

15.12.2022

CRR/4545/2022

Suvendu Adhikari
-Vs-
The State of West Bengal

For the petitioner: Mr. Sourav Chatterjee, Adv.,
Mr. Rajdeep Majumdar, Adv.,
Mr. Mayuk Mukherjee, Adv.,
Mr. Soumya Nag, Adv.,
Mr. Mr. Adity Tiwari, Adv

For the O.P: Mr. Sandipan Ganugly, Adv.,
Mr. Anand Keshari, Adv.,
Mr. Soumen Mohanty, Adv.,
Mr. Piyush Kr. Ray, Adv.,
Mr. Mr. Agnish Basu, Adv.

The petitioner is an accused in connection with the Case No.C/3095 of 2022 pending before the learned Chief Judicial Magistrate, 9th Court at Alipore, South 24 Parganas for the offence punishable under Section 500 of the Indian Penal Code.

It is not in dispute that the petitioner received summons in connection with the aforesaid case and on the date of appearance in terms of the summons and a petition under Section 205 Cr.P.C was filed by the learned Advocate for the petitioner praying for dispensing with his personal appearance on the ground that he is the leader of the opposition in West Bengal Legislative Assembly and he remains busy as a people's representatives.

The learned Magistrate refused to entertain the petition under Section 205 of the Cr.P.C holding, inter alia, that the said petition is premature. It was also held that personal identity of the present accused is very much a point of acquisition in the given case and his

application under Section 205 of the Cr.P.C cannot be entertained before his personal appearance. Thus, the said application is kept with the record. The petitioner has assailed the impugned order dated 1st December, 2022 by filing the instant revision under Article 227 of the Constitution of India.

It is needless to say that an offence under Section 500 of the IPC is punishable by simple imprisonment for two years or with fine or both, the offence is non-cognizable and bailable in nature and it is triable by a Magistrate of the First Class.

This being the position the only question involved in the instant criminal revision for adjudication is as to whether petitioner's personal attendance can be dispensed with even without insisting upon his physical presence in court.

It is found from the impugned order dated 1st December, 2022 that the learned Advocate for the petitioner relied on a decision of the Hon'ble Supreme Court in **Bhaskar Industries Ltd. Vs. M/s Bhiwani Denim & Apparels Ltd & Anr.** reported in **(2001) 7 SCC 401**. In the said report it was held by the Hon'ble Supreme Court that in summons cases, such as one involving offence under Section 138 of the Negotiable Instruments Act, if it appears to the court that personal attendance may result in enormous hardship and cost to an accused, the court may dispense with his personal attendance either throughout or at any particular stage of the proceedings, after taking an undertaking from him 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 he would have no objection in taking evidence in his absence. The Magistrate distinguished the aforesaid report of the

Hon'ble Supreme Court with the instant case holding, inter alia, that the case instituted against the petitioner is not a case under Section 138 of the NI Act and in the instant case his personal identity is required to be established first before applying for dispensation with personal appearance.

I have heard Mr. Saurav Chatterjee, learned Advocate for the petitioner and Mr. Sandipan Ganguly, learned Senior Counsel on behalf of the State.

It is needless to say that the learned Magistrate completely misplaced the ratio of **Bhaskar Industries** (supra) and directed himself in misleading manner. Though **Bhaskar Industries** is a decision upon a complaint under Section 138 of the NI Act, the principle laid down by the Hon'ble Supreme Court is applicable to all summons triable case.

In a subsequent judgment by the Hon'ble Supreme Court in **Puneet Dalmia vs. CBI, Hyderabad** reported in **(2020) 12 SCC 695** the Hon'ble Supreme Court has enunciated the principle where a petition under Section 205 of the Cr.P.C should be allowed. It is observed by the Hon'ble Supreme Court that the principles for grant of exemption as observed by the Supreme Court in **Bhaskar Industries Ltd, (2001) 7 SCC 401** can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest. Nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial. In case of other two co-accused in cases arising of the same FIR, the applications for exemption

on the very same grounds have been allowed. The application submitted by appellant to dispense with his appearance before trial court on all dates of adjournments and permitting his counsel to appear on his behalf is allowed. The appellant shall give an undertaking to the trial court that he would not dispute his identity in the case and that his advocate would appear before the trial court on his behalf on each and every date of hearing and that he shall not object recording of evidence in his absence and that no adjournment shall be asked for on behalf of appellant and/or his advocate. The appellant shall appear before trial court for the purpose of framing of the charges and also on other hearing dates whenever trial court insists for his appearance. If the trial court is of the opinion that the appellant and/or his advocate is trying to delay the trial, in that case, it would be open for the trial court to exercise its powers under Section 205(2) Cr.P.C and direct the appearance of the appellant on each and every date of adjournment.

Though the learned Senior Counsel on behalf of the State of West Bengal submits that the accused may be directed to be present physically on the returnable date of summons, he did not in his usual fairness raise any objection to the legal principle governing dispensation with physical appearance of the accused.

In view of the above discussion, I do not have any other alternative but to set aside the impugned order dated 1st December, 2022.

The learned Magistrate is directed to hear out the application under Section 205 of the Cr.P.C afresh in the light of the discussion made hereinabove without insisting upon physical appearance of the case. He is also to consider in this regard that the petitioner is the

leader of the opposition in the West Bengal Legislative Assembly. Therefore, his identity is not to be established before entertaining the application under Section 205 of the Cr.P.C.

The instant revision is thus disposed of.

(Bibek Chaudhuri, J.)