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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.M.C. 152/2020 & CRL.M.A. 651-652/2020**
MS. PRIYANKA GUPTA Petitioner
Through: Mr. Mukul Gupta, Sr. Adv. with Mr.
Sudhir Gupta, Adv.
versus
EMPLOYEE STATE INSURANCE CORPORATION
..... Respondent
Through: Ms. Nisha Hans, Mr. VK Singh,
Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **15.01.2020**

CRL.M.A. 652/2020 (Exemption)

Exemption allowed, subject to just exceptions.

CRL.M.C. 152/2020 & CRL.M.A. 651/2020

Vide the present petition, the petitioner assails the impugned order dated 02.09.2019 of the learned MM-01, Shahadara, KKD Courts, vide which, the prayer made on behalf of the accused no.3 therein i.e. the present petitioner seeking permanent injunction in Complaint ID No.2829/2018 filed by the ESIC titled as *ESIC Vs. M/s HMR Institute* was declined observing to the effect that the prayer made for permanent injunction of the accused no.3 i.e. the present petitioner was not maintainable at that stage and that she was however granted liberty to move an appropriate application at the appropriate stage.

Reliance placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in *Bhaskar Industries Ltd. Vs. Bhiwani Denim*

and Apparels Ltd. and Ors. 2001 (3) ACR 2297 (SC), was held to be not applicable by the learned trial Court observing to the effect that the trial had not begun and that the applicant had not put in appearance on 3/4 dates before the Court and had also not furnished a bail bond.

The prayer made by the applicant seeking exemption from appearance on 02.09.2019 was however granted with directions to her to appear in person on the next date of hearing and to furnish a bail bond. The proceedings dated 02.09.2019 are indicated to have been renotified for the date 16.01.2020.

It has been submitted on behalf of the petitioner that the petitioner having suffered two miscarriages is unable to put in appearance till July, 2020.

In the interest of justice, the presence of the petitioner before the learned trial Court on the date 16.01.2020 is exempted through counsel appearing on her behalf.

As regards the submission that has been made on behalf of the petitioner that the impugned order is infirm and needs to be set aside, it is essential to observe that the observations in ***Bhaskar Industries Ltd. (Supra)*** whilst observing vide para 17 thereof which read to the effect:

“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.”

observe to the effect that in appropriate cases, the Magistrate can allow an accused to make even the first appearance through a counsel and that 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 with the observations in relation to applicability of Section 317 of the Cr.PC, 1973. It is essential to observe that the observations in the said case relied upon on behalf of the petitioner were in relation to a case under Section 138 of the Negotiable Instruments Act, 1881.

Furthermore, it has also been observed to the effect vide para 15 of the said verdict that if when a Magistrate feels that insistence of personal attendance of the accused in a summons case in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the Magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings though it would be dependent on the circumstances of each case as observed vide para 19 of the said verdict. It has been observed also to the effect that such discretion needs 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, though the Magistrate would have to take the precautions for the presence of the accused as required during the trial.

It is apparent thus that in the circumstances of the instant case, when the learned trial Court has observed categorically to the effect that the petitioner has not put in appearance even for a single date of hearing despite 3 to 4 dates of hearing in the case, the observations in the impugned order dated 02.09.2019 declining the grant of permanent exemption at the present stage cannot be held to be erroneous. However, the learned trial Court has also observed to the effect that the applicant would be at liberty to move an appropriate applicant at appropriate stage.

In the circumstances as directed hereinabove though the presence of the petitioner has been exempted for the date of hearing 16.01.2020, the learned trial Court would defer the proceedings qua the petitioner herein to a date in the month of July, 2020, on which date, the petitioner shall put in appearance and thereafter, the prayer, if any, made by the petitioner before the learned trial Court seeking exemption during the proceedings of the case would be considered independent of the observations made in the impugned order dated 02.09.2019.

The petition calls for no further action.

Copy of this order be sent to the learned trial Court.

Copy of the order be given Dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J

JANUARY 15, 2020

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