

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

**CRIMINAL PETITION NOS.7446, 7447, 7449, 7450, 7452, 7461,
7473, 7478, 7479, 7480 OF 2017**

COMMON ORDER:

The petitioner is the accused in various calendar cases for different offences and the details of the cases are mentioned herein below for better appreciation of the cases.

S. No.	(A)		(B)		(C)
	Criminal Petition pending before High Court		CrI.M.P.No.		Calendar Case No.
1	CrI.P.No.7446 of 2017	Preferred against	CrI.M.P.No.1303 of 2016	In	C.C.No.9 of 2012
2	CrI.P.No.7447 of 2017	Preferred against	CrI.M.P.No.1304 of 2016	In	C.C.No.10 of 2012
3	CrI.P.No.7449 of 2017	Preferred against	CrI.M.P.No.1306 of 2016	In	C.C.No.14 of 2012
4	CrI.P.No.7450 of 2017	Preferred against	CrI.M.P.No.1308 of 2016	In	C.C.No.25 of 2013
5	CrI.P.No.7452 of 2017	Preferred against	CrI.M.P.No.1307 of 2016	In	C.C.No.24 of 2013
6	CrI.P.No.7461 of 2017	Preferred against	CrI.M.P.No.1312 of 2016	In	C.C.No.26 of 2014
7	CrI.P.No.7473 of 2017	Preferred against	CrI.M.P.No.1309 of 2016	In	C.C.No.26 of 2013
8	CrI.P.No.7478 of 2017	Preferred against	CrI.M.P.No.1310 of 2016	In	C.C.No.27 of 2013
9	CrI.P.No.7479 of 2017	Preferred against	CrI.M.P.No.1305 of 2016	In	C.C.No.12 of 2013
10	CrI.P.No.7480 of 2017	Preferred against	CrI.M.P.No.1311 of 2016	In	C.C.No.28 of 2013

The investigating agency, after completion of investigation filed final reports under Section 173 Cr.P.C against the petitioner in all the above mentioned cases for the offences tabulated hereinabove. The petitioner was enlarged on bail by the Principal Special Judge for CBI Cases, Hyderabad vide order dated 11.12.2015 in CrI.M.P.No.1388 of 2013 in C.C.No.8 of 2012, and the following conditions were imposed against the petitioner.

- Y.S. Jagan Mohan Reddy / Petitioner/A-1 shall be enlarged on bail on his executing a bond for Rs.2,00,000/- (Rupees two lakh only) with two sureties each for like sum to the satisfaction of this Court.
- The petitioner/A-1 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.
- Petitioner/A-1 shall stay at Hyderabad and shall not leave Hyderabad without prior permission of the Court.
- The petitioner/A-1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court.

- (v) The respondent/CBI has liberty to make a proper application for cancellation of the bail, if the petitioner/ A-1 violates any of the conditions imposed by this Court.

Subsequently, the petitioner filed Crl.M.P.No.2323 of 2015 in Crl.M.P.No.1388 of 2013 in C.C.No.8 of 2012 before the Principal Special Judge for CBI Cases, Hyderabad for relaxation of conditions (iii) & (iv). The Court below was pleased to allow the said application and relaxed condition no.(iii) vide order dated 11.12.2015, while modifying relaxation no.(iv). On the basis of the order in Crl.M.P.No.1388 of 2015, the petitioner filed Crl.M.Ps referred in Column (B) in respective calendar cases mentioned in Column (C) in the table. Thereupon, the Court below refused to exercise discretion of permitting the petitioner's advocate to appear on his behalf permanently on all the dates of hearing the case and dismissed all the Crl.M.Ps referred in Column (B). Aggrieved by the said orders, the petitioner filed the present criminal petitions referred supra.

The Court below allowed Crl.M.P.No.1388 of 2015 on 11.12.2015 and relaxed condition no.(iii) and modified condition no.(iv). Aggrieved by the said order, the petitioner filed Crl.P.No.2239 of 2016 wherein this Court granted interim order dated 31.03.2016 dispensed with the presence of the petitioner before the Trial Court and the interim order has been extended from time to time. The Court below while enlarging the petitioner on bail, imposed certain conditions only in C.C.No.8 of 2012, but, in rest of the cases mentioned in Column (A) no conditions were imposed.

The petitioner filed Crl.M.Ps referred in Column (B) in the respective calendar cases mentioned in column no (C) of the table mentioned supra under Section 205 Cr.P.C before the Court below, to permit his authorised advocate Sri G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing the cases. The Court below refused to exercise discretion of permitting the petitioner's advocate to appear on his behalf permanently on all the dates of hearing the case and dismissed all the Crl.M.Ps referred in Column (B).

General election was held in State of Andhra Pradesh in April-May, 2014 and the petitioner's political party Yuva Jana Shramika Rythu Congress Party (Y.S.R Congress Party) secured 67 M.L.A seats and 8 M.P. seats. The petitioner was elected as Member of Legislative Assembly from Pulivendula Constituency and thereafter, he has been elected as Leader of Opposition for the Andhra Pradesh State Legislative Assembly. Due to changed circumstances, more particularly, in the light of the petitioner being a leader of Opposition for the State Legislative Assembly and President of Y.S.R Congress Party, the petitioner was necessitated to interact with the general public of the State of Andhra Pradesh from time to time effectively. The petitioner had approached the Court below under Section 205 Cr.P.C filed petitions shown in Column (B) to dispense with his personal appearance/attendance and to permit his authorised advocate Sri G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing the cases. The cases are being posted on every Friday of the week and

the physical presence of the petitioner would severely impede the petitioner's duty as an elected representative and insisting him to appear before the Court below on every date of adjournment is violative of fundamental right guaranteed under Article 21 of the Constitution of India. The Court below dismissed the petitions refusing to dispense with the appearance of the petitioner before the Court below without proper consideration of facts and committed grave error in dismissing the said applications referred in Column (B).

The order of the Court below in Crl.M.P.No.1388 of 2015 dated 11.12.2015 is challenged on various grounds, mainly on the ground that the petitioner being Leader of Opposition party in A.P. State Legislative Assembly is required to carry on his various political activities not only in relation to the party and the petitioner's constituency, but also in the interest of the general public of the State of Andhra Pradesh. Therefore, the petitioner is required to visit other places and conduct political activities and he cannot be deprived of his right to discharge his functions as a Leader of Opposition of Andhra Pradesh State Legislative Assembly and President of Y.S.R. Congress Party and that the Court below declined to exempt the petitioner and pinned him down, compelling him to appear on each and every date of adjournment unreasonably. Therefore, dismissal of the petitions filed by the petitioner is erroneous.

The Trial Court is in the process of adjudicating the discharge applications filed by various accused in several charge

sheets and does not require presence of the petitioner, but the Court below did not consider the necessity of appearance of the petitioner on the dates specified for consideration of discharge applications filed by other accused and it is nothing but subjecting the petitioner to unnecessary harassment and if the presence of the petitioner is dispensed with, that would not cause any inconvenience to the Court to proceed with the cases and the Court can also proceed even in the absence of the petitioner while hearing applications for discharge under Section 239 Cr.P.C by the other accused and thus the Court below committed grave error in dismissing the applications.

Learned Senior Counsel Sri S. Niranjan Reddy appearing for the learned counsel for the petitioner contended that the Court below did not consider the law declared by various Courts under Section 205 Cr.P.C and committed grave error in dismissing the applications. Finally, it is contended that the petitioner on several occasions filed petitions under Section 317 Cr.P.c, which were allowed by the Court below consistently. But, the Crl.M.Ps referred in Column (B) were dismissed as the Court below refused to exercise discretion of permitting the petitioner's advocate to appear on his behalf permanently on all the dates of hearing the case. It is contended that, on erroneous appreciation of facts and law, the Court below dismissed the applications and the order is not based on sound reasoning.

The main contention of the Learned Senior Counsel Sri S. Niranjan Reddy is that, insisting his personal appearance on

every date of adjournment is nothing but subjecting the petitioner to unnecessary harassment and such insistence would deprive the petitioner being a member of Legislative Assembly, representing Pulivendula Constituency to interact with the public of Pulivendula and also depriving him from interacting with the public in the State of Andhra Pradesh, being the Leader of Opposition in Andhra Pradesh Legislative Assembly and to pursue his political career. As on today, though the charge sheets were filed long ago, there was absolutely no progress in the trial of the cases for one reason or the other and the petitioner was appearing before the Court on every date of adjournment, except on the date when his presence was dispensed with on applications filed under Section 317 Cr.P.C. It is contended that the petitioner did violate no condition imposed by the Court below, but the Court without considering various principles laid down by **M.D. Jindal v. Angad Paul & others¹**, **Noorjehan v. Moideen²** and **T.G.N. Kumar v. State of Kerala and others³** committed grave error in dismissing the applications and insisting the petitioner to appear before the Court below on every date of adjournment is violation of fundamental right guaranteed under Article 21 of the Constitution of India.

It is also specifically contended by the Learned Senior Counsel Sri S. Niranjan Reddy that petitioner opted politics as his profession and pursuing his profession, being a politician and President of Political Party i.e. Y.S.R. Congress Party to move from every corner of the State and also Leader of Opposition Party, he is

¹ ILR (2007) Supp. (12) Delhi 15

² 2001 (2) Crimes 194 (kerala)

³ (2011) 2 Supreme Court Cases 772

required to move to from every nook and corner of the State to discuss the public issues in the Legislative Assembly being Opposition Leader. If he is not allowed to interact with the public in various corners of the State of Andhra Pradesh, he would be failing to discharge his duties as an Opposition Leader in the Legislative Assembly of the State of Andhra Pradesh, which would have its own impact on the public and therefore, requested this Court to set-aside the orders passed by the Court below in Crl.M.Ps filed under Section 205 Cr.P.C referred in Crl.M.Ps referred in Column (B).

The learned Special Public Prosecutor for Central Bureau of Investigation Sri K. Surender argued totally in support of the orders under challenge and mainly contended that in serious crimes, the Court below cannot dispense with the appearance of the accused by passing a blanket order and thereby the order passed by the Trial Court is in accordance with law. That apart, Section 205 Cr.P.C is confined to summons cases, but not to the warrants cases, in view of the language used in Subsection (1) of Section 205 Cr.P.C to determine the cases registered against the petitioners are warrant cases, mostly grave economic offences which dent the economy of the State. In such case, the presence of the petitioner cannot be dispensed with on all dates of adjournment with blanket order and prayed to dismiss the criminal petitions confirming the orders passed by the Court below in Crl.M.Ps referred in Column (B) of the table.

Considering rival contentions and perusing the material available on record, the point that arose for consideration is as follows:

“Whether the appearance of the petitioner on all dates of adjournments in Crl.M.Ps filed under Section 205 Cr.P.C referred in Column (B) of the table be dispensed with, permitting his authorised advocate G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing of the cases on the ground that the petitioner is a President of Y.S.R. Congress Party and Leader of Opposition of Andhra Pradesh State Legislative Assembly, as he is involved in various political activities to serve the public.”

P O I N T

The present batch of criminal petitions are filed under Section 482 of Cr.P.C. In **Hamida v. Rashid alias Rasheed and Ors.**⁴, this Court held that it is well established principle that inherent power conferred on the High Courts under Section 482 Cr.P.C. has to be exercised sparingly with circumspection and in rare cases and that too to correct patent illegalities or when some miscarriage of justice is done. The content and scope of power under Section 482 Cr.P.C. were examined in considerable detail in **Madhu Limaye v. State of Maharashtra**⁵ and it was held as under:

The following principles may be stated in relation to the exercise of the inherent power of the High Court -

⁴ (2008) 1 SCC 474

⁵ 1978CriLJ165

- (1) That the power is not to be resorted to if there is a specific provision in the Code for the redress of the grievance of the aggrieved party;
- (2) That it should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure the ends of justice;
- (3) That it should not be exercised as against the express bar of law engrafted in any other provision of the Code.”

In view of the limited power, this Court has to examine the legality of the order passed by the Court below, keeping in mind the grounds urged before this Court in the present batch of criminal petitions. The main ground urged before the Court below and this Court is to dispense with the presence of the petitioner permitting his authorised advocate G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing the cases as the petitioner being a politician and President of Political Party i.e. Y.S.R. Congress Party to move to every corner of the State and also Leader of Opposition Leader, he is required to move to from every nook and corner of the State to discuss the public issues in the Legislative Assembly. If he is not allowed to interact with the public in various corners of the State of Andhra Pradesh, he would be failing to discharge his duties as an Opposition Leader in the Legislative Assembly of the State of Andhra Pradesh in Assembly Sessions, which would have its own impact on the public. It is an undisputed fact that the petitioner was elected as a Member of Legislative Assembly from Pulivendula Constituency from Y.S.R Kadapa District of the State of Andhra Pradesh. Apart from that, the petitioner is also President of Y.S.R. Congress Party and also

Leader of Opposition Party in the Andhra Pradesh Legislative Assembly. The petitioner occupied highest position in the political party as the President of Political Party and Leader of Opposition Party in the Andhra Pradesh Legislative Assembly. But, the status of the petitioner by itself is not a ground to dispense with his presence under Section 205 Cr.P.C.

In **Sushila Devi vs Sharda Devi**⁶ Madhya Pradesh High Court while dealing with question of status of the accused held as follows:

"Courts should be generous in exempting accused persons from personal appearance. Personal appearance is the Rule in criminal cases of a serious nature, involving moral turpitude and punishable with imprisonment for some length of time. On the other hand, where the offence is punishable with fine only, and involves no moral turpitude, the exemption should be the rule unless, of course, it is to the interest of the accused himself, in view of the question of identification, to appear in person. Whenever personal appearance is insisted upon, there is some harassment to the accused; the courts have to see that this harassment is not out of proportion to the seriousness of the allegations, the severity of the possible punishment on conviction; and the very nature of the allegations themselves as they stand out in the prima facie case. While no hard and fast rule can be laid down, courts are expected to exercise their discretion in this regard after seeing the full picture. Certain general criteria can also be indicated. For example other conditions being the same a pardanashin woman should, if possible, be spared the inconvenience and embarrassment of compulsory personal appearance. The next test will be a question of status; highly placed public functionaries, or very busy captains of industry and the like should not, unless the prima facie case is serious, be compelled to attend.....".

The same principle is reiterated by the Karnataka High Court in **Jagadguru Sachidanada Shankarabharati Swami of Sri Kudli Sringeri Mutt v. State of Mysore**⁷, held that status is irrelevant when accused is involved in serious and grave offence.

⁶ 1961 CriLJ 819

⁷ AIR 1969 Mysore 95

Therefore, persuaded by the judgments of both the High Courts in **Sushila Devi⁵** and **Jagadguru Sachidanada Shankarabharati Swami of Sri Kudli Sringeri Mutt⁶** cases, it is difficult to accept the contention of the petitioner that person of his status, he is entitled to claim exemption from his appearance based on status as Member of Legislative Assembly from Pulivendula Constituency and Leader of Opposition Party i.e Y.S.R. Congress Party.

Learned Senior Counsel Sri S. Niranjan Reddy, during hearing fairly conceded that the status of the accused is irrelevant consideration to exercise power under Section 205 Cr.P.C which is purely discretionary in nature. Therefore, the status of the petitioner as President of Y.S.R. Congress Party and also Leader of Opposition Party in the Andhra Pradesh Legislative Assembly are not a relevant consideration to exempt the petitioner from his appearance on the dates of adjournment before the Court.

The main contention of the learned Senior Counsel for the petitioner is that, if the Court insists the appearance of the petitioner on all dates of adjournment, the petitioner will be put to serious harassment and embarrassment and it effects his personal movements within the State, being President of Y.S.R. Congress Party and also Leader of Opposition Party in the Andhra Pradesh Legislative Assembly to meet the public and to raise the issues before the Assembly. No doubt, it would restrict the petitioner's movements on Friday of every week only when cases are taken up by the Court below and in rest of the days in the week, the

petitioner can interact with the public, so as to raise the public issues in the Assembly. Insistence of petitioner's appearance before the Court below would not infringe personal liberty guaranteed under Article 21 of the Constitution of India, since such liberty can be deprived by law. Appearance of the accused in criminal cases on the dates of adjournment is mandated by the procedure, unless his appearance is exempted by the Court by exercising power under Section 205 Cr.P.C or dispense with the petitioner's appearance on the dates of adjournment by exercising power under Section 317 Cr.P.C. When the law mandates appearance of the accused in cases like grave economic offences, it would not amount to infringement of fundamental right guaranteed under Article 21 of the Constitution of India.

Undoubtedly, it is the obligation of the petitioner in different capacities stated above to be in public life and to interact with the public and to raise public issues in the Andhra Pradesh State Assembly. But, that itself is not a ground to exempt the petitioner from his appearance before the Court, as he is required to appear before the Court on one day in a week i.e. on Friday, as per the allegations made in the petitions.

The learned Special Public Prosecutor for C.B.I mainly contended that Section 205 Cr.P.C is applicable only to summons cases, but not to warrant cases and thereby, the petitioner is disentitled to claim exemption from appearing before the Court. On the other hand, learned Senior Counsel Sri S. Niranjan Reddy contended that Section 205 Cr.P.C applies both to summons and

warrant cases and no distinction shall be drawn to apply the procedure under Section 205 Cr.P.C and placed reliance on several judgments in support of his contention.

No doubt, as seen from the language used in Section 205(1) Cr.P.C, it is clear that whenever a Magistrate issues summons and if he finds reasons, the Court can exempt the personal attendance of the accused and permit him to appear by his pleader. Clause (2) of Section 205 Cr.P.C says that the Magistrate inquiring into or trying the case direct the personal attendance of the accused and if necessary, enforce such attendance in the manner prescribed, in his discretion, at any stage of the proceedings. A bare look at Clause (2) of Section 205 Cr.P.C, it appears that it is applicable to summons procedure, but this is clarified by catena of decisions rendered by Apex Court this High Court and other High Courts.

In **M.D. Jindal¹** case, the single Judge of the Delhi High Court expressed his view that Section 205 of the Code makes no distinction between a summons case and a warrant case with regard to grant of exemption from personal appearances to an accused is concerned. The respondents urged that the principles and rules governing the grant of exemption from personal appearance remains the same in both kind of cases and there are numerous judicial precedents to support this contention. In fact, judicial precedents support the grant of exemption from personal appearances to an accused even in warrants cases provided the learned Magistrate is satisfied with the facts and circumstances of the case. They refer to the following decision **Ajit Chakraborty vs.**

Serampore Municipality⁸ , Shyam Prasad Reddy vs. State of AP⁹, Shivani Sadannad vs. State¹⁰, and Noorjahan vs. Moideen¹¹.

In **Dasari House of Publications Pvt. Ltd. vs. M/s. Apple Credit Corporation Ltd. Secunderabad & Anr¹²** the Court held that under Section 205 whenever a Magistrate issues summons to the accused, it can dispense with the presence and permit him to appear by his pleader. No further guidelines are mentioned under Section 205 and it is left to the discretion of the Magistrate to exercise his discretion judicially. Therefore, based on such conclusions, various High Courts are of the consistent view that Section 205 Cr.P.C can be invoked either in summons or in warrant cases and it is purely a discretionary power of the Magistrate.

In **Sheela Kumar W/o Arvind Prasad and Ors. vs. State of Bihar through Vigilance¹³**, the Patna High Court on analysing the entire law laid down in various judgments, reiterated the same principle and laid down certain guidelines as to when such power has to be exercised by the Magistrate. Therefore, the consistent view of various Courts is that, there is no distinction between warrant cases and summons cases to exercise jurisdiction of Section 205 Cr.P.C to exempt personal appearance of the accused before the Court below. In view of the law declared by the Patna

⁸ 1989 Cri L J 523

⁹ 1991 Cri L J 2299

¹⁰ 2002(62) DRJ 678

¹¹ 2001 (2) Cri 194 (Ker).

¹² 2002 Cri. L.J. 47551

¹³ 2009CriLJ2675

High Court, I find no substance in the contention of the learned Public Prosecutor for C.B.I.

In **Basavraj R. Patil vs. State of Karnataka**¹⁴, the Supreme Court had ruled that even statement of accused under Section 313 of the Code can be recorded, if the Circumstances so warrant, and exemption from appearance be granted to him, in any category of cases, including warrant cases. The decisions in **Ajit Chakraborty**⁷; **Shyam Prasad Reddy**⁸, **Shivani Sadanad**⁹ and **Dasari House of Publications**¹¹ support the wide and expensive nature of the power to grant personal exemption, provided the trial court exercises its discretion judiciously, having regard to the circumstances.

The next contention urged by the learned Senior Counsel is that, the petitioner has chosen politics as his profession and if he is insisted to appear before the Court, it would affect his political career and he will not be able to raise public issues being the Leader of Opposition in Assembly and as a President of Y.S.R. Congress Party. But, the learned Public Prosecutor for C.B.I refuted this contention on the ground that politics is not a profession and when the petitioner is required to appear before the Court only once in a week, he will not be deprived of his opportunity to interact with the public to raise public issues in the Assembly. Even otherwise, when the petitioner is allegedly guilty of serious of grave crimes, he is not entitled to seek exemption of his appearance before the Court in various cases referred supra. Though, learned Senior Counsel Sri S. Niranjan Reddy raised a

¹⁴ 2000 (8) SCC 740

strange contention that politics is a profession or an avocation and did not bring to the notice of this Court about any such concept. But, incidentally, I have come across a Division Bench judgment of Apex Court in **Commissioner of Expenditure Tax, Andhra Pradesh v. P.V.G. Raju**¹⁵, wherein, Justice V.R. Krishna Iyer while criticizing the politics, held as follows:

“There can hardly be any doubt that it is either, or both. Harold Laski treated politics as a science and wrote his well-known book on the Grammar Politics, but the art of politics at a practical level has also been the subject of comment and has been praised and denounced on the basis that it is a profession. To Gandhiji it is sacred as religion. In Lincoln it rises to noble height of statesmanship. Lenin, Nehru and a galaxy of other great vision arise and makers and moulders of the modern world have dedicated them selves to politics as a profession. Of course in its vulgar and vicious manifestations, this occupation has been regarded by literary giants like Dr. Johnson as the last refuge of a scendrai. Robert Louis Stevenson has used barbed words: 'Politics is perhaps the only profession for which no preparation is thought necessary (Familiar Studies of Man Books 'yoshida-Torajiro'). George Bernard Shaw uses stinging language in Major Barbara : 'He knows nothing ; and he thinks he knows everything. That points clearly to a political career'. It is thus clear, without reference to the wealth of case law relied on by the High Court, that politics has been a profession and, indeed, under modern conditions in India, perhaps the most popular and uninhibited occupation with its parils, of course. Law cannot take leave of realities and therefore, Section 5(a) must bear the construction that politics is a profession or occupation.”

While deciding the liability to pay tax on expenditure under Section 5, Expenditure Tax Act, 1958, the Apex Court in **Commissioner of Expenditure Tax**¹³ case was of the view that politics is a profession or avocation, as such contention of the learned Senior Counsel is not strange, but it is based on the law declared by the Apex Court.

Though the petitioner is a professional politician, he allegedly committed serious financial fraud amounting to crores of

¹⁵ [1975] 101 ITR 465 (SC)

rupees at the behest of political support and such person again intended to take advantage of his political career to claim exemption of his appearance before the Court on every date of adjournment in various cases referred above.

No doubt, the Court can exempt appearance of the accused by exercising discretionary power under Section 205 Cr.P.C, but such discretion has to be exercised by the Magistrate depending upon the circumstances without subjecting the accused to any unnecessary harassment. In **S.V. Muzumdar and others v. Gujarat State Fertilizer Co. Ltd and another**¹⁶, the Supreme Court held 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.

In **M/s. Bhaskar Industries Ltd. vs. M/s. Bhiwani Denim and Apparels Ltd. and ors.**¹⁷, the Supreme Court reiterated certain principles regarding exercise of discretion of Magistrate to dispense with appearance of the accused in paragraphs 17, 18 & 19, which are as follows:

“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, one 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

¹⁶ (2005) 4 Supreme Court Cases 173

¹⁷ AIR 2001 SC 3625

court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he 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 he 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, bogs 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.”

(emphasis supplied)

In **T.G.N. Kumar**³ case, the Supreme Court relying on **M/s. Bhaskar Industries Ltd.**¹⁵ and **Manoj Narain Agrawal v. Shashi Agrawal**¹⁸ held as follows:

“15.It is manifest from the afore extracted passage that dispensation with the personal examination of an accused in terms of the said provision is within the Trial Court's discretion, to be exercised keeping in view certain parameters, enumerated therein and not as a matter of course.

¹⁸ (2009) 6 SCC 385

16. It is true that in direction (vii) (supra), the learned Judge has clarified that the stipulations in the preceding paragraphs are not intended to fetter the discretion of the Court to follow any different procedure, if there be compelling need but the requirement of recording 'specific reasons' by the Magistrate for deviating from the directions given in the order, as stipulated in the same paragraph, in our view, is by itself tantamount to putting fetters on the jurisdiction of the Magistrate. This is not warranted in law.”
(emphasis supplied)

In view of the law declared by the Courts in various judgments, it is clear that the Court can exempt appearance of the accused in cases where the accused is involved in commission of minor offences, but in cases where the longer period of punishment is prescribed and serious offences, the Court cannot grant exemption to the accused from personal appearance by exercising discretion. Therefore, it is abundantly clear that in serious and grave offences, the Magistrate may put on guard to exercise such discretion to exempt the accused from personal appearance on the dates of adjournment in serious and grave crimes.

In **Sheela Kumar**¹² case, the Patna High Court laid down certain guidelines for exercise of such discretion which are enumerated as follows:

“The findings arrived at, after noticing various decisions and principles is summed up as follows:

(A) Where summon is issued at the first instance, whether it may be in summons case or warrant case, application under Section 205 of the Code can be allowed in categories as follows:

- i) If accused resides or carries on business at a far off place.
- ii) On account of physical reasons.
- iii) If insistence of his personal presence would implicit enormous suffering or tribulation on him and comparative advantage of disallowing such petition would be less.
- iv) Purdanashin women.
- v) Old and sick person.
- vi) Factory workers and labourers.

- vii) Busy business people or public functionaries.
- viii) Corporate employees.

(B) The aforesaid categories are illustrative and not exhaustive. The nature of allegation and conduct of accused would also be relevant consideration. However, in cases of serious and major offences, like rape, murder, dacoity, Arms Act etc. or offences involving moral turpitude and longer punishment, exemption under Section 205 of the Code ought not to be ordinarily granted. In case any time before arrest of a person pursuant to the execution of warrant, if summons is issued at first instance, application under Section 205 of the Code would be fully maintainable. Further more in case where summons are to be necessarily issued at the first instance, as it is desirable in summons case in view of Section 204(1)(a) and by mistake warrant has been issued, application under Section 205 of the Code cannot be disallowed on the ground that warrant has been issued at the first instance.

(C) High Court in exercise of power under Section 482, Cr.P.C. can even consider the plea of an accused for dispensing with his personal attendance as provided in Section 205(1), Cr.P.C, even in cases warrant has been issued at the first instance in place of summons. In summons cases the Court should be more liberal in granting exemption under Section 205 of the Code in comparison to warrant cases as the offence in the former cases are less severe and involve lesser punishment (below two years) in comparison to warrant cases defined in Section 2(x) and covers offences for which punishment may range from 2 years up to death.”

(emphasis supplied)

The same view was expressed in **S.V. Muzumdar and others**¹⁴ case also.

Therefore, in serious and grave offences, the Court shall not ordinarily grant exemption to the accused from appearance before the Court as a matter of course and exercise its discretion. At the same time, when the accused committed a serious offence, which dent the economy of the State itself, he must be examined before the Court under Section 313 Cr.P.C.

In **M.D. Jindal**¹ case, in paragraph 23 of the said judgment, the Delhi High Court considered the possibility of the accused residing far away, in foreign lands and held that the Court can exercise discretion at any stage of the proceedings and grant

exemption from personal appearance before the Court on every date of adjournment. Therefore, the law is clear that the accused can be exempted in less serious offences, but not to the offences of longer period of punishment is prescribed or if the offences are of serve nature involving moral turpitude, the presence of the accused shall be insisted, the presence of the accused dispensed with ordinarily by exercising judicial discretion under Section 205 Cr.P.C.

There is no straight jacket formula to decide which is grave and serious crime to exercise judicial discretion by the Magistrate under Section 205 Cr.P.C. Since the petitioner allegedly committed serious financial fraud amounting to crores of rupees, at the behest of politicians, such case can be treated as grave and serious offence.

The Supreme Court in the case of the same petitioner in **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation**¹⁹ held that Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

Thus, the Apex Court itself has described the offences committed by the petitioner as grave offences causing dent to the economy of State and affecting the economy of the country. Grave

¹⁹ AIR 2013 SC 1933

economic offences, for that matter the offence causing dent to the economy of the country can be classified as serious and grave offences and the Court would not normally exercise its discretion to dispense with the appearance of the accused under Section 205 Cr.P.C.

One of the reasons recorded by the Court below to reject the request of the petitioner is that the petitioner filed Crl.M.P.No.2323 of 2015 in Crl.M.P.No.1388 of 2013 in C.C.No.8 of 2012 before the Principal Special Judge for CBI Cases, Hyderabad for relaxation of conditions (iii) & (iv). The Court below allowed the said application and relaxed condition no.(iii) vide order dated 11.12.2015, while modifying relaxation no.(iv). On the basis of the order in Crl.M.P.No.1388 of 2015, the petitioner filed Crl.M.Ps referred in Column (B) in respective calendar cases mentioned in Column (C) in the table. Thereupon, the Court below refused to exercise discretion of permitting the petitioner's advocate to appear on his behalf permanently on all the dates of hearing the case and dismissed all the Crl.M.Ps referred in Column (B).

Learned Senior Counsel Sri S. Niranjan Reddy contended that, insisting the petitioner to appear before the Court on every date of adjournment is nothing but harassment to the petitioner, who being the Leader of Opposition Party in A.P. State Legislative Assembly and President of Y.S.R. Congress Party. Undoubtedly, though the petitioner is elected as Member of Legislative Assembly from Pulivendula Constituency, Y.S.R Kadapa District, it appears in the cause-titles of the above petitions that the petitioner is ordinarily a resident of Hyderabad City for the last few years.

Moreover, after registration of crimes and enlarging him on bail, the petitioner is able to pursue his political career moving from one corner of the State of Andhra Pradesh to another to interact with the public of the State. Despite subsisting condition imposed on the petitioner to appear before the Court, the petitioner filed petitions under Section 317 Cr.P.C and obtained exemptions on the date of adjournments on several occasions. No occasion was brought to the notice of this Court where the Court below dismissed applications filed for dispensing with the petitioner's personal appearance. But, a specific cause is suddenly invented after four years to exempt him to undertake Padayatra in the State as a President of Y.S.R. Congress Party.

No doubt, the petitioner is entitled to pursue his political career as he has chosen politics as his profession or avocation. But, on the alleged reason of pursuing his political career, the petitioner cannot avoid appearance before the Court on the dates of adjournment. The petitioner is required to appear before the Court on the date of adjournment only once a week i.e. on Friday, on all other days including Sunday, the petitioner can conveniently pursue his politics without any holiday. Moreover, the petitioner and the other accused for one reason or other are causing hurdles to the Court below from proceeding further and latches or delay in dispensation of justice is not on the part of the Court, but the delay is attributable to the petitioner due to filing of successive applications under different provisions of law, one after the other, either by the petitioner or the co-accused in different Courts, and obtaining interim orders. If the delay is on the part of the Court,

there is some justification to lament the Court for non-disposal of the case and keeping the matter pending for many years. But, when the delay is attributable to the petitioner/accused in all the cases, the petitioner by taking advantage of such delay cannot claim exemption of his appearance who involved in serious and grave financial fraud which dent the financial health of the entire country. Therefore, appearance of the petitioner cannot be exempted in view of the gravity and seriousness of the economic fraud involving crores of rupees.

The long line of perspective pronouncements of Apex Court, this Court and other High Courts made clear that the power of Magistrate under Section 205 Cr.P.C is purely discretionary in nature and such power has to be exercised judiciously and when the Magistrate is alone competent to exercise his judicial discretion recording specific reasons for deviating the normal procedure, such power has to be exercised sparingly under Section 205 Cr.P.C.

In **T.G.N. Kumar³** case, the Supreme Court held that on the plain language of Section 313, it is evident that in a summons case, when the personal appearance of the accused has been dispensed with under Section 205 of the Code, a discretion is vested in the Magistrate to dispense with the rigour of personal examination of the accused under Section 313 of the Code as well. Therefore, on analysis of entire law laid down by various Courts, the discretion is totally vested with the Magistrate to dispense with the appearance of the accused and the Court must also see that such exemption shall not be misused. When the Magistrate feels that dispensing with the personal attendance of the accused would

only be in the interest of justice, he may exercise such discretion under Section 205 Cr.P.C judiciously and he must also take necessary precautions enumerated that such exemption shall not be misused and protract the proceedings without any reason.

While deciding applications under Section 205 Cr.P.C for the offences punishable under Section 138 of Negotiable Instruments Act, the Apex Court laid down certain guidelines which are not serious and grave offences. Therefore, those principles cannot be applied to the present facts of the case, since the offences committed by the petitioner are grave and serious in nature, as observed by the Apex Court in petitioner's own case in **Y. S. Jagan Mohan Reddy**¹⁸ case. Hence, I am of the opinion that the Court below while exercising original jurisdiction rightly exercised its discretion to decline permission to the petitioner's advocate to appear on his behalf permanently on all the dates of hearing the case exempting personal appearance of the petitioner and such discretionary order cannot be interfered with by this Court while exercising power under Section 482 Cr.P.C

In view of my foregoing discussion, I find that the Court below did commit no error in dismissing Crl.M.P.s mentioned in column (C), warranting interference of this Court by exercising jurisdiction under Section 482 Cr.P.C, since the petitioner allegedly committed grave and serious economic offences and the possibility of the petitioner misusing such exemption, if granted, cannot be ruled out on account of involvement political activities like taking up Padayatra etc.

In the result, all the criminal petitions are dismissed.

Consequently, miscellaneous applications pending if any, shall also stand dismissed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Date:31.08.2017
SP

