



2024:DHC:9992



IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.12.2024

+ **CRL.REV.P. 657/2023, CRL.M.A. 15582/2023 & CRL.M.A. 15583/2023**

**THE HONGKONG AND SHANGHAI BANKING
CORPORATION LTD AND OTHERS** Petitioners
versus

MANJU SAXENA Respondent

Advocates who appeared in this case:

For the Petitioners : Mr. Mohit Mathur, Sr. Adv. with Mr. Sanjay Gupta, Mr. Rajnish Gaur & Mr. Ateev Mathur, Advs.

For the Respondent : Respondent in person

**CORAM
HON'BLE MR JUSTICE AMIT MAHAJAN**

JUDGMENT

1. The present petition is filed challenging the order dated 19.04.2023 (hereafter '**impugned order**'), passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Courts, Delhi in Complaint Case No. 42108/2016 to the extent that it directed the petitioners to appear for the purpose of furnishing bail bonds and to furnish an undertaking.



2. By the impugned order, the learned MM directed the accused petitioners to obtain bail upon furnishing bail bonds and to enter appearance for this purpose. The learned MM also directed the petitioners to furnish an undertaking affirming their no objection to the recording of evidence in their absence, agreeing not to contest their identity during such proceedings, and committing to appear in person for the framing of charges, if deemed necessary.

3. The dispute originated in the year 2005 when the respondent, a former employee of the Hongkong and Shanghai Banking Corporation Ltd (**HSBC**), was terminated from her employment. Disputing the termination, she initiated an industrial dispute against the bank, raising grievances regarding unfair dismissal. During the pendency of these proceedings, the respondent alleged that the bank had submitted a forged Airway Bill document to support its case. This allegation led to the initiation of criminal proceedings against the petitioners.

4. By order dated 06.05.2009, the learned MM issued summoning order against the petitioners based on the allegations of forgery. The summons required personal appearance of the accused individuals, including senior officials of HSBC, which the petitioners contended was both procedurally irregular and unnecessary given the corporate nature of the dispute.

5. Subsequently, Petitioner No.1 - HSBC approached this Court challenging the summoning order and quashing of the complaint in CrI.M.C. No. 2046/2009 on the ground that personal appearance in such cases would cause undue hardship and was unwarranted,



especially considering the nature of the allegations. By interim order dated 15.07.2009, Mr. Davis then CEO of HSBC was granted exemption from personal appearance before the Trial Court till the next date of hearing.

6. Subsequently, Petitioner Nos.2 & 3 filed separate petitions being, Crl. M.C. No.2447/2009 and 2551/2009 before this Court challenging the summoning order and seeking quashing of the complaint. By interim orders dated 24.07.2009 and 27.07.2009, the proceedings were stayed before the learned MM.

7. By order dated 28.01.2014, this Court disposed of all three petitions granting liberty to the petitioners to raise the arguments presented in those petitions before the Trial Court at the stage of hearing on charge and held that personal appearance of the petitioners was not necessary during trial proceedings, as long as they were represented through counsel.

8. Consequently, the petitioners preferred Special Leave Petitions bearing No. 2364/2017, 4095/2014 and 4675/2014 before the Hon'ble Apex Court against the order dated 28.01.2014 passed by this Court. The Hon'ble Apex Court, by order 09.09.2015 disposed of the petitions and held as under :

“Having considered the totality of the facts and circumstances of these cases, we consider it just and appropriate to relegate the controversy back to the trial court, and require the trial court to permit the petitioners before this Court to cross examine the witnesses produced by the complainant, including the right to confront the said witnesses, with documents available with the petitioner.

Having given the aforesaid liberty, we request the trial to proceed to examine the controversy under Section 245 of the



Code of Criminal Procedure, 1973, and to pass an appropriate order in accordance with law. Needless to mention that the trial court will not be influenced by any of the observations made either by the High Court or by this Court.

Insofar as the personal appearance of the petitioners is concerned, the trial court shall abide by order dated 15.07.2009 passed by the High Court.”

9. Clearly, the Hon’ble Apex Court made it clear that insofar as the personal appearance of the petitioners is concerned, the Trial Court should abide by the order dated 15.07.2009 passed by this Court.

10. On 29.03.2016, the respondent filed an application before the learned Trial Court, seeking a direction that Petitioner Nos. 2 and 3 be directed to appear personally for the purpose of furnishing bail bonds.

11. By an order dated 23.04.2018, the learned MM disposed of the said application and directed the personal presence of the petitioners while further mandating that Petitioner Nos. 2 and 3 furnish bail bonds or surety bonds.

12. Aggrieved by the order dated 23.04.2018, Petitioner Nos. 2 and 3 filed Criminal Revision Petition No. 463/2018 before this Court. The revision petition was allowed by order dated 24.05.2018, wherein this Court clarified that a harmonious reading of the previous orders passed by the Hon’ble Apex Court and the Delhi High Court made it evident that all the petitioners had been exempted from personal appearance before the Trial Court until the conclusion of arguments on the point of framing of charge.

13. Despite the clarification provided by this Court, on 01.06.2018, the respondent once again filed an application before the learned Trial Court, seeking directions for the counsel representing the accused to



provide an undertaking stating that the petitioners had no objection to the complainant leading pre-charge evidence. Additionally, the respondent requested the court to direct the accused to furnish their current addresses and locations. The respondent also filed multiple other applications, including one for the summoning of various witnesses from HSBC, another under Section 340 of the CrPC against the petitioners, and a separate application seeking directions against Petitioner No. 1.

14. By the impugned order dated 19.04.2023, the learned Metropolitan Magistrate allowed the respondent's application seeking a direction for the counsel representing the petitioners to provide an undertaking on behalf of the petitioners. Additionally, the learned MM directed the petitioners to furnish bail bonds.

Submissions

15. The learned senior counsel for the petitioners submitted that the impugned order dated 19.04.2023 passed by the learned MM is ex-facie illegal and has an effect of overreaching the orders passed by the Hon'ble Apex Court and this Court.

16. He submitted that a bare perusal of the order dated 09.09.2015 passed by the Hon'ble Apex Court as well as order dated 28.01.2014 passed by this Court, reveals that the petitioners are exempted from personal appearance till the arguments on charge have been concluded in the trial.

17. He submitted that the said issue has already been addressed in the order dated 24.05.2018 passed by this Court, that all the petitioners



have been exempted from personal appearance before the learned Trial Court, and despite the same being the position, the learned MM has passed directions mandating the presence of the petitioners for the purpose of furnishing bail bonds.

18. He submitted that the directions passed by the learned MM is beyond the relief sought by the respondent in the application, as the prayer in the said application is only to the extent of filing an undertaking on behalf of the accused persons/ petitioners, of no objection in pre-charge evidence in their absence, and filing an affidavit of their current address and location.

19. He submitted that the application filed by the respondent for a direction to the petitioners to furnish bail bond/ security has already been dismissed in consequence of the order dated 24.05.2018 passed by this Court, setting aside the order dated 23.04.2018 passed by the learned MM allowing the said application of the respondent.

20. He submitted the direction passed by the learned MM with regard to furnishing an undertaking of no objection in recording of pre-charge evidence, is also erroneous, as no such direction was passed by the Hon'ble Apex Court or by this Court while exempting the petitioners from personal appearance.

21. He further submitted that the record of the Trial Court reveals that the respondent has filed almost six applications since the order dated 09.09.2015 passed by the Hon'ble Apex Court, in order to delay the process and prolong the harassment of the petitioners, and that the learned MM has failed to consider the same.



22. *Per contra*, the respondent in person, submitted that there is no perversity in the impugned order dated 19.04.2023 passed by the learned MM.

23. She submitted that the learned MM has relied upon the judgement passed by the Hon'ble Apex Court in ***Satender Kumar Antil Vs CBI : SLP Crl No.5191 of 2021*** as well as the judgement passed by this Hon'ble Court in ***Kajal Sen Gupta Vs Ahlcon Ready Mix Concrete : Crl M.C. No.1640 of 2011***, and taken note of the fact that neither the order passed by the Hon'ble Apex Court nor the orders passed by this Court have exempted the accused persons/ petitioners from furnishing bail bonds and obtaining formal bail.

24. She submitted that the learned MM has not overreached the orders passed by the Superior Courts, rather has exercised equal protection of law. She submitted that the learned MM has relied upon the view taken in ***Puneet Dalmia Vs CBI : Crl Appeal No.1901 of 2019***, wherein the Hon'ble Apex Court upheld the grant of personal exemption on the condition that the accused shall give an undertaking that he will not dispute his identity and shall not object to the recording of evidence in his absence.

Analysis

25. The limited issue before the court is whether the learned MM was justified in directing the petitioners to furnish bail bonds and an undertaking despite prior exemptions from personal appearance granted by the Hon'ble Apex Court and this Court.



26. The factual background involves a criminal complaint against HSBC and its representatives following allegations of forgery arising from an employment termination dispute initiated by the respondent following which the petitioners were summoned *vide* order dated 06.05.2009 which was subsequently challenged by the petitioners. This court, by order dated 28.01.2014 disposed of the petitions and held as under :

“.....this petition is disposed of with liberty to petitioners to urge the pleas taken herein before the trial court at the stage of hearing on the point of charge and if it is so done, then trial court shall deal with the pleas raised herein by passing a speaking and reasoned order. Till arguments on the point of framing of charge are concluded, personal appearance of petitioners’ be not insisted upon by the trial court, provided petitioners are duly represented through counsel, who does not seek adjournment.....”

27. This Court, by order dated 24.05.2018 in Crl. Revision Petition No. 463/2018 further clarified that a harmonious reading of the orders passed by both the Hon’ble Apex Court and this Court indicated that the petitioners were exempted from personal appearance before the trial court. The Court emphasized that the exemption was comprehensive and continued to be in force unless revoked by a competent authority for valid reasons. The relevant part of the order dated 24.05.2018 is reproduced hereunder:

“A perusal of order dated 28th January 2014, passed by the learned Single Judge coupled with the order dated 09th September, 2016 of the Supreme Court makes it clear that all the petitioners were exempted from personal appearance before the Trial Court till the arguments on the point of framing of charge are concluded. Accordingly, in my view, Trial Court has erred by holding that only petitioner no.1/Mr. Stuart Davis/CEO



of HSBC/ Accused no.1 was exempted from personal appearance.”

28. Concededly, the petitioners were exempted from personal appearance not only by the order of the Hon’ble Apex Court, but also pursuant to the order dated 28.01.2014 passed by this Court.

29. Section 88 of the CrPC confers a discretionary power upon the Magistrate to require a bond for ensuring the attendance of a person in court when such attendance is deemed necessary. This provision is intended as a procedural safeguard to ensure compliance with judicial directives when an accused is summoned to appear before the court. However, the discretionary nature of Section 88 of the CrPC implies that bail bonds are not mandatory in every instance and must be assessed in the context of the specific facts and circumstances of each case. The provision does not prescribe a rigid or inflexible standard for its application.

30. In the present case, the issue of securing the presence of the petitioners does not arise as the requirement for personal appearance has already been dispensed with by prior exemption orders passed by this Court as well as the Hon’ble Apex Court. Consequently, the necessity for furnishing bail bonds becomes redundant since the accused are not being compelled to make a physical appearance. Therefore, invoking Section 88 of the CrPC in the present case would be legally superfluous and would amount to an excessive and punitive measure against the petitioners without any judicial justification.



31. The case of ***Kajal Sengupta v. Ahlcon Ready Mix Concrete*** (*supra*), which has been relied upon by the learned MM in the impugned order, is clearly distinguishable from the present case on both factual and legal grounds.

32. In ***Kajal Sengupta v. Ahlcon Ready Mix Concrete*** (*supra*), the exemption from personal appearance granted to the accused was conditional and limited to specific circumstances, where the court retained discretion to require personal appearance if deemed necessary. Conversely, in the present matter, the exemption granted by the Hon'ble Apex Court and this Court was absolute, with no such reservations or conditional limitations imposed.

33. Furthermore, the requirement of furnishing bail bonds in ***Kajal Sengupta v. Ahlcon Ready Mix Concrete*** (*supra*) was justified due to the accused's failure to comply with previous court directions. However, in the current case, the petitioners have complied with all court orders, and their exemption from personal appearance has been consistently upheld by superior courts.

34. Therefore, the reliance placed on ***Kajal Sengupta v. Ahlcon Ready Mix Concrete*** (*supra*) by the learned MM in the impugned order is misplaced and does not apply to the facts and circumstances of the present case.

35. Furthermore, the authority and binding nature of directions issued by higher courts cannot be undermined by lower courts. The principle of judicial discipline mandates that subordinate courts must adhere to the directives and orders issued by superior courts and



refrain from issuing conflicting or contradictory orders. Any deviation from such binding precedents not only undermines the authority of the higher judiciary but also disrupts the uniform administration of justice.

36. The impugned order requiring bail bonds, despite exemption, creates procedural redundancy. The exemption, already granted, indicates the court's satisfaction with ensuring the petitioners' compliance through alternative mechanisms like representation by counsel.

37. In the opinion of this Court, the requirement to furnish bail bonds under these circumstances is legally redundant and contrary to the principles of judicial efficiency and proportionality.

38. The conduct of the respondent in repeatedly filing multiple applications, despite clear judicial pronouncements granting the petitioners exemption from personal appearance, reflects a deliberate attempt to delay the trial proceedings. The consistent filing of such applications, even after the Hon'ble Apex Court and the Hon'ble High Court clarified the exemption status, demonstrates an abuse of the judicial process aimed at causing unnecessary procedural hurdles for the petitioners.

39. Furthermore, the learned MM, by entertaining these repetitive applications and issuing the impugned order directing personal appearance and the furnishing of bail bonds, has committed a manifest error in law.

40. The learned MM has failed to establish any exceptional or compelling circumstances justifying a deviation from the exemptions



2024:DHC:9992



previously granted by the higher courts in favour of the petitioners. The judicial precedents set by superior courts were binding, and no legal basis for overriding such directions has been demonstrated.

41. In view of the above, the petition is allowed, and the impugned order dated 19.03.2023 mandating bail bonds and undertaking, is set aside. Courts should ensure that procedural requirements do not impose undue hardship or contravene previously granted exemptions.

AMIT MAHAJAN, J

DECEMBER 24, 2024