

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

CRM-M-57306-2022

Date of decision: 23.04.2024

SEEMA AND ANR

....PETITIONERS

Versus

STATE OF HARYANA AND ANR

....RESPONDENTS

CORAM:- HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: - Mr. Arun Gupta, Advocate for
Mr. Rakesh Gupta, Advocate
for the petitioners.

Mr. Vikas Bhardwaj, AAG, Haryana.

Ms. Amandip Kaur, Advocate for
Mr. Amit Jain, Advocate
for respondent No.2.

HARPREET SINGH BRAR, J. (ORAL)

1. This petition has been filed under Section 482 Cr.P.C. seeking quashing of FIR bearing No.57 dated 10.02.2021 registered under Sections 323/34/406/498-A/506 IPC at Police Station Pataudi, District Gurugram (Annexure P-1) along with all subsequent proceedings arising therefrom as well as charge sheet dated 04.08.2021 (Annexure P-2).

2. Mr. Amit Jain, Advocate has filed his Memo of Appearance on behalf of respondent No.2, which is taken on record.

3. Learned counsel for the petitioners inter alia submits that the petitioners are sisters-in-law of respondent No.2 and they have been falsely implicated by respondent No.2 out of personal spite, in order to wreak vengeance on them.

4. Learned counsel for the petitioners seeks to withdraw the present petition with liberty to raise all the pleas taken in the present petition at the appropriate stage during the trial. However, he confines his prayer to the extent that both the petitioners are ladies and attending the trial on every date would cause them great hardship and inconvenience, especially considering that both the petitioners are household ladies.

5. Per contra, learned counsel for the complainant, opposes the prayer made by the learned counsel for the petitioners on the ground that serious allegations have been levelled against the petitioners, therefore, they are not entitled to exemption from personal appearance.

6. Learned State counsel also opposes the prayer made by the petitioners on the ground that their presence is required during trial.

7. Having heard learned counsel for the petitioners and after perusing the record of the case with his able assistance, this Court is of the opinion that the petitioners deserve the concession of exemption from personal appearance.

8. A two Judge Bench of the Hon'ble Supreme Court in *S.V. Muzumdar v. Gujarat State Fertilizer Co. Ltd 2005(2) RCR (Criminal) 860*, speaking through Justice Arijit Pasayat, has laid down the law that while deciding on the issue of exemption, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. Further, a two Judge Bench of the Hon'ble Supreme Court has laid down the ratio in *M/s.*

Bhaskar Ind. Ltd. v. M/s. Bhiwani Denim & Apparels Ltd., 2001(4)

RCR (Criminal) 137 that the accused need not appear before the Magistrate and that the Magistrate can allow the accused to make even the first appearance through his counsel. Speaking through Justice K.T. Thomas, the following was observed:

"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 seeking 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 within in order to make himself present in the Court in that particular case.

xxx xxx xxx

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 as 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."

9. In view of the facts and circumstance of the case and the ratio laid down by this Court in *Suresh Kumar and another Vs. The State of Haryana and another 2023 (4) R.C.R.(Criminal) 304*, the personal appearance of the petitioners before the learned trial Court is ordered to be exempted, subject to the following conditions: -

- (i) petitioners shall be represented through their counsel.
- (ii) shall not delay/stall the proceedings.
- (iii) shall not dispute their identity.
- (iv) shall have no objection if the prosecution evidence is recorded in their absence but in the presence of their counsel.
- (v) shall appear before the Court as and when required; and
- (vi) any other condition, which the Court below may impose.

10. Accordingly, the present petition is disposed of with liberty aforesaid.

23.04.2024
Anu

(HARPREET SINGH BRAR)
JUDGE

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| i) | Whether speaking/reasoned? | Yes/No |
| ii) | Whether reportable? | Yes/No |