HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Misc(Pet.) No. 4654/2018

Bharat S. Udeshi S/o Sh. Shivji Udeshi, Aged About 61 Years, Proprietor M/s Shiv Sneha Associates , Office Shiv Sneha Chambers, 307, Shahid Bhagat Singh Road, Fort Market Junction, Mumbai 4000038 (Maharashtra)

----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Anil Agarwal S/o Sh. Prem Chand Agarwal, B/c Agarwal , Fe-50, Madhu Kunj, Shastri Nagar, Jodhpur

----Respondents

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Connected With

S.B. Criminal Misc(Pet.) No. 3153/2018

Bharat S. Udeshi S/o Shivji Udeshi, Aged About 61 Years, Prop. M/s Shiv Sneha Associates, Office Shiv Sneha Chambers, 307, Shahid Bhagat Sngh Road, Fort Market Junction, Mumbai 4000038 (Maharashtra)

----Petitioner

Versus

1. State, Thorugh Pp
2. Arti Jain Spouse/o Naresh S Bhandari, 682/b, 10Th C Road

----Respondents

S.B. Criminal Misc(Pet.) No. 3193/2018

Bharat S. Udesh S/o Sh. Shivji Udeshi, Aged About 61 Years, Proprietor M/s Shiv Sneha Associates , Office Shiv Sneha Chambers, 307, Shahid Bhagat Singh Road, Fort Market Junction Mumbai 4000038 (Maharashtra)

----Petitioner

Versus

1. State, Through Pp
2. Smt. Rupal Bhandari W/o Sh. Manish Bhandari, 682/b, 10Th C Road, Sardarpura , Jodhpur

----Respondents

S.B. Criminal Misc(Pet.) No. 4651/2018

Bharat S. Udeshi S/o Shri Shivji Udeshi, Aged About 61 Years, Proprietor M/s. Shiv Sneha Associates, Office- Shiv Sneha Chambers, 307, Shahid Bhagat Singh Road, Fort Market Junction, Mumbai- 4000038 (Maharashtra)

----Petitioner

Versus

1. State, Through Pp
2. Anil Agarwal S/o Shri Prem Chand Agarwal, By Caste Agarwal, R/o E-50, Madhu Kunj, Shastri Nagar, Jodhpur.

----Respondents

S.B. Criminal Misc(Pet.) No. 4652/2018

Bharat S. Udeshi S/o Shri Shivji Udeshi, Aged About 61 Years, Proprietor M/s. Shiv Sneha Associates, Office- Shiv Sneha Chambers, 307, Shahid Bhagat Singh Road, Fort Market Junction, Mumbai- 4000038 (Maharashtra)

----Petitioner

Versus

1. State, Through Pp
2. Anil Agarwal S/o Shri Prem Chand Agarwal, By Caste Agarwal, R/o E-50, Madhu Kunj, Shastri Nagar, Jodhpur.

----Respondents

S.B. Criminal Misc(Pet.) No. 4655/2018

Bharat S. Udeshi S/o Shri Shivji Udeshi, Aged About 61 Years, Proprietor M/s. Shiv Sneha Associates, Office- Shiv Sneha Chambers, 307, Shahid Bhagat Singh Road, Fort Market Junction, Mumbai- 4000038 (Maharashtra)

----Petitioner

Versus

1. State, Through Pp
2. Smt. Chandra Devi W/o Shri Sumer Chand, By Caste Jain, R/o 682/b, 10Th C Road, Sardarpura, Jodhpur.

----Respondents

For Petitioner(s)	:	Dr. H.S. Shekhawat
For Respondent(s)	:	Mr. Mahipal Bishnoi, P.P. Mr. H.M. Saraswat Mr. Deepesh Beniwal

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HON'BLE MR. JUSTICE SANDEEP MEHTA

Order

27/02/2020

The petitioner herein is facing trial in six criminal complaints pending in the Court of the Special Metropolitan Magistrate (N.I. Act Cases) No.1, Jodhpur Metropolitan, filed by different complainants, who are represented by Mr. H.M. Saraswat and Mr. Deepesh Beniwal, Advocates.

The petitioner, who is a resident of Maharashtra was summoned through bailable warrants in each complaint. Upon service of the bailable warrants, he moved applications under Section 205 read with Section 445 CrPC in all the cases seeking exemption from personal appearance and liberty to file cash bail before the trial court. These applications have been rejected vide orders dated 31.08.2018 and 15.12.2018, which are assailed in these miscellaneous petitions, details of which are as follows :-

Misc. petition No.	Name of the complainant	Complaint Case No.	Date of impugned order
4654/2018	Anil Agarwal S/O Shri Prem Chand Agarwal	374/2018	15.12.2018
4651/2018	Anil Agarwal S/O Shri Prem Chand Agarwal	1271/2018	15.12.2018
4652/2018	Anil Agarwal S/O Shri Prem Chand Agarwal	1274/2018	15.12.2018
3193/2018	Smt. Rupal Bhandari W/O Shri Manish Bhandari	439/2018	31.08.2018
3153/2018	Arti Jain W/O Shri Naresh S. Bhandari	438/2018	31.08.2018
4655/2018	Smt. Chandra Devi W/O Shri Sumer Chand	01/2018	15.12.2018

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Mr. H.S. Shekhawat, learned counsel for the petitioner, placed reliance on the Supreme Court decision in the case of ***M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim & Apparels Ltd. & Ors. [2001 All MR (Cri) 1961)***, to be specific the following observations made therein :

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15. These are days when prosecutions for the offence under Section 138 are galloping up in criminal courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely such accused would be ladies also. For prosecution under Section 138 of the NI Act the trial should be that of summons case. 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.

16. Section 251 is the commencing provision in Chapter XX of the Code which deals with trial of summons cases by magistrates. It enjoins on the court to ask the accused whether he pleads guilty when the "accused appears or is brought before the magistrate". The appearance envisaged therein can either be by personal attendance of the accused or through his advocate. This can be understood from Section 205(1) of the Code which says that "whenever a magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader."

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.

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 he magistrate cane 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.

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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.

He urged that in view of the ratio of the Hon’ble Supreme Court judgment, exemption from personal appearance can be granted to an accused even on the first date of hearing.

He submits that as the petitioner is ready to furnish cash amount of bail as well as surety bonds and as he undertakes to fully instruct his counsel to plead the matter on his behalf in the trial court on each and every date of hearing and to accept the consequences of such a course of action, his prayer for exemption from personal appearance deserves to be accepted.

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Learned counsel representing the respondents have vehemently and fervently opposed the submissions advanced by the petitioner's counsel and urged that if this blanket exemption is granted, the accused would never appear before the trial court at any date of hearing even when the statement under Section 313 CrPC is to be recorded or when the judgment is to be pronounced.

To this submission, Mr. Shekhawat submits that the accused undertakes to appear in the trial court when the statement under Section 313 CrPC is to be recorded and on the date of pronouncement of the judgment.

In this view of the matter and considering the ratio of the above referred Supreme Court decision in the case of M/s. Bhaskar Industries Ltd. (supra) to be fully applicable in this case, the miscellaneous petitions deserve to be and are hereby allowed, subject to the following conditions :-

(1) The petitioner shall deposit cash bail to the tune of Rs.20,000/- in each of the complaints

(2) He shall furnish an undertaking that his counsel shall appear and plead the matters before the trial court on each and every date of hearing, failing which, the bail amount shall be forfeited and the accused shall be liable to face the other legal consequences thereof.

(3) The accused shall also undertake to appear in the trial court when the statement under Section 313 CrPC is to be recorded and on the date of pronouncement of the judgment.

(4) The petitioner shall ensure compliance of the above steps, in 30 days from today.

With these observations, the impugned orders are quashed and set aside. The trial court is requested to expedite the proceedings. The miscellaneous petitions are allowed in these terms.

(SANDEEP MEHTA),J

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