

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

17 CRIMINAL WRIT PETITION NO.887 OF 2019

Orchid Dweller Pvt. Ltd.,
through its Director,
Prince Ajmani, S/o TilakRaj Ajmani,
R/o Bansal Plaza, Station Road, Ranchi
Its registered office at third floor,
The Pentagon, Harmu Bypass Road,
District Ranchi (Jharkhand).

... PETITIONER

VERSUS

1. The State of Maharashtra,

(Copy to be served on Public Prosecutor,
High Court of Judicature of Bombay Bench
at Aurangabad)

2. M/s. Jain Irrigation Pvt. Ltd.,
Registered office at Plastic Park,
Bambhori, Tal. Dharangaon,
District – Jalgaon
through its authorized person
Mr. Kailas Nagolal Agarwal

... RESPONDENTS

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Advocate for Petitioner : Mr. Rohit Sinha i/b. Mr. Shaikh Mobin H.
Advocate for Respondent No.2 : Mr. Sant Kishor C.
APP for the respondent no.1-State : Mr. S.B. Joshi

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CORAM : MANGESH S. PATIL, J.

DATE : 23.09.2019

JUDGMENT :

Heard both the sides.

2. The petitioner is the accused in the original proceeding who submitted application (Exh.9) under Section 205 of the Code of Criminal Procedure seeking exemption from personal appearance. After the respondent complainant contested the application, by the order dated 26.02.2019 the learned Magistrate rejected the application. Even the Criminal Revision preferred by the petitioner was rejected by the impugned judgment and order dated 12.04.2019. Hence this writ petition.

3. The learned advocate for the petitioner submits that in the peculiar facts and circumstances of the case the request made by the petitioner was quite reasonable. He is a businessman from Ranchi whereas the complaint was filed at Jalgaon. Section 205 of the Code of Criminal Procedure contains an enabling provision. In the light of the decision of the Supreme Court in the case of **Bhaskar Industries Ltd. Vs. Bhiwani Denim and Apparels Ltd. and Ors. ; (2001) 7 Supreme Court Cases 401** and the decision of this Court in the case of **Mr. Bhaskar Sen Vs. State of Maharashtra and Ors.; 2004(4) ALL MR 606**, the petitioner was entitled to seek such exemption more so when in the application he had specifically mentioned, apart from the

reason, that he would not dispute his identity and the advocate on his behalf would remain present in the Court and he would have no objection if the evidence was recorded in his absence. He had also undertaken to appear before the Court at any stage of the proceeding if it was so desired/directed. In spite of such specific undertaking and reasonable cause, the Magistrate has rejected the request, in disregard to the observations of this Court in the case of Bhaskar Sen (*supra*).

4. Even the learned Additional Sessions Judge, has committed a gross error in observing that the application did not contain any willingness of the petitioner accused to furnish an undertaking to the satisfaction of the Court and that there was no mention in the application that he has authorized his advocate to record the plea. The observations and the conclusion of both the courts below are quite perverse and arbitrary and this Court should intervene in the exercise of the writ jurisdiction.

5. The learned advocate for the respondent submits that the petitioner may have his own reasons not to turn up. However, he was expected to appear at least on the first date of appearance and should have applied for bail. The conduct of the petitioner in not following such a course was a sufficient ground to reject his request. In the alternative the learned advocate submits that the petitioner may be put

to some conditions is at all the writ petition is to be allowed.

6. One need not delve much as far as the law in respect of the scope and ambit of Section 205 of the Code of Criminal Procedure is concerned when there is already a direction of the Supreme Court in the form of *Bhaskar Industries Ltd.* (supra). For that matter, even a coordinate Bench of this Court had an occasion to consider all these aspects by referring to the decision in the case of *Bhaskar Industries Ltd.*, in the case of *Bhaskar Sen* (supra). Elaborate directions have been given to the Magistrates as to how they should approach whenever such request under Section 205 of the Code of Criminal procedure is made before them particularly in the complaints filed under Section 138 of the Negotiable Instruments Act.

7. There is indeed a distinction between the provisions of Section 205 and 317 of the Code of Criminal Procedure. For the former it is not expected that the accused should first apply for bail and it is only thereafter he can make that request, which would not be the case when it comes to the applicability of Section 317 of the Code of Criminal Procedure.

8. The petitioner is a resident of Ranchi in Jharkahnd State whereas the complaint has been filed at Jalgaon. Since it is a proceeding under Section 138 of the Negotiable Instruments Act and

apparently the dealing between the parties was pertaining to the business transaction, it would certainly be a genuine cause for the petitioner accused to seek an exemption under Section 205 of the Code of Criminal Procedure.

9. Needless to state that since he has been relying upon the decision in the case of Bhaskar Sen (*supra*) he was expected to follow the course and the steps laid down therein. It is pursuant to such directions that it was specifically mentioned in the application (Exh.9) in paragraph no.5 that he undertakes to not to dispute the identity, his advocate would remain present in the Court and that he would have no objection in taking down the evidence in his absence. In paragraph no. 6 he had specifically undertaken to appear before the Court as an when directed at any stage of the proceeding. In spite of such specific statement in the application which is supported by the affidavit, the Magistrate as well as the learned Revisional Court have made certain observations which are quite perverse and arbitrary. The Revisional Court in the impugned judgment has gone to the extent that no such undertaking was even sought to be given in the application.

10. As far as recording of plea of the petitioner is concerned, needless to state that in the light of directions in the Bhaskar Sen (*supra*) he may even at a future point of time seek his plea to be

recorded through his advocate. However that is not the matter in issue now. He had expressly mentioned that he was ready to appear as and when directed by the Court and such undertaking was quite in pursuance to Sub-section 2 of Section 205 of the Code of Criminal Procedure. The learned Magistrate as well as the learned Revisional Court could have by taking necessary precaution and may by imposing certain terms and conditions, allowed the application if they were apprehending that the petitioner would not turn up even for recording the plea. That being not the case, both the orders suffer from gross illegality. Those are perverse and arbitrary and are liable to be quashed and set aside.

11. The Writ petition is allowed. The impugned orders are quashed and set aside. The Magistrate shall pass a fresh order on the application (Exh.9) in the light of the observations and directions in the case of Bhaskar Sen (supra) as early as possible and the observations made herein above.

12. Rule is accordingly made absolute.

(MANGESH S. PATIL, J.)