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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision-10.04.2019

1. CRM-M-4397-2018

M/s Go Green Auto Pvt Ltd. and anotherPetitioners

Vs.

M/s Hero Exports, New Delhi ...Respondent

2. CRM-M-4562-2018

M/s Go Green Auto Pvt Ltd. and anotherPetitioners

Vs.

M/s Hero Exports, New Delhi ...Respondent

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. H.S.Ghuman, Advocate for the petitioners.

Mr. Vijay Kumar Chaudhary, Advocate for
Mr. Dheeraj Jain, Advocate for the respondent.

MANOJ BAJAJ, J.

This order will dispose off the above mentioned two petitions i.e. CRM-M-4397-2018, titled as “M/s Go Green Auto Pvt Ltd. and another Vs. M/s Hero Exports, New Delhi” and CRM-M-4562-2018, titled as “M/s Go Green Auto Pvt Ltd. and another Vs. M/s Hero Exports, New Delhi” which have impugned order dated 02.03.2017 whereby application for grant of exemption from personal appearance was dismissed in both the complaint cases by the trial Court. The complaints pertain to two different cheques

issued by the same drawer in favour of the same complainant. However, the facts are being extracted from CRM-M-4397-2018.

This petition has been filed by the petitioners to challenge the order dated 02.03.2017 passed in criminal complaint No.1973 of 2012 whereby the application filed under Section 205 of Criminal Procedure Code on behalf of the accused seeking exemption from personal appearance before the Court was declined vide order dated 02.03.2017.

Learned counsel for the petitioners contends that the petitioner is an accused in a complaint case brought by respondent under Section 138 of Negotiable Instruments Act, 1881. The attention of the Court is invited to the application filed by the petitioner under Section 205 Cr.P.C for exemption on 15.11.2016 (Annexure P-1). According to him, a perusal of the application reveals that the petitioner Vinod Gupta has given his status in the company (co-accused) as well as his engagement in the family affairs. It is pleaded that he is sole bread-winner of the family and his parents are of advanced age and are not keeping good health, besides highlighting his own ailments. According to him, it is cumbersome for him to travel to Ludhiana at a distance of 300 kilometers and, therefore, prayed indulgence of the Court for granting him exemption from personal appearance. At the same time, it was also pleaded that his counsel, namely, Sunil Tiwari, Advocate would appear on his behalf. The applicant has expressed his intention to appear before the Court at the stage of recording his statement under Section 313 Cr.P.C.

The said application was dismissed by the Court on the ground

that the trial is summary in nature and there will be no prejudice to him, if he appears in these proceedings and the Court proceeded to dismiss the application on 02.03.2017.

Learned counsel for the petitioners has contended that the trial Court has adopted a very narrow approach in refusing the concession He has relied upon judgment of Hon'ble the Supreme Court in Criminal Appeal No.858 of 2001, titled as **M/s Bhaskar Industries Ltd. Vs. M/S Bhiwani Denim & Apparels Ltd., 2001 (4) R.C.R. (Criminal) 137.**

Learned counsel for the parties have been heard and with their assistance I have gone through the case file.

A perusal of the application reveals that the same was filed under Section 205 Cr.P.C which does not deal with the issue of permanent exemption from appearance in a criminal trial. Besides, the necessary undertaking required by law has not been given by the petitioner in the said application filed before the trial Court. Section 317 Cr.P.C empowers a Court to extend this extraordinary concession but before that the Court has to record a satisfaction that the accused neither will not dispute his identity nor will have any objection to the recording of evidence in his absence, but in the presence of his counsel.

The judgment relied upon by the petitioner also contains the pre-condition before extending this concession, which is contained in paragraph 17 of the said judgment. The said paragraph reads as under:-

“17. 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.”

In view of the above, it is clear that the application filed by the petitioner (accused) did not meet the pre-requisites seeking permanent exemption from personal appearance and therefore, this Court does not find any illegality in the order passed by the trial Court.

Resultantly, petitions are dismissed.

(MANOJ BAJAJ)
JUDGE

10.04.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No