

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL PETITION No.3880 OF 2016

ORDER:

This criminal petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the order dated 08.03.2016 passed in CrI.M.P.No.2473 of 2015 in C.C.No.12 of 2013 by the Principal Special Judge for CBI Cases, Hyderabad, whereby the petition filed under Section 205 of Cr.P.C. by accused No.3 in C.C.No.12 of 2013, was dismissed.

The petitioner herein is accused No.3 in the above C.C.No.12 of 2013, registered for the offence punishable under Sections 120-B, read with 420 and 409 of Indian Penal Code (for short "I.P.C.") and under Section 9, 12, 13 (2) read with 13 (1) (c) and (d) of Prevention of Corruption Act (for short "P.C.Act"). The petitioner filed the petition under Section 205 of Cr.P.C. to dispense with his appearance before the Court on all dates of adjournments permitting his counsel Sri Bharadwaj Reddy to appear on his behalf, on the sole ground that the petitioner is a Director on the Boards of several companies, as such he is preoccupied with management and attending day to day affairs on account of business exigencies of the companies. Apart from that he is required to travel from Delhi to appear before the Court at Hyderabad on every Friday spending not less than two days. On account of posting C.C.No.12 of 2013 on every Friday, the petitioner has been facing undue hardship in meeting his business commitments, in addition to continuous financial loss caused to him. Hence, the petitioner requested to dispense with his appearance permitting his counsel Sri Bharadwaj Reddy to appear

on his behalf.

The respondent – Central Bureau of Investigation (for short “C.B.I.”) filed counter denying material allegations inter alia contending that Sri Puneet Dalmia (accused No.3) of M/s. Dalmia Cement (Bharat) Limited (accused No.12) conspired with Sajjala Diwakar Reddy (accused No.7) promoter of M/s. Eswar Cements Private Limited (accused No.13) entered into Memorandum of Understanding (for short “MOU”) with a condition that M/s.Eswar Cements Private Limited (accused No.13) could acquire prospecting licence/Mining lease in favour of M/s.Eswar Cements Private Limited (accused No.13) and to facilitate transfer to M/s.Dalmia Cement (Bharat) limited (accused No.12) paving the way for M/s. Dalmia Cement (Bharat) Limited (accused No.12) for establishment of a cement unit in Andhra Pradesh by back door entry.

The petitioner/accused No.3 herein being the Managing Director of M/s Dalmia Cement (Bharat) Limited (accused No.12) in furtherance of criminal conspiracy with Sri Y.S.Jagan Mohan Reddy (accused No.1), Director, M/s.Raghuram Cements (accused No.11) entered into a share subscription agreement on 29.03.2007 and paid initially Rs.20 crores towards illegal gratification in the form of investments a few days after issue of G.O.Ms.No.346, dated 27.12.2006 transferring the prospecting licence. Thereafter, M/s Dalmia Cement (Bharat) Limited (accused No.12) paid a further sum of Rs.75 crores to M/s.Raghuram Cements Limited (accused No.11), as a *quid-pro-quo*, M/s.Dalmia Cement (Bharat) Limited (accused No.12) got the mining lease transferred in its favour, which was obtained from the Government of Andhra Pradesh.,

circumventing the guidelines already issued, by using the influence and office of his father Sri Y.S.Rajasekhar Reddy, the then Chief Minister of Andhra Pradesh.

The petitioner/accused No.3 herein paid an illegal gratification to the tune of Rs.95 crores to Sri Y.S.Jagan Mohan Reddy (accused No.1). Dr.Y.S.Rajasekhara Reddy, the then Chief Minister and his son Y.S.Jagan Mohan Reddy (accused No.1) attended the foundation stone laying function of M/s.Dalmia Cement Factory on 20.04.2007 at Jammalamadugu and assured M/s.Dalmia Cement (Bharat) Limited (accused No.12) to extend all help.

The petitioner/accused No.3 herein in furtherance of the criminal conspiracy and as per the pre-arranged agreement with Sri Y.S.Jagan Mohan Reddy (accused No.1) and Sri V.Vijay Sai Reddy (accused No.2) and other accused, returned part of the net sale proceeds amounting to Rs.55 crores, in cash and through hawala channels out of Rs.139 crores received from the sale of shares of M/s.Raghuram Cements Limited (accused No.11) which clearly indicates the fact that the said payment was nothing but illegal gratification paid under the guise of investment.

In view of the allegations referred above, the petitioner allegedly committed grave economic offence punishable under Section 120-B of I.P.C. read with 420 of I.P.C. and Section 12 of Prevention of Corruption Act.

After completion of investigation, C.B.I. filed charge sheet against the petitioner herein and other accused for various offences referred supra.

It is further alleged in the counter the ground on which the petitioner sought for relief to dispense with his appearance on account of business commitments and pre-occupation in connection with his business activities and inconvenience being caused to the petitioner to appear before the Court, is not at all a ground and prayed to dismiss the petition.

Upon hearing argument of both the counsel, the Principal Special Judge for CBI Cases, Hyderabad dismissed the petition on various grounds.

Aggrieved by the order passed by the Principal Special Judge for CBI Cases, Hyderabad, the petitioner preferred the present petition on the same grounds while contending that the petitioner gave consent that he will not claim or set up defence that the evidence is recorded in his absence, in the event of passing order in his favour and that his appearance before the Court on every Friday is useless effort made by him and that he is incurring huge expenditure to attend the Court on every date of adjournment besides loss of two days time and thereby causing much inconvenience in participating in his business affairs being the director of various companies. But the trial Court did not consider the purpose of appearance before the Court and the inconvenience being caused to the petitioner due to appearance before the Court on every Friday besides financial loss and loss of man-hours and requested to allow the petition setting aside the order passed by the Court below.

During hearing, Sri D.Prakash Reddy, learned Senior Counsel for the petitioner contended that appearance before the

Court, when several petitions are pending for adjudication before the Court would not serve any purpose and insisting the petitioner to appear on every date of adjournment is nothing but causing inconvenience to the petitioner and that the petitioner assured that he will not set up any plea that the evidence was recorded in his absence in contravention of provisions of Cr.P.C. and that the petitioner is ready to execute any bond for his appearance whenever directed by the Court in connection with the trial of the case. He also reiterated the grounds urged in the petition, more particularly inconvenience being caused to the petitioner and financial loss etc., and requested this Court to quash the order and pass an order dispensing with his appearance on every date of adjournment authorizing Sri Bharadwaj Reddy to represent him before the Court and allow the petition.

Sri K.Surender, learned Special Public Prosecutor for CBI would contend that a similar application was filed by accused No.1 in C.C.No.12 of 2013 in Crl.M.P.No.1305 of 2016, which was the subject matter of Crl.P.No.7479 of 2017 and this Court by order dated 31.08.2017 passed a detailed order and in view of the order passed by this Court the appearance of the petitioner cannot be dispensed with and prayed to confirm the order passed by the Principal Special Judge for CBI Cases and dismiss the petition.

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 C.C.No.12 of 2013 be dispensed with, permitting his authorised advocate Bharadwaj Reddy to

appear on his behalf permanently on all the dates of hearing of the case on the ground that he is a Director of various companies and that he is facing financial difficulty besides loss of man hours?”

P O I N T

The present criminal petition is filed under Section 482 of Cr.P.C. In “***Hamida v. Rashid alias Rasheed***¹”, the Apex 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***²” 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 -

- (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 criminal petition. The main ground urged before the Court below and this Court is to dispense with appearance of the petitioner permitting his authorised advocate Bharadwaj Reddy to appear on his behalf

¹ (2008) 1 SCC 474

² 1978CriLJ165

permanently on all the dates of hearing the case, as the petitioner being a businessman and as a director of various companies, he has to visit various places to perform his day to day duties, hence he is unable to appear before the Court on every Friday and due to his appearance before the Court on every Friday, he is loosing concentration in business activities besides spending huge amount to undertake journey from Delhi to Hyderabad and apart from that no purpose is served by attending the Court on every Friday.

No doubt, appearance before the Court on every date of adjournment may cause inconvenience to the petitioner. But the petitioner can file an application under Section 317 of Cr.P.C. to dispense with his appearance on the date of adjournment, instead of filing such application under Section 317 of Cr.P.C. to condone the absence of the petitioner on the particular date of adjournment, he filed petition under Section 205 of Cr.P.C. to avoid his appearance before the Court authorizing his Counsel Sri Bharadwaj Reddy to appear on all date of adjournment and the petitioner is ready to file undertaking that he will not set up any defence that the evidence was not recorded in his presence and that he will appear before the trial Court as and when directed, but the attributions against the petitioner are serious in nature i.e. bribing accused No.1 and his father allegedly for transferring mining licence by corrupt practices and the total amount allegedly bribed is Rs.20 crores, later Rs.70 crores etc., and the total amount is about Rs.139 crores so as to establish the cement factory at Andhra Pradesh by backdoor methods. When the offences allegedly committed by the petitioner are serious in nature causing dent to the economy of the State itself, the trial Court

normally would not exercise power under Section 205 of Cr.P.C. to dispense with the appearance of the petitioner on all dates of adjournments.

Learned Senior counsel for the petitioner would contend that the Court can dispense with the appearance during trial or enquiry while permitting the accused to be represented by his authorized advocate by exercising power under Section 205 of Cr.P.C., and strange argument is advanced in addition to the above argument that instead of filing petition under Section 317 of Cr.P.C., the petitioner filed petition under Section 205 of Cr.P.C. Therefore, quoting wrong provision of law is not a ground to dismiss the petition, if the petitioner is entitled to claim relief in a petition filed under Section 205 of Cr.P.C. But this contention cannot be accepted for the simple reason that there is lot of distinction between Section 317 of Cr.P.C. and Section 205 of Cr.P.C. Under Section 317 of Cr.P.C., the absence of the petitioner can be condoned either during trial or enquiry, but power under Section 205 of Cr.P.C. can be exercised only to dispense with the appearance of the petitioner during trial/enquiry by the Judge/Magistrate if he is represented by Counsel duly authorized by the petitioner. In a petition filed under Section 317 of Cr.P.C. no such advocate need to represent the accused. The power conferred on the Court under Section 205 of Cr.P.C. is in the nature of special vakalat to represent the petitioner/accused and the Counsel can answer to the questions put to him including his examination, so also examination under Section 313 of Cr.P.C., whereas under Section 317 of Cr.P.C. no such permission can be granted except to condone the absence on particular date, during

trial or enquiry. Therefore, the petition filed before the trial Court virtually a petition under Section 205 of Cr.P.C. to represent the petitioner by Special Vakalat holder Bharadwaj Reddy on all dates of adjournments during trial or enquiry. Therefore, the argument advanced by Senior Counsel is without any force. On that ground, the petition cannot be allowed treating the same as petition filed under Section 317 of Cr.P.C.

Learned Senior Counsel would draw the attention of this Court to a judgment of High Court of New Delhi and this Court in support of his contentions. In “Shri Chandramauli Prasad v. State of Delhi” (unreported judgment in Crl.M.C.No.1303 of 2008 dated 03.07.2008) the High Court of Delhi discussed the philosophy under Section 205 of Cr.P.C. and Section 317 of Cr.P.C. In the said judgment, the High Court of Delhi referred judgments in “**Basil Ranger Lawrance v. Emperor**”³ and also another judgment in “**Sultan Singh Jain v. The State**”⁴ with reference to pre-amended Cr.P.C. i.e. Section 540A of Cr.P.C. equivalent to Section 205 of Cr.P.C. and concluded that the Court can exercise such power under Section 205 of Cr.P.C. to dispense with the appearance of the accused on every date of adjournment and the power is purely discretionary in nature. Even in “**Basil Ranger Lawrance v. Emperor**” (referred supra) the Court observed that “it is an essential principle of our criminal law that the trial of an indictable offence has to be conducted in the presence of the accused; and for this purpose trial means the whole of the proceedings, including sentence, There is authority for saying that in cases of

³ AIR (20) 1933 PC 218

⁴ AIR 1951 ALL 864 (FB)

misdemeanour there may be special circumstances which permit a trial in the absence of the accused, but on trials for felony the rule is inviolable unless possibly the violent conduct of the accused himself renders it lawful to continue in his absence." Similarly in "**Sultan Singh Jain v. The State**" (referred supra), the Court made the following observation:

"There is no section in the Criminal Procedure Code which provides that the accused must be present at every hearing of the case, though there are several sections in the Code which show that the presence of the accused at certain stages of the proceedings is specifically provided for. It is, however, one of the vital principles of the administration of criminal justice, which is universally acknowledged, that in a criminal trial the Court should not proceed ex parte against an accused person."

It is further held that while, therefore, it cannot be denied that the presence of the accused at the trial is necessary, the Code itself shows that the trial Court has **discretion** in certain circumstances to exempt the personal attendance of the accused. There is no specific section to that effect except Section 205 of Cr.P.C., but it is implied in some of the other sections in the Code. For example, Section 353 of Cr.P.C. provides for recording of evidence in the presence of the accused.

Therefore, on the strength of the principle laid down in the above judgments, the learned Senior Counsel for the petitioner contended that the Court below did not exercise its discretion, which vested on it by Section 205 of Cr.P.C. and when the Court failed to exercise discretion, this Court while exercising power under Section 482 of Cr.P.C. can interfere with such order and pass appropriate order.

In “**Robin Paul v. Mr.G.K.Roy and another**⁵” the High Court of Calcutta held as follows:

“It is true the case in connection with which the petitioner is seeking exemption at the stage of his examination under section 313 of the Code of Criminal Procedure, relates to a case punishable with imprisonment for a term which may extend upto 3 years and is a warrant case and not a summons case. Therefore, his personal examination under section 313 of the Code cannot be dispensed with nor the accused be permitted to be examined through his learned lawyer, even when his personal attendance during the trial has been dispensed with by the Court earlier. Admittedly, in this case the accused was never enjoying any exemption under section 205 of the Code. However, the accused has sought for such exemption at the stage of his examination under section 313 of the Code on the ground that he was seriously ill having suffered a massive attack of Cerebro vascular stroke with right side hemi paresis and as a result he has been lying completely bed ridden due to paralysis. The necessary medical papers in support of such claim have been filed with this criminal revision and the authenticity of the same has not been disputed by the learned advocate of the State. I have no reason to doubt the genuineness of the statement of the accused as to his illness. Thus, indisputably if the accused is now insisted to be present in Court for his examination under section 313 of the Code of Criminal Procedure by undertaking a long journey from his present place of residence at Kolkata to Jalpaiguri, obviously that would cause enormous hardship to him and might be a serious threat to his health. In this connection it would be more apposite to refer to the decision of the Hon'ble Supreme Court in the case of Keya Mukherjee v. Magma Leasing Limited and another (2008) 2 C Cr LR (SC) 646 where the Apex Court held as follows;

Thus it is well settled that the provision is mainly intended to benefit the accused and as its corollary to benefit the Court in reaching the final conclusion.”

In addition to the above two judgments of other High Courts, this Court in Crl.R.C.No.2337 of 2015 in C.C.No.26 of 2014 on the file of Principal Special Judge for CBI Cases while exercising power

⁵ 2010 (125) FLR 556

under Section 317 (1) of Cr.P.C. dispensed with the appearance of the petitioner therein making observation that the appearance of the petitioner would not serve any purpose on every date of adjournment.

In “**Sri Rameshwar Yadav v. The State of Bihar**⁶” the Apex Court in a similar situation while dealing with a petition filed by a businessman, who has to travel long distance more than 1700 kms, sought for exemption from appearing before the Court by filing an application under Section 205 of Cr.P.C. in a case registered for the offence punishable under Section 498-A of I.P.C. and under 4 of Dowry Prohibition Act, held that grant of exemption from personal appearance in Court on each and every date was required to be considered in view of fact that application was filed much before their appearance in Court and finally granted exemption.

In “**Sushila Devi vs Sharda Devi**⁷” 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

⁶ AIR2018SC1435

⁷ 1961 CriLJ 819

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 Mysore⁸**", held that status is irrelevant when accused is involved in serious and grave offence.

Therefore, persuaded by the judgments of both the High Courts in **Sushila Devi** and **Jagadguru Sachidanada Shankarabharati Swami of Sri Kudli Sringeri Mutt** cases (referred supra), it is difficult to accept the contention of the petitioner that by virtue of his status, he is entitled to claim exemption from his appearance

This Court in Crl.P.No.7446 of 2017 and batch decided identical question in a petition filed by accused No.1 in the same C.C.No.12 of 2013, dismissed the petition taking into consideration of gravity and seriousness of the offences.

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 business activities, being the director of various companies. 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 on rest of the days in the week, the petitioner can undertake his business

⁸ AIR 1969 Mysore 95

activities. 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 to participate in business activities being the director of various companies. 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 D.Prakash 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.

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. Jindal v. Angad Paul & others***”⁹ the single Judge of the Delhi High Court expressed his view that Section 205 of Cr.P.C. 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 appearance to an accused even in warrants cases provided the learned Magistrate is satisfied with the reason for his inability to appear before the Court and circumstances of the case. In the said judgment, Delhi High Court referred the decision “***Ajit Chakraborty vs. Serampore Municipality***”¹⁰, “***Shyam Prasad Reddy vs. State of***

⁹ ILR (2007) Supp. (12) Delhi 15

¹⁰ 1989 Cri L J 523

AP¹¹, ***“Shivani Sadannad vs. State¹²”*** and ***“Noorjahan vs. Moideen¹³”***.

In ***“Dasari House of Publications Pvt. Ltd. vs. M/s. Apple Credit Corporation Ltd. Secunderabad & Anr¹⁴”*** the Court held that under Section 205 whenever a Magistrate issues summons to the accused, it can dispense with the personal appearance 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 Vigilance¹⁵”***, 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 High Court, I find no substance in the contention of the learned Public Prosecutor for C.B.I.

¹¹ 1991 Cri L J 2299

¹² 2002(62) DRJ 678

¹³ 2001 (2) Cri 194 (Ker).

¹⁴ 2002 Cri. L.J. 47551

¹⁵ 2009CriLJ2675

In “**Basavraj R. Patil vs. State of Karnataka**¹⁶”, 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, Shyam Prasad Reddy, Shivani Sadanad and Dasari House of Publications (referred supra)** 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.

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 “**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:

“17. 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 court that he would not dispute his identity as the particular accused in the case, and that a

¹⁶ 2000 (8) SCC 740

¹⁷ AIR 2001 SC 3625

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 v. State of Kerala and others***¹⁸”, the Supreme Court relying on ***M/s. Bhaskar Industries Ltd.*** (referred supra) and “***Manoj Narain Agrawal v. Shashi Agrawal***¹⁹” 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.

16. It is true that in direction (vii) (supra), the learned Judge has clarified that the stipulations in the preceding

¹⁸ (2011) 2 Supreme Court Cases 772

¹⁹ (2009) 6 SCC 385

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** case (referred supra), 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** (referred supra) 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** case (referred supra), 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 “**Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation**²⁰” 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 accused No.1 therein as grave offences causing dent to the economy of State and affecting the economy of the country. Grave 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

²⁰ AIR 2013 SC 1933

exercise its discretion to dispense with the appearance of the accused under Section 205 of Cr.P.C.

Learned Senior Counsel Sri D.Prakash 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 director of various companies. Despite subsisting condition imposed on the petitioner to appear before the Court, the petitioner filed petitions under Section 317 of 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, on the alleged reason of pursuing his business activities, 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 or undertake his business activities 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 and other accused 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. Kumar** case (referred supra), the Supreme Court held that on the plain language of Section 317 of Cr.P.C., 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 317 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 of 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 **Y. S. Jagan Mohan Reddy** case (referred supra). 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 of Cr.P.C.

In “**Bibhuti Bhusan Das Gupta v. State of West Bengal**”²¹ the Court had an occasion to decide an identical issue under pre-amended Cr.P.C. in a petition filed, which is corresponding to Section 205 of Cr.P.C. in the present Code, the Court while dealing with such application observed as follows:

“As a general rule save where the magistrate dispenses with the personal attendance of the accused person the first step in a criminal proceeding is to bring him before the magistrate. The attendance of the accused is secured if necessary by summons or by warrant of arrest. Thereafter the inquiry or trial proceeds in his presence. Section 205 of the Code of Criminal Procedure empowers the Magistrate whenever he issues a summons to dispense, with the personal attendance of the

²¹ AIR 1969 SC 381

accused and permit him to appear by a pleader. The section runs as follows :--

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

(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 the manner hereinabove provided."

It appears from the law laid down by the Apex Court that only in summons case, the Court can dispense with the appearance by exercising power under Section 205 of Cr.P.C. the Apex Court further referred judgment of Bombay High Court rendered in "**Dorabshah v. Emperor**"²² and the Bombay High Court held that where the accused is permitted to appear by his pleader under Section 205 of Cr.P.C. the pleader may on his behalf be examined and may plead guilty under Sections 242 and 243. Whether the Court can act upon an admission of guilt by the pleader under Sections 242, 243, 251A, 255 and 271 does not directly arise in the case and expressed no opinion on it. The Court expressed its opinion that it is sufficient to say that the language of those sections and the effect of admissions under them are entirely different. The Court was not impressed with the argument that the accused will suffer inconvenience and harassment if the Court cannot dispense with his attendance for purpose of Section 205 of Cr.P.C. and thereby negated the relief to dispense with the appearance by exercising power under Section 205 of Cr.P.C.

²² AIR1926Bom218

In “**Arvind Kejriwal v. the State of U.P.**”²³ the Allahabad High Court held as follows:

“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, 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 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.

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.”

The Court has drawn distinction between warrant case and summons case and finally concluded that the Court can exercise power in certain cases.

One of the contentions raised by the learned Senior Counsel for the petitioner is that in “**Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation**” (referred supra) the Apex Court made certain observations against the petitioner therein, not against the petitioner herein. But this contention is not based on any sound

²³ (2015) 6 All L J 542

reasoning simply because the petitioner herein did not approach the Apex Court and the petitioner herein is accused No.3 in the same C.C.No.12 of 2013, whereas Sri Y.S.Jagan Mohan Reddy is accused No.1. Therefore, the observations whatever made by the Apex Court in Y.S.Jagan Mohan Reddy's case will have its own bearing on the issue involved in C.C.No.12 of 2013, on this ground the petitioner cannot be exempted from appearance before the Court by exercising power under Section 205 of Cr.P.C.

The power under Section 205 of Cr.P.C. is purely discretionary in nature and while deciding such application, the Magistrate or the Judge has to bear in mind the nature of the case as also the conduct of the person summoned. The Magistrate shall examine whether any useful purpose would be served by requiring the attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. (See: "**S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd.**"²⁴ (referred supra)). Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance is totally depending upon the discretion of the Magistrate, who is the master of the Court in so far as the progress of the trial is concerned and none else. Such discretion has to 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

²⁴ (2005) 4 Supreme Court Cases 173

accused must take the precautions enumerated in long line of decisions of the Apex Court.

The Apex Court in T.G.N.Kumar's case (referred supra) referred other judgments and concluded that the discretion is totally lies on the Magistrate, who is the Master of his Court for the progress of trial. It is equally trite that the inherent powers of the High Court under Section 482 of the Code have to be exercised sparingly with circumspection, and in rare cases to correct patent illegalities or to prevent miscarriage of justice.

Similarly, while it is true that the power of superintendence conferred on the High Court under Article 227 of the Constitution of India is both administrative and judicial, but such power is to be exercised sparingly and only in appropriate cases in order to keep the subordinate courts within the bounds of their authority. In any event, the power of superintendence cannot be exercised to influence the subordinate judiciary to pass any order or judgment in a particular manner. In "**Jasbir Singh v State of Punjab**²⁵" it is observed that the independence of the subordinate courts in the discharge of their judicial functions is of paramount importance, just as the independence of the superior courts in the discharge of their judicial functions. It is the members of the subordinate judiciary who directly interact with the parties in the course of proceedings of the case and therefore, it is no less important that their independence should be protected effectively to the satisfaction of the litigants" as observed in "**Trimbak Gangadhar Telang v Ramchandra Ganesh Bhide**²⁶", "**Mohd. Yunus v Mohd.**

²⁵ (2006) 8 SCC 294

²⁶ (1977) 2 SCC 437

***Mustaqim & Ors.*²⁷** and ***“State (N.C.T. Of Delhi) vs Navjot Sandhu@ Afshan Guru*²⁸”**

In view of the aforesaid discussion, this Court cannot interfere with the discretionary orders passed by the Magistrate or subordinate judges liberally unless the Court concludes that there is manifest error in the order under challenge or if the order is not set aside, it would lead to misuse or abuse of process of Court. Therefore, the High Court must be slow in interfering with such discretionary orders passed by the Magistrate.

In ***“Devanand Upadhyay v. the Union of India*²⁹** the Single Judge of Patna High Court observed that “the Court below has chosen not to exercise its discretion in favour of the petitioner and this Court, while exercising inherent powers under Section 482 of the Code, should not regulate and guide the exercise of discretion vested in the Court below.” In the facts of the above judgment, the accused was absent consistently, consequently N.B.W. was issued against the petitioner therein, instead of appearing before the Court and get the warrant recalled by filing appropriate application, filed application under Section 205 of Cr.P.C. to dispense with his appearance while permitting his authorized agent to appear before the Court, but the Court held that the discretion exercised by the Magistrate cannot be faulted since the High Court cannot regulate and guide the subordinate Courts while exercising power under Section 205 of Cr.P.C.

Thus, in view of the law declared by various Courts in long line of decisions referred supra, the order passed under Section

²⁷ (1983) 4 SCC 566

²⁸ 2003 (6) SCC 641

²⁹ 2006 Cri.L.J 63

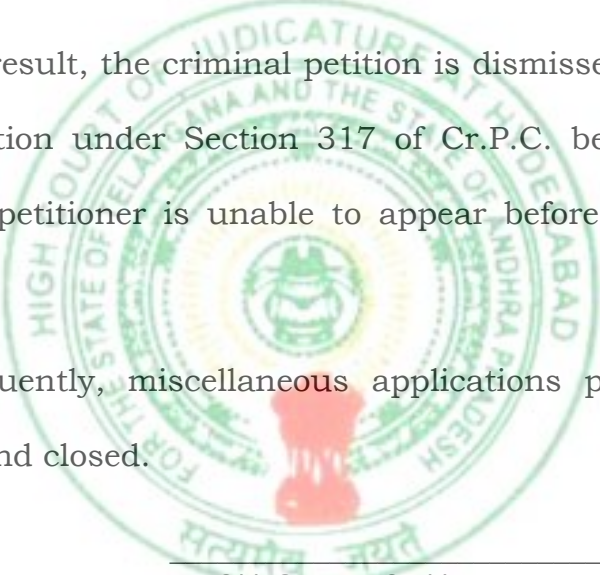
205 of Cr.P.C. is purely within the discretion of Magistrate/Judge here, the Principal Special Judge for CBI Cases, Hyderabad. The Principal Special Judge for CBI Cases being the Master of the proceedings in his Court exercised his discretion and declined the request of the petitioner. In **Sushila Devi** and **Jagadguru Sachidanada Shankarabharati Swami of Sri Kudli Sringeri Mutt** case (referred supra) it is held that 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. If these principles are applied to the present facts of the case, though the petitioner is busy industrialist, who intend to establish another industry in the composite State of Andhra Pradesh by illegal means i.e. allegedly paying approximately Rs.139 crores for transfer of prospecting license. Therefore, his pre-occupation in the affairs of various companies or industries is not a ground in view of the seriousness of the case involving more than Rs.100 crores for granting largesse by the Government i.e. transfer of prospecting licence by M/s Raghuram Cements Limited, in violation of settled guidelines for such transfer. When the petitioner allegedly resorted to such practice to establish an industry, the Principal Special Judge for CBI Cases exercised his discretion to negate the relief.

Taking up the case on every Friday is only because of the direction of this Court in Public Interest Litigation No.145 of 2015 dated 10.08.2015, but not otherwise. If the petitioner is aggrieved by the direction for taking up the matter on every Friday, he can challenge the order passed by this Court in PIL No.145 of 2015 in appropriate proceedings. But to overcome difficulty in appearance,

on account of direction issued by this Court, the petitioner cannot resort to procedure under Section 205 of Cr.P.C. Therefore, I find no illegality in the discretion exercised by the Principal Special Judge for CBI Cases warranting interference of this Court while exercising power under Section 482 of Cr.P.C. since this Court cannot regulate or issue any direction to the subordinate Courts in passing discretionary orders, which purely lies on the Magistrate or the Judge, who is exercising power of the Magistrate under special enactment. Consequently, the petition is liable to be dismissed.

In the result, the criminal petition is dismissed giving liberty to file a petition under Section 317 of Cr.P.C. before the Court below if the petitioner is unable to appear before the Court. No costs.

Consequently, miscellaneous applications pending if any, shall also stand closed.



JUSTICE M. SATYANARAYANA MURTHY

10.09.2018
Ksp