

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CRIMINAL PETITION No.1813 OF 2018

ORDER:

This Criminal Petition, under Section 482 of Cr.P.C., is filed by the petitioner-A.3 seeking to quash the order dated 29.12.2017 passed in CrI.M.P. No.1894 of 2017 in Sessions Case No.2 of 2017 on the file of the Principal Special Judge for C.B.I. Cases at Hyderabad, and allow the said CrI.M.P. No.1894 of 2017 by dispensing with the personal attendance of the petitioner-A.3 and allowing the appearance of the special vakalat holder in terms of Section 205 Cr.P.C.

2. Heard Sri T.Niranjan Reddy, learned senior counsel representing Sri Challa Gunaranjan, learned counsel for the petitioner-A.3 and the learned Additional Public Prosecutor appearing for the respondent-State, apart from perusing the material available on record.

3. It has been contended on behalf of the petitioner-A.3 that the Court below erred in dismissing CrI.M.P. No.1894 of 2017 in S.C. No.2 of 2017, *vide* orders dated 29.12.2017, wherein the petitioner-A.3 was seeking permission in terms of Section 205 Cr.P.C. to be represented by a special vakalat holder; the Court below failed to exercise the discretion vested and the petition ought to have been allowed; the petitioner-A.3 is 72 years old, a resident of Chennai and he is holding various positions in 12 companies and he has business in different parts of India; the offences alleged in Sessions Case No.2 of 2017 are not sustainable; merely because the offences alleged under the Prevention of Money Laundering Act are triable by the Court of Session, *ipso facto*, would not render the offences grave in nature and the test for determining the severity of offences depends on the quantum of sentence for the alleged offences

and not the Court which conducts the trial for the offence under Section 4 of the Prevention of Money Laundering Act, 2002, the punishment prescribed is imprisonment extendable upto 7 years, so it cannot be held that the offences alleged are serious in nature; the Court below failed to apply the principles laid down in various judgments and the approach of the Court below is erroneous; and ultimately, prayed to allow the application as prayed for. In support of his contentions, learned counsel for the petitioner-A.3 has relied on the following decisions:

- (1) **A.R. Antulay v. Ramdas Srinivas Nayak and another**¹;
- (2) **Sheila Kaul, through Deepa Kaul, v. State, through Central Bureau of Investigation**²;
- (3) **Bangaru Laxman v. State (Through CBI) and another**³;
- (4) **Nikesh Tarachand Shah v. Union of India and another**⁴;

4. On the other hand, learned Additional Public Prosecutor opposed the relief sought for by the petitioner-A.3.

5. In view of the contentions putforth by both sides, the point for determination is, whether the request of the petitioner-A.3 can be acceded to?

6. It is apt to extract the provisions of Section 205 Cr.P.C. as hereunder:

"Section 205. Magistrate may dispense with personal attendance of accused:

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

¹ (1984) 2 SCC 500

² (2014) 12 SCC 453

³ (2012) 1 SCC 500

⁴ Decided on 23.11.2017 by the Apex Court in Writ Petition (Criminal) No.67 of 2017

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and if necessary, enforce such attendance in a manner hereinbefore provided."

7. As seen from the record, the circumstances under which the application is filed would not make a rare case. Age factor and the pre-occupation of the petitioner-A.3 also cannot be a ground to allow the application. In the event of the petitioner-A.3 busy on any particular day, there is remedy available to him under the Code of Criminal Procedure to dispense with the personal attendance on that particular day. Moreover, the offences alleged against the petitioner-A.3 are not triable by Magistrate and they are triable by a Court of Session as per the procedure contemplated in the provisions of Sections 225 to 237 Cr.P.C. The petitioner-A.3 is facing trial before a Court of Session. Section 205 Cr.P.C. enables the Magistrate to dispense with the personal attendance of accused in a summons case. Under the Code of Criminal Procedure, 1973, there are two types of trials, viz., Magisterial trial and Sessions trial, depending on the gravity of the offences and the punishment prescribed therefor. The Court competent has to try and dispose of the case. The first schedule to the Cr.P.C. is divided into two parts, viz., Part I and Part II. Column I of the first part of the first schedule enumerates the list of the offences punishable under the Indian Penal Code and Column 6 thereof indicates the Court by which those offences are triable. Those Courts are either the Magistrate's Courts or the Courts of Session. A summons case is defined under Section 2(w) Cr.P.C. as "Summons Case", means a case relating to an offence and not being a warrant case. A warrant case is defined under Section 2(x) Cr.P.C. as "Warrant Case", means a case relating to an offence punishable with death, imprisonment for life or

imprisonment for a term exceeding two years. The instant case is a warrant case. Both the procedures to try the summons case as well as warrant case are distinct. The language of Section 205 Cr.P.C. is very clear. The mandate given under Section 205 Cr.P.C. would not extend to the Court of Session trying warrant cases. The provisions of Section 205 Cr.P.C. would not enable the Court of Session to allow the accused to be represented by a special vakalat holder. The decisions relied on by the learned senior counsel for the petitioner-A.3 have no direct application to the facts and circumstances of the present case. Further, those decisions do not relate to the provisions of Section 205 Cr.P.C. The Court below while dealing with the subject matter, had elaborately dealt all the contentions raised on behalf of the petitioner-A.3. There is no infirmity in the impugned order. There are no circumstances to consider the request of the petitioner-A.3. The petition is devoid of merit and it is liable to be dismissed.

8. Accordingly, the Criminal Petition is dismissed. Miscellaneous petitions, if any pending in this Criminal Petition, shall stand closed.

Dr. SHAMEEM AKTHER, J

Date:14-03-2018

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