

Both the accused persons had undertaken further that their advocate will appear on each date to represent them.

Learned court below after hearing, came to a finding that the discretion under Section 205 of the Code can only be exercised in rare cases, where the accused resides at a far away place from the court or due to physical or other reasons.

It is contended on behalf of the petitioners that the petitioners have fulfilled both conditions. In the present context, the accused persons are residing far away from the court and petitioner no. 2 is bed-ridden. Accordingly, the petitioners submit that the order impugned itself is self-contradictory and not sustainable in the eye of law and liable to be set aside.

Learned counsel for the State submits that if the petitioners undertake that they will not challenge their identity at any stage of the proceeding with a further undertaking that they will appear physically before the court as and when will be asked by the court, then such prayer can be allowed by the court.

While dealing with such application for exemption from personal appearance, court is to consider the nature of the offence, whether any useful purpose would be served by requiring the personal attendance of the accused or progress of trial is likely to be hampered on account of his absence. In the present case, while rejecting the aforesaid prayer, no such observation has been made in support of rejection.

Needless to say rejection of a prayer for representation under Section 205 of the Code must be with proper reasons to be recorded. When discretion in law vests upon Magistrate for his exercise, reasons are to be provided indicating the justification for

his exercise of the discretion. Magistrate should not adopt too much technical or stringent approach, though the discretion should not be used liberally for the mere asking for it.

Having considered the facts of the case and also considering the submissions made on behalf of the petitioners that they are usual habitant of different State and that one of the petitioner is suffering from health issues, I find that the court blow was not justified in rejecting the prayer for dispensing personal attendance simply on the ground that such discretion can be exercised on rare cases.

In such view of the matter, the impugned order dated 23rd August, 2016 passed in CR 51 of 2015 is hereby set aside. The petitioner's prayer for dispensing personal appearance before the court below is hereby allowed on condition that the petitioners will not challenge their identity at any stage of the proceeding and that they will be represented by their pleader on each date and also on further condition that they will appear before the court physically as and when they will be asked to appear physically by the court below. If they fail to comply the conditions at any stage, court below will be at liberty to take appropriate steps to secure their attendance.

CRR 3478 of 2016 is accordingly disposed of.

The application being CRAN 2 of 2018 (Old CRAN 2832 of 2018) is also disposed of.

Upon Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)

