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13.07.2021
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CRR 1031 of 2021

Re : An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of : **Sanjay Jain**

..... petitioner

Mr. Ayan Bhattacharjee
Mr. Indrajit Adhikari
Mr. Aditya Ratan Tiwary

....For the petitioner

Mr. Saswata Gopal Mukherjee, Ld. PP
Ms. Faria Hossain

....For the State

The petitioner in this revisional application has impugned a judgment and order dated August 29, 2019, passed by the learned Judge, 1st Bench, City Sessions Court at Calcutta in Cri. Rev. No. 101 of 2017 whereby the learned Judge affirmed an order dated February 15, 2017, passed by the learned Metropolitan Magistrate, 13th Court at Calcutta in Case No. CNS/0009950 of 2015 under Sections 138/141 of the Negotiable Instruments Act, 1881.

The petitioner filed an application under Section 205 of the Code of Criminal Procedure, 1973 before the learned Magistrate for dispensing with his personal appearance in the case.

The learned Magistrate allowed the said application by passing, *inter alia,* the following order:

> *"....205 of Cr.P.C. for accused Nos. 2, 3 and 4 are allowed with conditions that the accused persons will remain present in person before this Court at the time of examination u/s 251 of Cr.P.C. and u/s 313 of Cr.P.C. as because there are certain facts which can only be explained by the accused persons and within their knowledge and as and when call for by this Court.*
> *matter is fixed on 19.05.2017 for plea..."*

The petitioner challenged the order of the learned Magistrate before the learned Sessions Judge. Learned Sessions Judge found that the learned Magistrate committed no mistake in passing the said order dated February 15, 2017, and affirmed the order of the learned Magistrate.

Mr. Ayan Bhattacharjee, learned advocate appearing for the petitioner, submits that the learned Magistrate as well as the learned Sessions Judge in the Court below did not appreciate the scope of Section 205 of the Code of Criminal Procedure, 1973 and imposed the conditions mechanically while allowing the said application.

He relied upon the judgments reported at **2008 CRI. L.J. 2793** ***(Vivek Bajoria Vs. State)*** and **2018 (2) JCC 142** ***(Shaleen Khemani Vs. The State of West Bengal)***. Further reliance was placed upon a judgment reported at **(2020) 12 SCC 695** ***(Puneet Dalmia Vs. Central Bureau of Investigation, Hyderabad)***.

A request was made to Mr. Saswata Gopal Mukherjee, learned Public Prosecutor to assist this Court. Mr. Mukherjee fairly submits that in view of the law laid down in ***Puneet Dalmia*** (supra), the personal appearance of an accused can be dispensed with, but such exercise should not be done mechanically, and it will depend on the facts and circumstances of each case.

From the order of the learned Magistrate it does not appear that the learned Magistrate assigned any reason as to why the appearance of the petitioner was necessary at the time of

examination under Sections 313 and 251 of the Code of Criminal Procedure, 1973. Learned Magistrate merely mentioned that there are certain facts which can only be explained by the accused persons, and those facts are only within their knowledge, and as such, their presence may be required.

In my view, the order of the learned Magistrate cannot be said to be a speaking order, so as to justify the presence of the petitioner at the time of examination under Section 251 or under Section 313 of the Code of Criminal Procedure, 1973.

It has been held in ***Vivek Bajoria*** (supra) as follows:-

> *"It appears from the record of the proceedings relating to the case C-3940 of 2007 under Section 138 of the Negotiable Instruments Act, now pending before the Learned Metropolitan Magistrate, 16th Court, Calcutta, the Learned Court by its order dated May 30, 2007 and thereafter by another order dated July 31, 2007 allowed the petitioners application under Section 205 of the Code of Criminal Procedure and thereby exempted them from appearing during the day to day proceeding of the said case. the said application was allowed on condition that the accused persons be present on the dates for recording of plea, their examination under Section 313 of the Code and on the date of delivery of judgment and on further condition that they be present in Court the Trial Court fixed September 28, 2007 for plea and directed the present petitioners to be present personally on the date o fixed. Thereafter, the date fixed for plea was deferred to December 13, 2007, as on that day the petitioners were not present in Court, on the prayer of the complainant the Learned Magistrate issued warrant of arrest against them although they were duly represented by their learned advocate under section 205 of the Code of Criminal Procedure.*
>
> *It is a settled legal position in appropriate cases the Magistrate can allow an accused to make even his first appearance through a Counsel and the plea of the accused can also be recorded even when his Counsels make such plea on behalf of the accused in a case where the personal appearance of the accused has been dispensed with. Similarly, I am of the further opinion although a person enjoying exemption under Section 205 of the Code of Criminal Procedure may always be directed to be present in Court on any particular day by the learned Magistrate, may be that for his examination under Section 251 of the*

> *Code of Criminal Procedure but such discretion must always be exercised by the Court judicially and thus when such an order is passed in respect of an accused enjoying exemption under Section 205 of the Code of Criminal Procedure the Court must indicate good reasons as to why such exemption has been withheld and he has been directed to be personally present in Court. No order in this regard can be passed mechanically and arbitrarily without being supported by sound judicial reasons. It appears in the instant case the learned Magistrate directed for appearance of the accused for his examination under Section 251 of the Code of Criminal Procedure merely because his prayer for exemption under Section 205 of the Code of Criminal Procedure was allowed on condition that he shall be present in Court for his examination under Section 251 of the Code of Criminal Procedure which according to me is not in accordance with law and is wholly unjustified. In this connection reliance may be placed in the decision of the Apex Court in the case of M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim and Apparels Ltd., reported in AIR 2001 SC 2625, as well as the decision of this Hon'ble High Court in the case of S. R. Jhunjhunwalla v. B.N. Poddar, reorted in 1987 C CrLR (Cal) 66."*

The view of this Court regarding conditions attached to an order dispensing the personal appearance of an accused appears to be consistent. A similar view was taken in ***Shaleen Khemani*** (supra).

No different view is called for.

This revisional application is disposed of with a direction that the learned Magistrate will be at liberty to record the plea of the petitioner through his learned advocate and his examination under Section 313 of the Code of Criminal Procedure, 1973, may also be conducted in terms of Section 313(5) of the Code.

In the event the learned advocate for the petitioner remains absent or does not participate in the proceedings, the learned Magistrate will be at liberty to forthwith recall the dispensation granted under Section 205 of the Code of Criminal Procedure,

1973. The petitioner in that event shall be personally present during the trial of the case.

This revisional application being CRR 1031 of 2021, is accordingly disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Kausik Chanda, J.)