

HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P.No.705 of 2017**

1. V.S. Reddy (wrongly mentioned as B.S. Reddy in impugned order) S/o Shri V.G. Reddy, aged 81 years, at present r/o : Veterinary Colony, Road No.1, House No.54-1/16, Vijaywada (A.P.)
Superintending Engineer (now retired) Department of Irrigation : State of Madhya Pradesh, Hasdeo Bairaz Division, Minimata Bango Dam, Machatoli, Thana-Katghora, Distt - Bilaspur CG) (Now Distt-Korba)
2. Rampal Tomar S/o Shri Gaya Singh Tomar aged 75 years, r/o 29, Saket Nagar Tansen Road, Gwalior (M.P.)
Divisional Accountant (now retired) Office of Hasdeo Bairaz Division : Rampur/Korba

---- Petitioners

Versus

State of Chhattisgarh Through : State Economic Offence Investigation Bureau Raipur CG
(The name of other co-accused not been impleaded since Accused no 2 is expired and Accused no 4 and 5 are not effected by the impugned order)

---- Respondent

For Petitioners	:	Mr.Anurag Dayal Shrivastava, Advocate
For Respondent	:	Mr.Gary Mukhopadhyay, Dy.G.A.

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board**23/06/2017

1. Learned counsel for the petitioners would submit that application under Section 317 of the CrPC has been rejected by the trial Court and warrant of arrest has been issued against the petitioners on 21.3.2017. He would further submit that petitioner No.1 is retired person aged about 81 years and is staying at Vijaywada in the State of Andhra Pradesh and petitioner No.2 is also retired person aged about 75 years and is staying at Gwalior in the State of Madhya Pradesh and on 21.3.2017 the case was fixed for reply and

argument of some application², it was not fixed for prosecution evidence. He would also submit that earlier application under Section 317 of the CrPC would not preclude the Court from considering the application under Section 317 of the CrPC on its merit. He would place reliance upon the judgment of the Supreme Court in the matter of **M/s. Bhaskar Industries Ltd Vs. M/s. Bhiwani Denim and Apparels Ltd. and others**¹.

2. I have heard learned counsel for the petitioners and considered his submissions made hereinabove.
3. It is correct to say that on 21.3.2017 the case was fixed for reply and argument of some application, which is apparent from order-sheet dated 21.3.2017, on that day, application under Section 317 of the CrPC was moved. It is true that medical certificate in support of exemption was not produced, but the fact remains that both the petitioners are retired persons aged about 81 and 75 years respectively. Petitioner No.1 is staying at Vijaywada in the State of Andhra Pradesh and petitioner No.2 is staying at Gwalior in the State of Madhya Pradesh. Their application has to be considered in the light of the aforesaid facts and their presence should be insisted on the date when the case is fixed for evidence.
4. Paragraphs 14, 17, 18 and 19 of **M/s. Bhaskar Industries Ltd** (supra) are quite relevant, which read as under:-

¹ AIR 2001 SC 3625

“14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the Court, provided he has been granted exemption from attending the Court. The concern of the criminal Court should primarily be the administration of criminal justice. For that purpose the proceedings of the Court in the case should register progress. Presence of the accused in the Court is not for marking his attendance just for the sake of seeing him in the Court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the Court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the Court in that particular case.

17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the Court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, on precaution which the Court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the Court that he would not dispute his identity as the particular accused in the case, and that a counsel in his behalf would be present in Court and that has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.

18. A question could legitimately be asked - what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205(2) says that the magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19. The position, therefore, boils down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.”

5. In view of that, the order impugned is set aside and warrant of arrest, if issued, be recalled. However, it is directed that the petitioners will keep themselves available on the date of hearing before the trial Court unless application under Section 317 of the CrPC is considered and granted. If an application under Section 317 of the CrPC is filed, the trial Court is at liberty to consider that application in the light of principle of law laid down by the Supreme Court in **M/s. Bhaskar Industries Ltd** (supra).

6. The petition is allowed to the extent indicated hereinabove.

Sd/-

(Sanjay K. Agrawal)

Judge

B/-