

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Judgment: 20.02.2017	Date of pronouncing the Judgment : 22.02.2017
---	--

CORAM :

THE HONOURABLE MR. JUSTICE S.BASKARAN

Criminal Revision Case No.240 of 2017
and Crl.M.P.No.2431 of 2017

1.P.Suresh
2.P.Karthikeyan

.. Petitioners
/Accused Nos.3 and 4

Vs.

The State
Rep. By Inspector of Police
V &AC, Chennai city-II
Chennai-600 035

.. Respondent/Complainant

Petition filed under Section 397 of Cr.P.C., against the order dated 01.02.2017 in Crl.M.P.No.972 of 2016 in Spl.Case No.3 of 2014 on the file of Special Judge/Chief Judicial Magistrate, Chengalpattu.

For Petitioners : Mr.I.Subramaniam, Senior Counsel
for M/s.S.Elambharathi

For Respondent : Mr.E.Raja, Additional Public
Prosecutor

ORDER

The Revision Petitioners have come forward with this Criminal Revision Case, aggrieved over the order of dismissal dated 01.02.2017 passed by the Special Judge cum Chief Judicial Magistrate, Chengalpattu, in Crl.M.P.No.972 of 2016 in Special C.C.No.3 of 2014, filed under Section 205 Cr.P.C., seeking to dispense with the personal appearance of the petitioners.

2. The petitioners, who are A-3 and A-4 in the case in Special C.C.No.3 of 2014, on the file of Special Judge cum Chief Judicial Magistrate, Chengalpattu, were charged for the offences

under Section 420, 120(b) of IPC along with co-accused, alleging that these petitioners with criminal intention to obtain wrongful gain for themselves and to cause wrongful loss to the Government influenced the public servants A-1 and A-2, who processed the file No.ROC.No.19432/08/CP (Spl.Cell) dated 18.11.2008, and raised a demand of Rs.3.10 crores as per G.O.Ms.161, knowing that these petitioners are not entitled to the benefits of G.O.Ms.161, resulting in loss to the Government to the tune of Rs.8.68 crores. The petitioners filed Crl.M.P.No.1843 of 2014 before the trial court seeking to discharge them and the same was dismissed by the trial court as per order dated 02.02.2016. Aggrieved over the same, the petitioners/A-3 and A-4 filed Crl.R.C.No.226 of 2016 before this court. While the same was pending, the trial court framed charges on 27.04.2016 and aggrieved over the same, the petitioners/A-3 and A-4 subsequently filed Criminal Revision Case No.822 of 2016 seeking to quash the charges framed against them by the trial court. While the above said Revisions were pending before the trial court, the appearance of the petitioners before the trial court was dispensed with as per the orders passed on 11.02.2016 in Crl.M.P.No.1546 of 2016 in Crl.R.C.No.226 of 2016 and as per order dated 14.06.2016 in Crl.M.P.No.6195 of 2016 in Crl.R.C.No.822 of 2016. The above said Crl.R.C.No.226 of 2016 and Crl.R.C.No.822 of 2016 were subsequently dismissed by this court, by common order dated 03.08.2016. Aggrieved over the dismissal of the said revision petitions, the petitioners A-3 and A-4 have preferred S.L.P., before the Apex Court in S.L.P.No.7418 and 7419 of 2016 and notice was ordered to the respondents on 13.09.2016 and the same is pending. While so, the petitioners stated that they are reputed businessman and due to their business commitments, they are forced to conduct meetings at various places in India and abroad and they find it very difficult to appear before the trial court on each hearing. Hence, the petitioners filed Crl.M.P.No.972 of 2016 in Spl.C.C.No.3 of 2014 under Section 205 Cr.P.C., seeking to dispense with their personal appearance and to be represented by Special Vakalat, but the said petition was dismissed by the trial court on 01.02.2017. Aggrieved over the same, the petitioners have come forward with this Criminal Revision case.

3. The learned Senior counsel appearing for the petitioners pointed out that the trial court failed to appreciate the issue correctly and erroneously dismissed the petition. According to the learned Senior counsel for the petitioner, the reasoning of the trial court that the petitioners filed petition under Section 205 Cr.P.C., before the High Court and on dismissal of the same, have preferred S.L.P., and as the same is pending before the Apex Court, the petition under Section 205 Cr.P.C., cannot be entertained is factually incorrect. The other reasoning that the petition under Section 317 Cr.P.C., can be

filed and therefore, no need to entertain petition filed under Section 205 Cr.P.C is also not correct. Hence, the petitioner seeks to set aside the impugned order under challenge and to allow this Criminal Revision Petition.

4. On the other hand, opposing the petition, the learned Additional Public Prosecutor contends that the plea of the petitioner cannot be entertained for reasons stated in the written submission filed by the prosecution. It is admitted by the respondent that the petitioners filed Crl.M.P.1843 of 2014 before the trial court seeking to discharge them and the same was dismissed on 02.02.2016 and aggrieved over the same, the petitioners filed Crl.R.C.No.226 of 2016 and subsequently filed Crl.R.C.No.822 of 2016 to quash the charges framed against them and both the said revisions were dismissed by this court on 03.08.2016. Aggrieved over the said order, according to the prosecution, the petitioners have preferred SLP before the Apex Court and the same is pending disposal. In such circumstances, the petitioners filed petition under Section 205 Cr.P.C., to dispense with their personal appearance before the trial court and the same has been dismissed on 01.02.2017. According to the prosecution, the reason stated by the petitioners that as businessman, they have to attend several meetings in India as well as abroad cannot be a valid ground for seeking relief under Section 205 Cr.P.C., and the finding of the trial court is just and proper and the same is passed on correct reasoning. Hence, the respondent seeks dismissal of the Criminal Revision Petition.

5. Admittedly, the petitioners were charged for the offences under Section 420, 120(b) IPC along with 2 other accused. The petition filed by them seeking discharge from the case was dismissed both by the trial court and by this court and the SLP preferred against the same by the petitioners is pending before the Apex Court. Similarly the fact that the petitioners are businessman is also not disputed. The petitioners contend that as busy business people, they have to participate in number of meetings both in India and abroad and as such they are not able to be present for all the hearings before the trial court and therefore, seeks to dispense with their personal appearance and to permit them to appear by special vakalat. The senior counsel appearing for the petitioners also contended that the petitioners are prepared to appear in all effective hearings and are ready and willing to cooperate in the trial court proceedings without causing any delay.

6. It is evident from the order under challenge passed by the trial court that only on the ground that the petitioners have preferred SLP before the Apex Court, in respect of petition filed under Section 205 Cr.P.C., is pending, the trial court has dismissed the petition filed by the petitioners under Section

205 Cr.P.C. However, as rightly pointed out by the learned counsel for the petitioners, the said SLP.No.7418 and 7419 of 2016 are filed against the order passed by this court in respect of CrI.R.C.No.226 of 2016 and 822 of 2016, which were filed challenging the order of dismissal passed by the trial court regarding the discharge of the petitioners and to quash the charges framed against the petitioners. It is therefore clear that no SLP is pending challenging any order passed by this court in any petition filed by them under Section 205 Cr.P.C. It is also pointed out by the learned senior counsel for the petitioners that during the pendency of criminal revision No.226 of 2016 and CrI.R.C.No.822 of 2016 before this court, the personal appearance of the petitioners before the trial court was dispensed with by this court as per orders passed in CrI.M.P.No.1546 of 2016 and 6195 of 2016 till disposal of the above said two criminal revision cases. Thus, the appearance of the petitioners before the trial court has already been dispensed with by this court. Further, there is nothing on record to show that the petitioners are deliberately protracting the proceedings before the trial court. On the other hand, the petitioners have categorically stated that they are prepared to cooperate with the trial proceedings. In such circumstances, as rightly contended by the learned Senior counsel appearing for the petitioners, the reasoning given by the trial court for dismissing the petition is not factually correct. Further, the learned senior counsel for the petitioners contended that the plea under Section 205 Cr.P.C., has to be entertained by the court liberally, if the appearance of the accused before the trial court is not necessary in all hearings except during effective hearing. In support of the same, the learned Senior counsel relied upon the ruling of this court in the case of Dr.Zubaida Begum Vs. State rep. By The Inspector of Police, District Crime Branch, Kancheepuram reported in (2016) 2 MLJ (CrI) 490, wherein, it is held as follows:-

" 12. Section 205 Cr.P.C. has two parts. Section 205(1) Cr.P.C enables the Court to dispense with the personal appearance of the accused. However, some arrangements have to be made by the accused by engaging a counsel to represent the accused. But if we read the language employed in Sections 205(1) and 205(2) Cr.P.C, there is no absolute right in the accused that he will never or ever appear before the Court.

13. Section 205(2) Cr.P.C enables the Court to direct the accused to present in the Court although his personal appearance has been dispensed with under Section 205(1) Cr.P.C.

14. The Court cannot use its discretion under Section 205(2) Cr.P.C. just to see the face of the accused

or just gather crowd in the Court. In fact, too much gathering in the Criminal Court is a nuisance to the Court, lawyers and prosecution and court staff. It will distract the court from its concentration. Therefore, liberal usage of the power under Section 205(1) Cr.P.C has been advocated.

15. When time is so important for the Court, it is also so important to the accused. He has to eke out his livelihood. Attend to his work, without wasting his time from morning to evening in the Court when the case is posted for not making effective progress, such as plea of the accused is to be recorded, where identification of the accused is involved, where his examination under Section 313 Cr.P.C is to be done, where he has to be questioned on the proposed sentence. But even then when the case is very simple in nature, his counsel himself could answer the questions under Section 313 Cr.P.C. and the presence of the accused need not be insisted upon. The defence counsel can always receive copies under Section 207 Cr.P.C and give acknowledgement.

16. There is no wrong in Court directing the accused to be present in Court when the case is posted for any effective hearing."

The learned Senior counsel also contended that the contention of the prosecution that the petitions are filed only with an intention to drag on the trial proceedings cannot be a valid ground for rejecting the petition filed seeking to dispense with the personal appearance. In this regard, the learned Senior counsel relied upon the unreported judgment of this court passed in CrI.R.C.Nos.993 and 994 of 2015 dated 25.09.2015 [Ajay Kumar Bisnol and Amul Gabrani Vs. M/s.KEI Industries Limited], wherein it is held as follows:-

" 12. Reverting to the case on hand wherein, a perusal of the impugned orders, it appears that the court below has mainly dismissed the petitions only with a view that the petitioners were filed only to drag on the proceedings. I am failed to understand the view taken by the court below. When the appearance of the petitioners/accused has been undertaken by their counsel, their absence has nothing to do with the progress of the case and there is no impediment for the court below in proceeding with the case in the presence of the counsel of the petitioners/accused. It is well settled that the process of the Courts should not be used for harassment of litigants and the insistence on the appearance of the parties before the Court need be only if it becomes absolutely necessary for some

purpose. In fact, the very existence of the Courts is only for dispensation of justice. The reason cited by the petitioners for their inability to make appearance before the Court is that busy businessmen and frequently travel abroad and also to look after day today affairs of their company and to permit their counsel Mr.R.Aneesan to appear and represent on their behalf on all hearing dates. The said reason cited by the petitioners, is in my opinion, is reasonable and hence, their personal appearance can be dispensed with by permitting their counsel to appear and represent on their behalf."

The learned Senior counsel for the petitioners also relied upon the ruling of the Supreme Court in the case of TGN Kumar Vs. State of Kerala and others reported in AIR 2011 Supreme Court 708 and in the case of Bhaskar Industries Ltd., V.Bhiwani Deni & Apparels Ltd., & Ors reported in (2001) 7 SCC 401 and submitted that order of the Magistrate should be such which does not result in an unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The Apex Court in AIR 2011 SC 708 (cited supra), has held as follows:-

"8. In Bhaskar Industries Ltd. (supra), this Court had laid down the following guidelines, which are to be borne in mind while dealing with an application seeking dispensation with the personal appearance of an accused in a case under Section 138 of the N.I. Act:

"19. ...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 on 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."

7. Thus relying upon the above said Rulings, the learned Senior counsel appearing for the Revision Petitioner pleads to set aside the impugned order under challenge, as the same is passed on mistaken application of factual position. On the other hand, opposing the petitioner, the learned Additional

Public Prosecutor contended that the petitioners are not interested in getting along with the trial proceedings and if the petitioners' appearance is dispensed with, it will be difficult to dispose of the case quickly. In this regard, the learned Additional Public Prosecutor relied upon the Ruling in the case of S.V.Muzumdar and Ors Vs. Gujarat State Fertilizer Co.Ltd., and Another reported in AIR 2005 SC 2436, wherein, it is held as follows:-

"If the appellants file applications in terms of Section 205 of the Code for dispensing with their personal attendance, the trial court will do to take note of the same and dispense with the personal attendance by stipulating conditions in terms of Section 205(2) of the Code. It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance."

8. Thus the learned Additional Public Prosecutor seeks dismissal of the Revision contending that the trial court is justified in dismissing the petition filed under Section 205 Cr.P.C., by the petitioners as their presence before the court is necessary for quick disposal of the case and as the reason stated for entertaining the petition is not a valid reason.

9. Considering the facts and circumstances of the case, this court is of the considered view that in the case on hand, there is no such allegation against the petitioners that they are trying to delay the completion of trial. Therefore, the objection raised by the prosecution on that ground is unsustainable. However, considering the above said reasons, it is apparent that the trial court has passed the impugned order only on the ground that the petitioners have approached the Apex Court in respect of dismissal of petition under Section 205 Cr.P.C., which factually is not correct. Further, the petitioner has categorically stated that they are ready and willing to cooperate in the trial court proceedings even during their absence.

10. It is clear from the above said discussion that the petitioners are prepared to cooperate with the trial even if

they are not appearing in person. In such circumstances, taking into consideration the reasons stated by the petitioner and in the light of the rulings relied upon by them, it is clear that the plea of the petitioners has to be entertained and the reasoning given by the trial court for dismissal of the Crl.M.P.No.972 of 2016 are not proper and the same is liable to be set aside and this petition is to be entertained.

11. Hence, this Criminal Revision is allowed. The order passed in Crl.M.P.No.972 of 2016 in Spl.Case No.3 of 2014 by the Special Judge/Chief Judicial Magistrate, Chengalpattu, dated 01.02.2017 is set aside. The trial court is directed to dispense with the personal appearance of the Revision Petitioners herein/A-3 and A-4 and permit them to be represented by special vakalat on all hearings. It is open to the court below to insist upon the presence of the petitioners/accused as and when it is required for the effective hearing of the case. Consequently, connected MP is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

nvsri

To

1.The Special Judge/Chief Judicial Magistrate, Chengalpattu.

2.The Inspector of Police
V &AC, Chennai-II
Chennai-600 035

3.The Public Prosecutor, High Court, Madras.

+lcc to Mr.S.Elambarathi, Advocate sr.11090

rsy(co)
ss(1/3/2017)

Order in
Crl.RC. No.240 of 2017

WEB COPY