

“In our opinion, even the court cannot impound a passport. Though, no doubt, Section 104 Cr.P.C. states that the court may, if it thinks fit, impound any document or thing produced before it, in our opinion, this provision will only enable the court to impound any document or thing other than a passport. This is because impounding of a “passport” is provided for in Section 10(3) of the Passports Act. The Passports Act is a special law while Cr.P.C. is a general law. It is well settled that the special law prevails over the general law vide G.P.Singh's Principles of Statutory Interpretation. This

principle is expressed in the maxim of generalia specialibus non derogant. Hence, impounding of a passport cannot be done by the court under Section 104 Cr.P.C. though it can impound any other document or thing.”

Regarding the need of respondent-accused taking the permission of the trial court prior to travelling abroad is concerned, it is to be kept in mind that most of the accused persons are not residing in this Country and so putting of such a condition is not warranted. However, it is made clear that even if, it is inconvenient for respondents-accused, still they are directed to remain present before the trial court on the dates of hearing. Needless to say, in deserving cases, exemption from personal appearance can be granted by trial court but it should not result in delaying the proceedings.

In the facts and circumstances of this case, trial court is directed to expedite the proceedings under Section 138 of *Negotiable Instruments Act, 1881* and to make all endeavours to conclude it preferably within this calendar year.

With aforesaid directions, this petition and the applications are disposed of.

(SUNIL GAUR)
JUDGE

MAY 19, 2015

vn