

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL WRIT PETITION NO. 828 OF 2019

(1) Dr. Vellai Thangadurai S/o M. Vellai,
Aged about 74 years, Occ : Doctor,
Resident of 17/36, 4th Avenue,
Ashok Nagar, Chennai – 600083.

(2) Smt. Nalini W/o Dr. Vellai Thangadurai,
Aged about 73 years, Occ : Housewife,
Resident of 17/36, 4th Avenue,
Ashok Nagar, Chennai – 600083.

.... Petitioners

- Versus -

Dr. Pramod S/o Tulsiramji Warhekar,
Aged about 52 years, Occ : Medical
Practitioner, R/o C-18, Sayali Apts.,
Hill Top, Ramnagar, Nagpur-440010,
presently residing at Villa No. 3,
Baker Villa, Muteena, Deira,
Dubai (U.A.E.)

.... Respondent

Mr. A. R. Prasad, Advocate for the petitioners

Mr. Sachin Katarpawar, Advocate h/f Shri G. L. Bajaj, Advocate for the
respondent

CORAM : ROHIT B. DEO, J.

DATED : 25TH JANUARY, 2021.

ORAL JUDGMENT

Heard.

2. With consent, the petition is finally heard at the
admission stage.

3. The petitioners are accused in Summary Criminal Complaint (S.C.C.) 13980/2012 instituted by respondent under Section 138 of the Negotiable Instruments Act, 1881.

4. The petitioners are dissatisfied with the orders dated 8-8-2019 and 17-8-2019 rendered by the learned Magistrate.

5. Vide order dated 8-8-2019, the learned Magistrate rejected the prayer of accused 2 (petitioner 2 herein) for grant of permanent exemption and recording her plea through counsel. Vide order dated 17-8-2019, the learned Magistrate rejected application which sought permanent exemption for accused 1 (petitioner 1 herein).

6. Petitioners are senior citizens, aged 74 years and 73 years respectively and are residents of Chennai.

7. Learned counsel Mr. Prasad states, on instructions, that the petitioners have no objection if the entire evidence is conducted in their absence and that the recording of evidence shall not be challenged.

8. While petitioner 1 did appear before the learned Magistrate pursuant to the order passed by this Court in Writ Petition 1022/2018, it appears that the petitioner 2 failed to appear and she sought permanent exemption on the ground that she was not keeping well.

9. Considering the age of the petitioners herein, the fact that they are residents of Chennai and that the evidence can be recorded in their absence, I do not see any reason why their personal presence cannot be exempted. The only difficulty is that the petitioner 2 has not appeared before the learned Magistrate. However, Mr. Prasad states that petitioner 2 shall appear before the learned Magistrate on or before 26-2-2021. The statement is accepted as an undertaking to the Court.

10. In this view of the matter, the orders impugned are quashed to the extent that permanent exemption is denied to the petitioners.

11. The petitioners shall file their respective undertaking before the learned Magistrate that the evidence can be conducted in

their absence and they would have no objection. This shall be done on the next date of appearance. Subject to furnishing the undertaking, the personal appearance of the petitioners – accused is dispensed with, unless found absolutely necessary.

12. The learned Magistrate shall dispose of Summary Criminal Complaint 13980/2012 as expeditiously as possible since the same is already made time bound, on or before 16-4-2021. No further extension shall be granted.

13. The petition is disposed of.

JUDGE

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