

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION NO.4373 OF 2018

ORDER:

This petition is filed under Section 482 of Criminal Procedure Code (for short "Cr.P.C.") to quash the proceedings in C.C.No.270 of 2017 on the file of Judicial Magistrate of I Class, Sidhout, Kadapa District.

During hearing, learned counsel for the petitioner submitted that the petitioner is native of East Godavari District and whereas, the calendar case is pending on the file of Judicial Magistrate of I Class, Sidhout, Kadapa District and both the places are unconnected by direct train and that the petitioner is suffering from serious ill-health and he is not in a position to appear before the court on every date of adjournment. Therefore, requested this Court to dispense with his appearance on every date of adjournment before Judicial Magistrate of I Class, Sidhout, Kadapa District.

The main grievance of this petitioner is that, only due to ill-health, he is not in a position to appear before the Judicial Magistrate of I Class, Sidhout, Kadapa District in connection with C.C.No.270 of 2017.

In **M/s. Bhaskar Industries Ltd. vs. M/s. Bhiwani Denim and Apparels Ltd. and ors.**¹, 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:

¹ AIR 2001 SC 3625

“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.

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 the 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**² held as follows:

² (2009) 6 SCC 385

“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 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 view of the law declared by the Apex Court in the judgments referred supra, the Court can dispense with the appearance of the petitioner, if the petitioner files an appropriate application before the Trial Court. Further, on filing an application by the petitioner, the Judicial Magistrate of I Class, Sidhout, Kadapa District by following the judgment in **M/s. Bhaskar Industries Ltd. vs. M/s. Bhiwani Denim and Apparels Ltd. and ors** (referred supra), is directed to pass appropriate orders, in accordance with law, within one month from the date of filing such application.

In the result, the criminal petition is disposed of, without touching the merits in the main petition.

Consequently, miscellaneous petitions pending, if any, shall also stand closed. No costs.

JUSTICE M. SATYANARAYANA MURTHY

Dated:30.04.2018

SP

