

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-41850-2023
Date of decision: 08.04.2024**

GURCHARAN KAUR **... PETITIONER**

V/s

STATE OF PUNJAB & ANOTHER **... RESPONDENTS**

CORAM: HON'BLE MR. JUSTICE SUMEET GOEL

Present: Mr. Aayush Gupta, Advocate for petitioner.

Mr. Adhiraj Singh, AAG, Punjab.

Mr. Gurcharan Dass, Advocate for respondent No.2.

SUMEET GOEL, J.

1. Present Petition under section 482 of the Cr.P.C. is filed on behalf of the accused who is facing trial in the Court of Learned Judicial Magistrate, 1st Class, Ludhiana, in case FIR No. 43 dated 09.10.2021 registered under sections 406, 498-A, 420, 120-B IPC at Police Station NRI, District Police Commissionerate, Ludhiana.

2. Challenge in the Petition has been laid to the Order dated 19.07.2023 passed by the Learned Judicial Magistrate, whereby an application dated 20.03.2023 filed by the Petitioner under section 205 of Cr.P.C., seeking permanent exemption from personal appearance in the case, has been dismissed.

3. Learned Counsel for the Petitioner in tandem with his pleadings has argued that the petitioner who is an old lady aged about 66 years is facing

trial in the above case lodged on the Complaint of Avtar Singh, whose two daughters namely Gurpreet Kaur and Ramanjit Kaur are married to two sons of the petitioner namely Harminder Singh Kalota and Parminder Singh Kalota on 19.04.2009 and 20.03.2017 respectively. It is argued that the complainant and his entire family are living in Canada. It is further argued that both sons of the petitioner are also in Canada. It is submitted that the husband of the petitioner, who was also an accused in the above mentioned FIR, died during the pendency of trial on 09.01.2023. It is submitted that the petitioner being aged lady is suffering from multiple health issues. She resides in Jalandhar, while the trial is being conducted in Ludhiana, a location considerably distant from her place of residence. As such he submitted that the learned trial court ought to have allowed the application filed by the petitioner under section 205 of the Cr.P.C., while granting her permanent exemption from personal appearance.

4. The complainant in the case being respondent No.2, in the present petition, contested the petition filed by the petitioner, by filing a written reply to the same. Learned Counsel for the respondent No.2, in line with his written reply to the petition, argued that two sons of the accused who are residents of Canada, are not appearing before the learned trial court. It is submitted that under the garb of getting personal exemption, the petitioner also wants to flee away from the trial.

5. I have heard the learned counsel for the parties and gone through the record of the case.

6. In the above-mentioned case Challan was filed by the Police on 28.03.2022, and the charges against the petitioner were framed on 11.05.2022. Thereafter, the case was adjourned before the learned trial court but not even a single witness was examined in the case till

19.07.2023 i.e., when the learned trial court vide impugned order, dismissed the application filed by the petitioner under section 205 of Cr.P.C. Perusal of copies of orders filed by respondent No.2 with his reply to the petition shows that even thereafter, the case before the learned trial court was posted for 29.08.2023; 05.10.2023; 09.11.2023; 03.01.2024, when the petitioner was present to attend the proceedings. However, on all these dates also, no witness was examined in the matter.

Perusal of impugned order makes it clear that the learned trial court took note of two submissions made on behalf of the petitioner, i.e. first, she being an old age lady and second, regarding her suffering from many diseases. The learned trial court, after referring to the medical reports of the petitioner, held that the reports suggest that applicant is suffering from fatty liver. The learned trial court, while dismissing the prayer of petitioner for personal exemption held, be that as it may, accused appears to be hail and hearty; further, accused is not suffering from any such ailment which does not permit her to attend the Court proceedings.

7. In my considered opinion, the learned trial court, while dismissing the application of the petitioner under section 205 of the Cr.P.C. has not adverted to the facts and circumstances of the case in a pragmatic manner, and has rather proceeded in the matter in a pedantic manner. Further, the learned trial court has failed to appreciate the medical reports of the petitioner in a prudent manner. The fatty liver is not the only medical problem being faced by the petitioner. The petitioner being alone lady of advanced age of 66 years, her husband having died during the pendency of the trial proceedings, her sons not living with her, is certainly in a precarious medical and physical state of health. Calling the petitioner to court to attend the trial proceedings, just ceremoniously, without even a single witness having been examined in the case is an onerous condition

for her. The arguments on behalf of the respondent No.2 that since sons of the petitioner who are living in Canada are not appearing in the trial, do not entitle her to the relief of permanent personal exemption are grossly ill founded. The petitioner cannot be used as bait for securing presence of co-accused in the trial proceedings, more so, when the complainant as well as the sons of the petitioner are all residing outside India, even prior to the lodging of the FIR in the present case. It would apparently not be an easy task for the petitioner to undertake travel from Jalandhar to Ludhiana for attending Court proceedings in view of her old age and precarious health conditions.

8. It is trite law that an application seeking permanent personal exemption from appearance on behalf of the accused is to be liberally construed unless it has some adverse effect to the progress of the trial or the application has been filed by the accused with ulterior motives based on false facts, or the case involves a crime of a heinous nature.

9. The Hon'ble Supreme Court of India, in case of M/s Bhaskar Ind. Ltd. Vs. M/s Bhiwani Denim & Apparels Ltd. 2001(4) RCR (Criminal) held, as under:

14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the Court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the Court in the case should register progress. Presence of the accused in the Court is not for marking his attendance just for the sake of seeing him in the Court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings

which a particular accused person may have to bear with in order to make himself present in the Court in that particular case.

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 Negotiable Instruments Act the trial should be that of summons case. When a magistrate feels that insistence of personal attendance of the accused in a summon 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 provisions 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.

10. The Hon'ble Supreme Court of India, while reiterating the above dicta in the case of Puneet Dalmia vs. Central Bureau of Investigation, Hyderabad, 2020 AIR (Supreme Court) 214 held, as under:

It is true that in the aforesaid two cases before this Court, the offences alleged were less serious offences than alleged in the present case. However, the principles for grant of exemption as observed by this Court in the case of Bhaskar Industries Ltd. (supra) 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. At this stage, it is required to be noted that nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial.

11. In view of the above findings, the impugned order dated 19.07.2023 passed by the learned Judicial Magistrate, 1st Class, Ludhiana is quashed & the application under section 205 of the Cr.P.C. filed by the petitioner before the learned trial court is granted and the personal presence of petitioner during the course of trial shall remain exempted subject to the following conditions:

- (i) she will be represented by a counsel;
- (ii) she will not delay/stall the proceedings of the trial Court;
- (iii) she will not dispute her identity as accused;
- (iv) she will have no objection if the prosecution evidence is recorded in her absence but in presence of her counsel;

(v) she will appear before the trial Court as and when required by the trial Court and any other condition which the trial Court may impose.

12. Nothing said hereinabove shall be construed is opinion on the merits of the case.

13. Pending application(s), if any, shall also stand disposed off.

(SUMEET GOEL)
JUDGE

April 08, 2024
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No