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

CRM-M No.217 of 2016 (O&M)

Date of decision: 27th May, 2016

M/s S.R. Builders Limited

… Petitioner

Versus

State of Haryana and another

… Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Aseem Mehrotra, Advocate and
Mr. Sandeep Gahlawat, Advocate
for the petitioner.

Mr. Munish Sharma, Asstt. Advocate General, Haryana
for respondent No.1.

Mr. Sanjay Kaushal, Senior Advocate with
Mr. Arjun Shukla, Advocate for respondent No.2.

FATEH DEEP SINGH, J.

This is second petition by petitioner M/s S.R. Builders Limited, whereby provisions of Section 482 of the Code of Criminal Procedure (in short, 'the Code') have been sought to be invoked seeking quashing of the orders dated 17.09.2015 (Annexure P1) of the Court of learned Sessions Judge, Gurgaon whereby the revisional Court had set aside the orders dated 03.07.2015 (Annexure P7) of learned Judicial Magistrate 1st Class, Gurgaon whereby earlier directions had been issued by the learned Magistrate for appearance of the Directors of the Company.

Upon hearing Mr. Aseem Mahrotra and Mr.Sandeep Gahlawat, Advocates for the petitioner; Mr. Munish Sharma, Asstt. Advocate General, Haryana representing the State/respondent No.1; Mr. Sanjay Kaushal, Senior Advocate assisted by Mr. Arjun Shukla, Advocate on behalf of respondent No.2 and with their invaluable assistance perused the records as well.

The parties to this lis, the petitioners M/s S.R. Builders Limited as well as respondent No.2 M/s M.G.F. Developments Ltd., both are carrying on the business in real estate and along with one of associate Companies M/s Columbia Holdings Private Limited of respondent No.2 had entered into an agreement whereby the petitioners who happen to be the owners and in possession of a tract of land measuring 16 Kanals/2 Acres fairly described and depicted in the complaint situated in Tehsil and District Gurgaon for the purpose of business. By virtue of this agreement to sell dated 09.05.2001, petitioner/complainant undertook to sell the land in question and to deliver the actual vacant physical possession of the same to the accused Companies M/s M.G.F. Developments Ltd. and M/s Columbia Holdings Private Limited. During the course of events, a dispute had arisen between the complainant and the accused side leading to filing of criminal complaint by the present petitioners against the accused respondent No.2 M/s M.G.F. Developments Ltd. as well as M/s Columbia Holdings Private Limited. The allegations contained in the complaint spell out that the accused Companies have forged and fabricated an undated cash receipt for a sum of ₹20.00 lacs purported to have been issued by the complainant. It is stand of the complainant that he never executed such a document and which was rather a pure forged and fabricated document created by the accused side with dishonest intention to cause wrongful loss to the complainant. It is during the course of proceedings the learned trial Magistrate vide orders dated 15.07.2005 summoned the accused for commission of offences under Sections 420/463/464/468/469/471/120B IPC. It is thereafter, a war of wits have ensued between the two sides which has led to filing of innumerable number of legal recourses before various Courts including this Court. The present petition is a result of one of those maverick attempts to browbeat the other side and thus to have an upper hand in this business transaction obviously to obviate the endeavours of the trial Court to adjudicate the matter at the earliest. Consequent upon orders dated 15.07.2005 summoning the accused to face the trial including the Directors of the accused Companies, i.e. Mr.Rajiv Gupta, Mr.Shravan Gupta and Mr.Sidharth Gupta, Directors of accused M/s MGF Developments Ltd. and Mr.Shravan Gupta and Mr.Sidharth Gupta both Directors of M/s Columbia Holdings Pvt. Ltd., the Court had been issuing summons to the accused side for all these years and when failed to have the accused obeying to its orders, non-bailable warrants were issued. It is thereafter, the accused side appears to have secured stay on the proceedings from the Court of learned Additional District & Sessions Judge, Gurgaon by filing a criminal revision and which too stood dismissed on 04.02.2010 thus, furthering the endeavours of one of the parties to put the proceedings to a slow pace. It is thereupon the accused have started filing applications before the learned trial Magistrate seeking exemption of their personal appearance without adhering to the orders of the Court and thereby putting off their appearance in pursuance of the process of their summoning. It is in furtherance of this effort, the accused have thereafter on 28.04.2010 moved another application for exemption on the ground that the accused have been allowed to appear through their counsel and that their exemption has been granted by the Hon'ble High Court till further orders. It is in somewhat similar efforts the two petitions bearing CRM-M No.11642 of 2010 and CRM-M No.11929 of 2010, both under Section 482 Cr.P.C. seeking quashing of the complaint, summoning order and all proceedings emanating therefrom, came up before this Court and through a common order dated 16.02.2015 both these petitions stood dismissed. It is worthwhile to refer here that accused No.1 to 4 before the trial Court were allowed as per the orders of that Court dated 28.01.2011 to appear through their counsel and thus, paving way for progress of the trial of the complaint.

It is by another quirk of fate, as is reflected from the orders dated 12.08.2011, learned trial Magistrate on the stand of the counsel representing these four accused and who appears to have recused from appearing on behalf of accused No.2 and 3 had given fresh challenge to the Court below to look out for the appearance of these two accused. Thus, it was only on 12.06.2012 accused No.3 appeared through his counsel and thereafter accused No.2 appeared through his counsel on 28.07.2012. What meets the eye is that instead of allowing to proceed with the trial certain applications have been put forth seeking directions to the accused to deposit their passports and thereafter it transpired before the Court below that on 16.03.2013 accused No.3 had passed away, thus derailing the efforts of the Court to proceed ahead into the matter. The subsequent orders thereon are itself reflective of the manner in which the proceedings have been virtually put to hold and coupled with the casual approach of the Court below when to the astonishment of this Court on 15.04.2015 learned JMIC had a new revelation and had realized that accused No.2 and 3 have not appeared and thus, calling for their appearance and it was on 25.05.2015 accused No.1 and 4 appeared and the matter got adjourned for appearance of accused No.2 and 3. As a larger plan of this upmanship as is revealed from the orders dated 02.07.2015, one of the accused Company who has been sued through specified Director by name, had managed to authorize another person of the Company to represent him before the Court and it is by the impugned orders dated 03.07.2015 (Annexure P7) the learned trial Court had specifically ordered thereby directing the defence counsel to produce the Directors of the Company who have been named in the complaint and when the accused failed to abide by these orders, bailable warrants were issued when it dawned upon the Court as per orders dated 20.07.2015 that accused No.3 has died, thus, putting back the clock when it was so reflected in its previous orders detailed above. Furthermore, without calling for the reports from the concerned police, the trial Court acting on a mere copy of the death certificate has dropped the proceedings qua these accused. It was as a challenge to the orders directing the accused Companies' Directors to appear in person, accused No.1 and 2 filed a revision petition whereby the learned Sessions Judge had stayed the orders directing the Directors of the accused Companies to appear in person and thus, accused No.1 and 2 were allowed to appear in Court through their counsel. It is the orders passed by the learned Sessions Judge in this revision petition bearing No.86 of 2015 setting aside the orders of the learned JMIC that the complainant feeling aggrieved has come to this Court in this petition.

Though all these facts are not that relevant for judicious adjudication but at the risk of prolixity were necessitated to bring about how there has been sinister attempts to browbeat the system and thus, to create hurdles in smooth running and which would certainly have unending bearing on its disposal.

Thus from this all, it bears out how a resourceful litigant gives colour to its reticence in obeying directions of a Court of law and with his distasteful liking of appearing before a Court chooses various ways and means to keep at bay his self-imposed idea of erosion of his dignity which is nothing but which has sprung up from his wealth and influence.

What permeates from the lengthy arguments of the two sides, which are more aimed at as a psychological warfare than of a real assistance to the Court, is whether the learned trial Court was within its powers to have asked for appearance of the accused Companies through their Directors. It needs to be reiterated here that the complaint is at pre-charge stage.

Section 205 of the Code of Criminal Procedure ensues by way of sub-section (1) that whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the person attendance of the accused and permit him to appear by his pleader, and sub-section (2) lays down that such a Magistrate inquiring into the case may, in his discretion at any stage of the proceedings, direct the personal attendance of the accused and if so necessitated, enforce such attendance. Thus, from these statutory provisions of the Code it reflects that the power to grant exemption from personal appearance is totally discretionary and the most important is the facts and circumstances for each case individually for which no generalization can be laid down. At the same time, it needs to be emphasized that the Court should be generous in exempting such accused persons from their personal appearance especially when the accusations against the accused are not of very heinous nature. But at the same time, it needs to be ensured that the very question of identity of the accused by grant of such exemption is not put to peril. Section 206 of the Code has been engrained with a view to deal with petty offences where there is a total discretion and desire to appear by means of a pleader. Thus, it is reflective that provisions of Section 205 of the Code are more aimed at commencement of proceedings before a Magistrate whereas Section 317 of the Code ensues holding of trial in the absence of accused. This provision provides for discretion to a Judge or a Magistrate who is supposed to record his reasons as to his satisfaction for the personal attendance of the accused before the Court when the same is not necessitated and has to keep in mind the very interests of justice. Furthermore, Section 273 of the Code mandates that all the evidence which is to be taken in the course of trial or other proceedings shall be taken in the presence of the accused and where his personal appearance is dispensed with, in the presence of his counsel. Thus from all this, it flows that it is the sole and absolute discretion of the Court holding proceedings/trial which is supposed to visualize if presence of a particular accused before it is required or not.

The Hon'ble Supreme Court in **'TGN Kumar v. State of Kerala and others' 2011(2) SCC 772** has held that the Court must contemplate in its reasoning while exercising its discretion if any useful purpose would be served by exempting the personal appearance of the accused or if progress of the trial is likely to be hampered due to his absence and therefore, placing reliance on another view in **'S.V. Muzumdar and others v. Gujarat State Fertilizer Co. Ltd. and another' 2005(2) RCR (Criminal) 860** has drawn the conclusion that it is the Magistrate who is master of the Court in so far as the progress of the trial is concerned and none else. Reliance has also been placed on **'M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim & Apparels Ltd.' 2001(4) RCR (Criminal) 137** another view of the Hon'ble Apex Court holding that it is within the powers of a Magistrate and is totally his judicial discretion to dispense with personal appearance of an accused, may be at a particular stage and may be throughout the trial.

Thus, from it all it stands out unanimously that refusal by a Court to extend to the accused the benefit of such exemption from personal appearance is certainly to deny them justice and it is settled proposition of law that courts should try to dispense justice more than law. It needs to be reiterated here that the dignity of the Courts shall be preserved by being generous and liberal and not by being harsh or cruel. As a mark of caution, a Court should not derive pleasure by forcing a party to be there before it and has to strike a balance if the presence of the accused is necessitated or not. Since in the light of arguments, the very controversy surrounding the summoning of accused in the present case has already been laid to rest and the petitions have been dismissed and one of the set of accused does not at all challenge the same.

Though reliance has been placed on **'Simranjit Singh Mann v. Union of India and another' (1992)4 SCC 653 and 'Karamjeet Singh v. Union of India' (1992)4 SCC 666**, which are factually at much variance and thus, inapplicable to the facts of the case in hand and certainly **'Sunil Bharti Mittal v. Central Bureau of Investigation' (2015)4 SCC 609** does not help the case of the petitioner as the very quashment of the complaint already stands adjudicated by this Court and so the law laid down in **'GHCL Employees Stock Option Trust v. India Infoline Limited' (2013)4 SCC 505** cited on behalf of the accused does not in any manner advance their case in the light of the questions that have arisen in their submissions over the impugned findings and thus, has not any bearing on the outcome of the present petition.

Reverting back to the concise issue as to the exercise of powers by the learned Court below in the present set of allegations, a finer distinction needs to be made that it is not a pure and pure dispute over a transaction between two sets of Companies but the very prima facie allegations which form the very axle of the case of the complainant is acts whereby attribution has been made to the Directors in forging and fabricating the document in question and their acts of hatching a conspiracy and collusion with each other. Though the learned Magistrate as per the orders (Annexure P7) has not spelled out the reasons as to why personal appearance of the Directors of the accused Companies before it is necessitated rather it is more of an outcome of a desire to have the Directors before the Court than of as to what is the legal necessity to procure the same. At the same time, the very conduct of the Directors of the accused Companies needs to be severely deprecated how they have sought to stifle the progress of the case and what is discussed in the foregoing paragraphs of this order corroborates that even these persons, so called Directors, by their obstinacy appear to have made the Court below to take a more stricter and stringent approach. But at the same time, the impugned orders (Annexure P1) by the learned Sessions Judge passed in criminal revision has gone astray beyond the scope of its ambit under Section 397 of the Code and rather adjudicating on to the very legality and propriety of this order under challenge before it has ventured into the very merits of the allegations of the two sides, thus putting off the track the real issue before it. In the light of allegations which are there in the complaint, it is not a usual transaction here in the discharge of duties as a Director the alleged offences have been held to have been committed but are more so beyond their duties as Directors and thus, a finer distinction of Section 305 of the Code needs to be kept in mind. In the impugned order, the learned Sessions Judge has failed to consider whether there was appropriate exercise of powers by the learned Magistrate or not and without going into that aspect of the matter has come to that conclusion.

Thus, in the totality of what has been observed herein, neither the orders of the learned Magistrate (Annexure P7) nor the impugned orders (Annexure P1) of the learned Sessions Judge qualifies this litmus test of determining the judicious exercise of powers and as a consequence of the same the instant petition is allowed to the extent thereby setting aside the impugned judgment (Annexure P1) of the learned Sessions Judge as well as orders of the learned Magistrate (Annexure P7) which is totally non-speaking and does not reflect what has necessitated the presence of these Directors of the accused Companies. In the light of the same, it would be a legitimate exercise of powers by this Court under Section 482 of the Code to direct the trial Court to pass a speaking order spelling out the reasons as to why presence of Directors of the accused Companies is so necessitated and to do this exercise without loss of time, preferably within a period of 15 days. Parties are directed to put in appearance before the trial Court. Since the matter has already been much delayed as the complaint was filed in the year 2005 and since almost eleven years have elapsed and the matter is still at pre-charge evidence further impels this Court to issue directions to the trial Court to ensure that the matter is speedily disposed off by affording short adjournments and to further ensure that undesired adjournments are not given as per the whims and fancies of the parties.

With these observations, the petition stands disposed off. Records be sent back.

(FATEH DEEP SINGH)
JUDGE

May 27, 2016
rps

Whether to be referred to the Reporters or not? Yes