

*IN THE HIGH COURT FOR THE STATES OF PUNJAB
AND HARYANA AT CHANDIGARH.*

Cr. Misc. M 34558 of 2016
Date of decision: 28.9.2016

Ganpat Lal Agarwala

Petitioner

vs.

Sahuja Cotspin Pvt. Ltd.

Respondent

Present: Mr. Shilesh Gupta, Advocate.

M.M.S.BEDI,J.

This order will dispose of two petitions i.e. CRM M 34558 and 34572 of 2016 filed by the petitioner.

The petitioner has been summoned in a complaint filed u/s 138 of the Negotiable Instruments Act (for short 'the Act'), by the respondent.

Counsel for the petitioner has submitted that the petitioner is a heart patient. In support of his contention, he has placed on record certain documents indicating that in the year 2010 the petitioner had undergone angioplasty and was suggested certain procedures. The present health status of the petitioner has not been reflected in any of the documents. The petitioner had moved an application u/s 205 Cr.P.C. before the trial court, which has been dismissed on 19.8.2016 with the following order:-

“ Heard on the application for permanent exemption of the accused u/s 205 Cr.P.C. It is pertinent to mention here that the accused has yet not put in his appearance before this Court despite issuance of bailable warrants against him. Therefore, the present application requesting for his permanent exemption for appearance is not maintainable under the provisions of law. Therefore, the same stands dismissed being devoid of any merit. Since, the accused is having knowledge

regarding the pendency of present complaint against him, let he be summoned through NBW of arrest for 30.9.2016.”

Counsel for the petitioner has placed a strong reliance on judgment of the Apex Court in **M/S Bhaskar Industries Ltd. vs. M/S Bhiwani Denim & Apparels Ltd 2001(4) Crimes 199**, where the Apex Court had observed that a complaint u/s 138 of the Act is to be tried as a summons case and the Magistrate may dispense with the appearance of the accused, provided he is represented by a counsel. The Apex Court has made reference to the various provisions u/s 317/273/251 and 205 Cr.P.C. and formed an opinion that in the circumstances specified in the judgment, the court can exempt the personal appearance of the accused, if it is satisfied that in the interest of justice the personal attendance of an accused before it need not be insisted on or that if a court feels that insisting on the personal attendance of an accused in a particular case would be too harsh on account of a variety of reasons, accused can be given such relief.

There is no controversy regarding the authority of the court to exempt the personal appearance of an accused. No doubt, a Magistrate can direct the exemption from personal appearance at any stage of the proceedings but in the circumstances of the present case, the petitioner has not even once put in appearance before the court despite issuance of bailable warrants against him. He has sought exemption from personal appearance during the proceedings by moving an application u/s 205 Cr.P.C. The trial court has rightly exercised the discretion u/s 205 Cr.P.C. I have considered the above said judgment. It does not lay down an absolute bar that in every case where an application u/s 205 Cr.P.C. is filed by the accused, having been summoned, it is mandatory for the court

to exempt the appearance without even securing his presence. However, the discretion vested in the trial court has to be exercised taking into consideration the facts, circumstances and the conduct of an accused in each case.

Both the petitions are dismissed. Taking into consideration the age of the petitioner and his ailment, it is directed that the petitioner would be entitled to move an application in both the cases for exemption from personal appearance on the basis of his health condition or other circumstances after he has put in appearance before the trial court once and his presence is secured on his furnishing bail bonds/ surety bonds. He can seek the relief of exemption from personal appearance even by agreeing to discharge his liability , if any, partly or wholly.

September 28 ,2016	(M.M.S.BEDI)
TSM	JUDGE
Whether speaking/ reasoned	Yes/ No
Whether Reportable	Yes/ No