

CRM-M-25652-2017

Date of Decision : 09.08.2017

Kunal Nayyar and another

.....Petitioners

versus

State of Punjab

....Respondent

CORAM : HON'BLE MRS. JUSTICE LISA GILL**Present:** Mr. Parminder Singh, Advocate
for the petitioners.**LISA GILL, JUDGE (ORAL)**

The petitioners prays for setting aside order dated 24.05.2017 Annexure P-8 passed by the learned Judicial Magistrate 1st Class, Ludhiana whereby application under Section 205 Cr.P.C moved by the petitioners, seeking permanent exemption from appearance, has been dismissed.

As per the application Annexure P-6, it is mentioned that petitioner No.1 was serving M/s Bernhard Schulte Ship Management Company till August, 2015. He is facing extreme financial hardship and he is to seek employment which is for a period of six months in a year as the said petitioner was working in the Merchant Navy. It is stated that petitioner No.2 is a senior citizen suffering from hypertension and diabetes and is thus unable to travel from Ambala which is at a distance from 105 kms. The said application was dismissed by the learned trial Court while observing that contention of petitioner No.1 that he is working with M/s Bernhard Schulte Ship Management Company and was not allowed to leave the place of job is not substantiated by any document on record. Neither has any medical evidence been placed on record to indicate that petitioner No.2 is unable to

travel because of hypertension and diabetes.

Learned counsel for the petitioners submits that petitioner No.1 is working in the Merchant Navy. He is required to be on the Ship for a few months at a time. In case, exemption from personal appearance is not afforded for a particular period, his livelihood shall be in jeopardy. Therefore, the learned trial Court vide impugned order dated 24.05.2017 (Annexure P-8) has wrongly declined the benefit of permanent exemption from personal appearance.

I have heard learned counsel for the petitioners and have gone through the file with his able assistance.

It is to be noted that the learned trial Court has observed that no document has been placed on record to show that the petitioner No.1 is not allowed to leave the place of his job. In this situation, the learned trial Court declined to permanently exempt personal appearance of petitioner No.1. It is fairly stated by learned counsel for the petitioner that no schedule was submitted before the learned trial Court wherein the petitioner is required to be on the Ship for the purpose of his employment.

In respect of petitioner No.2, it is mentioned that there is no medical evidence on record to prove any kind of disability suffered by her which prevents her from attending the Court proceedings. It is not disputed by learned counsel that there is no medical evidence on record which would entitle petitioner No.2 to permanent exemption of personal appearance in the present matter. No such document indicating the medical condition of petitioner No.2 has even been placed on record of the present petition neither

has such a document been referred to during arguments as well.

Keeping in view the facts and circumstances of the case, it is considered just and expedient to dispose of this petition with the observation that in case petitioner No.1 moves an appropriate application before the learned trial Court giving the details of the period during which he is required to be at sea/ship, the learned trial Court shall consider the matter for exemption of the said petitioner from personal appearance for this period in accordance with law. In case, petitioner No.2 is indeed suffering from any particular ailment which prevents her from appearance on a particular date and she moves an appropriate application at a particular point of time, the learned trial Court would consider such application moved by her in accordance with law.

Petition is accordingly disposed of.

(LISA GILL)
JUDGE

09.08.2017

Neha

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No