

Court No. - 12

Case :- APPLICATION U/S 482 No. - 6051 of 2024

Applicant :- Mohammad Saquib Khan

Opposite Party :- Directorate Of Enforcement Thru. Assistant Director Lko. Zonal Office Lko.

Counsel for Applicant :- Shailendra Yadav

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Pankaj Bhatia,J.

1. Heard Sri Tamjeed Ahmad assisted by Sri Shailendra Yadav the counsel for the applicant and Sri Shiv P. Shukla who appears for the Enforcement Directorate.
2. This application under section 482 Cr.P.C. has been filed challenging the order dated 24.06.2024 whereby the application filed by the applicant under section 317 Cr.P.C. was rejected mainly on the grounds that the applicant had himself given the bond of undertaking under section 88 Cr.P.C wherein he had undertaken to appear on all the dates, the application could not be considered and further no charge has been framed till date.
3. While considering the application of the applicant in respect of inconvenience caused on account of distance of travel in between the residence and the court, the court observed that in the application under section 88 Cr.P.C., the applicant had undertaken to be present on all the dates. It was further recorded that the applicant has not been granted bail and was only granted the benefit under section 88 Cr.P.C.
4. The submission of the counsel for the applicant, in brief, are that in ECIR Case, complaint was filed by the E.D. without arresting the applicant in October 2023 and the applicant was summoned in terms of the complaint filed by the ED. The applicant appeared before the court concerned and in view of the law as declared in the case of **Tarsem Lal vs. Directorate of**

Enforcement; 2024 INSC 434, the applicant moved an application under section 88 Cr.P.C. giving personal bond, which was accepted vide order dated 01.06.2024 in which a condition was imposed by the court that he would be present on all the dates and would cooperate with the trial, the other conditions were also imposed.

5. After passing of the order accepting the personal bond under section 88 Cr.P.C. on 01.06.2024, the applicant moved an application purporting to be under section 317 Cr.P.C. on 10.06.2024 mentioning therein that the applicant is a resident of Bengaluru which is approximately 2500 kilometres from Lucknow and the dates are being fixed on a weekly basis and considering the inconvenience and the cost involved in travelling, the same is not economically feasible more so when he has to look after the aged parents, as such, he sought exemption from appearance on regular dates only and made an undertaking to appear in case of specific dates for example framing of charges and the proceedings under section 313 Cr.P.C. etc., the said application came up for consideration, which was dismissed by means of the impugned order.
6. While arguing the present application, the counsel for the applicant argues that the trial court has erred in rejecting the application under section 317 Cr.P.C., he argues that in the judgment of the **Tarsem Lal (supra)** itself, a window was left open for seeking exemption under section 205 Cr.P.C. He also places reliance on another judgment of the Supreme Court in the case of *Sharif Ahmad and another vs. State of U.P. and another; 2024 SCC Online SC 726* and places emphasis on paragraph 47, which is as under :

"47. Further, the observation that there is no provision for granting exemption from personal appearance prior to

obtaining bail, is not correct, as the power to grant exemption from personal appearance under the Code should not be read in a restrictive manner as applicable only after the accused has been granted bail. This Court in Maneka Sanjay Gandhi and Another v. Rani Jethmalani held that the power to grant exemption from personal appearance should be exercised liberally, when facts and circumstances require such exemption. Section 205 states that the Magistrate, exercising his discretion, may dispense with the personal attendance of the accused while issuing summons, and allow them to appear through their pleader. While provisions of the Code are considered to be exhaustive, cases arise where the Code is silent and the court has to make such order as the ends of justice require. In such cases, the criminal court must act on the principle, that every procedure which is just and fair, is understood as permissible, till it is shown to be expressly or impliedly prohibited by law.

He thus, argues that the order impugned deserves to be set aside and the application for exemption may be allowed.

7. During the course of hearing, the applicant has placed along with the records, a copy of the order passed by the same court on 03.06.2024 in another case wherein the accused on a similar application seeking exemption under section 317 Cr.P.C. mainly on the ground of distance required to be travelled and the inconvenience caused, the same judge who has rejected the present application allowed the said application. He further states that even in the said case being Criminal Case No.1417 of 2018 (CBI vs. Bharat Chaudhary), the charge has not been framed. He thus emphasised that the same judge while exercising the power under section 317 Cr.P.C. has granted the benefit to the accused of the said case and has denied the said benefit to the applicant by means of the impugned order.
8. Learned counsel for the Enforcement Directorate strongly opposes the application by arguing that in view of the law which is very clear, the application under section 317 Cr.P.C. was not maintainable at the first instance and the applicant ought to have

moved an application under section 205 Cr.P.C. He further argues that even in the case of **Tarsem Lal (supra)** the Supreme Court had referred Section 205 Cr.P.C. and not section 317 Cr.P.C. He further argues that for moving an application under section 317 Cr.P.C., it was incumbent upon the applicant to have filed an undertaking which was although not prescribed in the statute but was observed in the judgment of the Supreme Court in the case of **M/s Bhaskar Industries Limited vs. M/s Bhiwani Denima and Apparels Ltd and others; 2001 (7) SCC 401** and he places reliance on paragraph 17 which reads as under :

"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."

9. The counsel for the Enforcement Directorate further argues that a similar observation was made made by the Supreme Court in the case of **U.P. Pollution Control Board vs. M/s Mohan Meakins Ltd.; 2000(3) SCC 745**.
10. In response to the said, the counsel for the applicant argues that a plain reading of the language of section 317 Cr.P.C. makes it

clear that the magistrate is duly empowered to consider the application for exemption at the two stages either at the stage of enquiry or at the stage of trial and can be decided on facts of each case. He further draws my attention to section 2(g) of the Cr.P.C. which describes enquiry to the following effect. Section 2(g) is quoted herein below :

2(g) Cr.P.C. "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;

Section 317 Cr.P.C. is also quoted herein below:

317. Provision for inquiries and trial being held in the absence of accused in certain cases : (1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

(2). If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately."

11. He lastly argues that the power to grant exemption, is vested in the Magistrate and can be exercised either under section 205 Cr.P.C. or under section 317 Cr.P.C. and both of the said provisions operate and achieve the same objectives as was clarified by the Supreme Court in the case of ***Sharif Ahmad and another (supra)***.
12. The counsel for the applicant in reply to the counsel for the respondent in the light of observations of Supreme Court in **M/s**

Bhaskar Industries (supra), argues that the stage of filing undertaking will happen only after the application under section 317 Cr.P.C. is accepted and to that extent, the submission of the counsel for the respondent does not merit acceptance.

13. For considering the submissions made at the bar it is essential to notice certain provisions of PMLA and Cr.P.C.
14. The power of trial of offences under Section 3 of PMLA is in exclusive domain of Special Courts constituted by virtue of Section 43 of the PMLA.
15. In respect of proceedings at the stage prior to the stage of 'trial', the empowered 'Magistrate' or 'Special Court' are duly empowered to act according to the provisions elaborated under Chapter XV, XVI and Chapter XVII of Cr.P.C. as well as General Provisions under Chapter XXIV of the Cr.P.C.
16. On plain reading of the mandate of Section 317 Cr.P.C., it is clear that the power of granting exemption from appearance, is vested in the Magistrate both at the time of enquiry and at the time of trial. After the complaint is filed and the charge is framed in terms of the mandate of section 211 Cr.P.C. from the said date, the trial commences. From the date an application is filed under section 200 Cr.P.C. and till the time of framing of the charge, the entire proceedings are an enquiry and no more as defined under Section 2(g) of the Cr.P.C.
17. Section 205 Cr.P.C. empowers the Magistrate at the time of issuance of summons to dispense with the personal attendance of the accused and to permit him to be represented by pleader. Section 205 (2) Cr.P.C. further empowers the Magistrate to exercise his discretion of exemption from personal attendance at the time of enquiry or trying the case. Thus, from the plain reading of section 205 Cr.P.C. and 317 Cr.P.C., it is apparent that

the Magistrate is duly empowered to consider the grant of exemption at both stages i.e. after commencement of trial or at the stage of enquiry, of course depending on the requirement in facts of each case.

18. Exercise of powers under Section 205 and Section 317 are available to the Court to meet the same objectives.
19. Section 317 is a power vested in the Court in addition to Section 205 and not in exclusion of Section 205. To further clarify, general provisions under Chapter XXIV and further enabling provisions vested in a Court are in addition to the specific powers and cannot be interpreted to restrict the special powers.
20. Power to grant exemption from appearance either under Section 205 or Section 317 of the Cr.P.C. should be exercised liberally as observed in Para 47 of the judgment in the case of *Sharif Ahmad (supra)*.
21. Application of an accused for grant of exemption from appearance after bonds are submitted under Section 88 of Cr.P.C. can be filed both under Section 205 of Cr.P.C. or under Section 317 of Cr.P.C.
22. In the present case, considering the fact that no date was fixed for framing of charge, prima-facie from the materials there was no necessity of the applicant being called, more so when he had given an undertaking to appear through pleader and wanted exemption on non essential dates only. The order further ignores that the Special Court was well and duly empowered to summon the applicant for appearing as and when, the Court desired even after grant of exemption according to the facts of the case.
23. The rejection of the application on the grounds as mentioned in the impugned order being that the applicant had himself undertaken to appear in the undertaking under section 88

Cr.P.C., is wholly erroneous and deserves to be rejected and is accordingly rejected. The interpretation as recorded in the order is wholly perverse and contrary to the mandate of law as elaborated in the case of *Sharif Ahmad and another (supra)* and *Tarsem Lal (supra)*. The order is further bad in law insofar as it records that the stage of filing application under section 317 Cr.P.C. had not arrived, which is contrary to the scope of Section 317 Cr.P.C. as explained herein above. Thus, for both the reasons, the impugned order deserves to be quashed and is accordingly quashed.

24. The trial court is directed to pass orders granting exemption to the appearance on regular dates, however, it will be open to the Magistrate to call for personal appearance of the applicant at the time of framing of charge and thereafter whenever required for the reasons to be recorded.
25. Till the time, the fresh order, as directed above, is passed, the applicant would not be required to be present. The applicant would however be present through his advocate on all the date fixed. The applicant may also be called upon to furnish any undertaking, if so directed by the Magistrate in the light of the directions given in the case of *M/s Bhaskar Industries Limited (supra)*.
26. The application stands **disposed off** in terms of the said order.
27. Before parting with the said case, the two orders passed by the Magistrate in similar facts and circumstances demonstrates an extremely arbitrary decision making of the judicial officer concerned in deciding similar applications. Thus, Registrar General is directed to call for a report from the court concerned explaining the manner in which two diametrically opposite orders have been passed while exercising the jurisdiction in the same set of facts being the order dated 24.06.2024 passed in

Sessions Case No.2963 of 2024 and the order dated 03.06.2024 passed in Criminal Case No. 1417 of 2018. The Registrar General shall call for an explanation and shall place the same on records for the perusal of this Court and any further action, if required.

28. This court records its appreciation provided by Miss. Rajshree Lakshmi Research Associate / Law Clerk in deciding the case.

Order Date :- 11.7.2024
VNP/-

[Pankaj Bhatia, J.]