

Crl.O.P.No.9065 of 2011**B.PUGALENDHI, J.,**

This Criminal Original Petition, which was disposed of by this Court vide order dated 28.02.2019, has been listed today under the caption 'for clarification' at the instance of the learned Senior Counsel appearing for the petitioner.

2. The learned Senior Counsel for the petitioner submitted that this Court, by order dated 28.02.2019, has dismissed the Criminal Original Petition and directed the learned Additional Chief Metropolitan Magistrate (Economic Offences - 1), Egmore, to expedite the trial and conclude the proceedings in E.O.C.C.No.121 of 2011, as expeditiously as possible. Since the petitioner is a 70 year old senior citizen, suffering from health ailments, the learned Senior Counsel sought for dispensing with his personal appearance before the trial Court.

3. Though the age of the petitioner is not disputed by the learned Counsel for the respondent, he objected for dispensing with the personal appearance of the petitioner by this Court, before the trial Court. He further submitted that the petitioner's plea for dispensing with his personal appearance can very well be considered by the trial Court itself under

Section 205 Cr.P.C., as such, he objected for considering the same by this Court at this juncture, ie., after pronouncing the order on 28.02.2019.

4. The age of the petitioner is 70 years and the same is not in dispute. But, this Court is barred under Section 362 Cr.P.C., to entertain the petitioner's plea for dispense with, after pronouncing the order on 28.02.2019. Had the Counsel been sought for dispensing with the personal appearance of the petitioner prior to the pronouncement of this order on 28.02.2019, this Court would have considered the request at that point of time itself. But the fact remains that this Court has heard the matter and reserved it for orders at its Principal Seat, Chennai on 03.12.2018 and pronounced the orders at Chambers, Madurai on 28.02.2019. Therefore, it would not be possible for the Counsel to sought for the same before pronouncing the order.

5. Be that as it may, as per Section 362 Cr.P.C., this Court cannot alter its judgment once it is signed. For better understanding, Section 362 Cr.P.C., is extracted thus:

“362. Court not to alter judgment - Save as otherwise provided by this Code or by any other law for the time being in force,

no Court, when it has signed its judgment or final order disposing of a

case, shall alter or review the same except to correct a clerical or arithmetical error.”

6. The petitioner is now seeking to dispense with his personal appearance before the trial Court, which is neither a clerical nor an arithmetical error, as such, this Court is clearly barred under Section 362 Cr.P.C. Therefore, this Court is not in a position to consider the request of the petitioner at this juncture.

7. Relying upon the decision of this Court in ***Crl.OP(MD)No.9345 of 2017, dated 20.07.2017***, in the case of ***K.Bose v. Inspector of Police, Usilampatti Taluk Police Station, Madurai and another***, the learned Senior Counsel contended that even if the Criminal Original Petition is dismissed, the Court can still dispense with the appearance of the petitioner.

8. In the aforesaid decision, this Court has dispensed with the appearance of the petitioner before signing its order / before pronouncement, which is not the case herein and therefore, it would not be applicable to the present case on hand.

9. The learned Senior Counsel has also relied upon a decision of the Division Bench of Kerala High Court reported in **MANU/KE/2394/2011**, in the case of **Sreedharan v. Bharathan**, wherein, the Kerala High Court, in a case of extending the time limit for payment of fine / compensation, by exercising its powers under exceptional circumstances, has extended the time limit stating that it would not be offending Section 362 Cr.P.C., but would only be securing the ends of justice. It further held that since such circumstances can occur only rarely, may be only once in a case, no successive petitions can be entertained.

10. But, the Hon'ble Supreme Court, in the decision reported in **2017 SCC OnLine SC 1738**, in the case of **Narayan Prasad v. State of Bihar**, has held that the prohibition under Section 362 Cr.P.C., is absolute and after the judgment is signed, even the High Court, in exercise of its inherent power under Section 482 Cr.P.C., has no authority or jurisdiction to alter / review the same. The inherent power under Section 482 Cr.P.C., was purported to avoid the abuse of the process of the Court and to secure ends of justice. Such power cannot be exercised to do something which is expressly barred under the Code.

11. In fact, the petitioner is having a remedy under Section 205 Cr.P.C., before the trial Court, for dispensing with his appearance, as has been rightly pointed out by the learned Counsel for the respondent. Under the above circumstances, this Court is not inclined to interfere with its order dated 28.02.2019, as such, this Court concludes that no clarification is required.

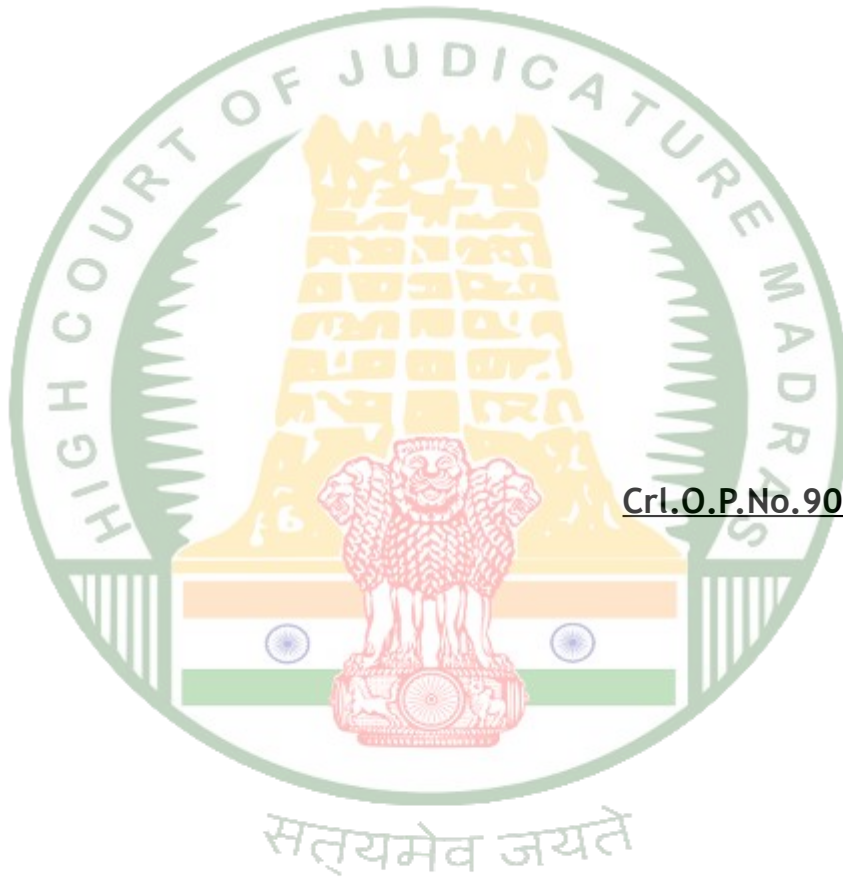
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