
(2014) 04 RAJ CK 0091
In the Rajasthan High Court
Case No : Cr. Misc. Petition No. 3908 of 2012

A.K. Pandya

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 200, 205, 233, 243
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 120B, 406, 420

Citation : (2014) CriLJ 3411

Hon'ble Judges : M.C. Sharma, J

Bench : Single Bench

Advocate : Biri Singh Sinsinwar, Sr. Advocate, Miss Suruchi Kasliwal for the Accused in S.B. Cr. Misc. Petition Nos. 3908/2012, 3833/2012 and 3833/2012, Mr. Mahendra Singh for the Accused in S.B. Cr. Misc. Petition No. 3846 of 2012, Advocate for the Appellant; Vijay Singh Poonia for the Respondent No. 2, Mr. R.S. Shekhawat, Public Prosecutor for the State of Rajasthan, Advocate for the Respondent

Judgement

Mahesh Chandra Sharma, J.—These four criminal misc. petitions have been filed by the accused petitioners against the order dated 5.11.2012 passed by Additional Metropolitan Magistrate (Junior Division) No. 21 Jaipur Metropolitan, Jaipur in Criminal Case No. 113 of 2003 (under sections 406 and 120B IPC) whereby the application dated 7.7.2003 filed by the accused petitioners (except accused No. 4) seeking exemption from personal appearance u/s 205 of the Criminal Procedure Code was rejected.

2. Since all the aforesaid criminal misc. petitions have been filed against the order dated 5.11.2012 passed by Additional Metropolitan Magistrate (Junior Division) No. 21 Jaipur Metropolitan, Jaipur rejecting the application u/s 205 of the accused petitioners, they are being disposed by this common order.

3. Facts as alleged in Criminal Misc. Petition No. 3846 of 2012 are taken into

consideration. A rights Issue was brought out in the year 1999 by the erstwhile Bank of Rajasthan comprised of 448,55,480 equity shares of Rs. 10/- each for cash at a premium of Rs. 5 per share with one detachable warrant carrying the right to be converted in one equity share within 12-18 months. In the first phase of the Issue 9248 applications were received from various share holders. M/s. HRB Floriculture Ltd. through its Managing Director Krishna Kumar Parwal and his family members were found eligible for allotment of shares. In the second phase of allotment, i.e. Conversion of warrants into shares 5701 applications were received from various share holders including the complainant who sought allotment in Demat Form. The first phase of allotted shares were credited to the beneficiary account with the depository National Security Depository Ltd. on 28.1.2000. The complainant filed application on 20.3.2001 for conversion of warrants into shares in D-Mat form and on grant of approval by the concerned Stock Exchanges for listing of shares the beneficiary account of complainant was credited by the depository of his choice National Security Depository Ltd. on 8.11.2001. On 11.3.2002 the complainant sent a legal notice to the Bank and its Directors claiming compensation against losses said to have been suffered for the alleged delay in listing of shares. By the said notice, the Bank and its Directors were threatened with civil/economic/SEBI/criminal cases unless a sum of Rs. 26,05,500/- were to be paid by the Bank to the complainant. The Bank politely reply to the said notice vide communication dated 14.3.2002. Eight months later, the complainant filed a complaint in the court of Additional Chief Judicial Magistrate No. 8 Jaipur City Jaipur with the allegation that the shares were not issued and listed within a period of 42 days from the date of application and therefore the complainant was put to a great loss on account of fall in share price. The court below referred the said complainant to Police Station Vidyadhar Nagar, Jaipur u/s 156(3) Cr.P.C. for investigation. Consequently a criminal case No. 322/2002 came to be registered at Police Station Vidyadhar Nagar, Jaipur on 7.12.2002 for offence under sections 420, 406 and 120B IPC. Upon completion of investigation by the investigating agency it was found that no cognizable offence was made out and the dispute between the parties was purely of civil nature and a final report was submitted to the Judicial Magistrate No. 21 Jaipur City, Jaipur. Upon receipt of final report, the court below passed an order directing issuance of notice to the complainant. On 24.1.2003 the complainant filed a protest petition before the court below and on 20.3.2003 the statement of Krishna Kumar Parwal was recorded u/s 200 Cr.P.C. The court below vide order dated 2.5.2003 took cognizance of offence under sections 406 and 120B IPC against the erstwhile Bank of Rajasthan and all its Directors/office bearers and bailable warrants of arrest were issued against the accused petitioners. Upon service of the said bailable warrants of arrest requisite bail bonds and sureties were duly executed by the accused petitioners. The accused petitioners thereafter entered appearance before the court below through their counsel and submitted an application dated 7.7.2003 for grant of exemption from personal appearance. The Bank of Rajasthan Ltd. and others filed a petition u/s 482 Cr.P.C. against the criminal proceedings so initiated against them and the same was registered as

S.B. Criminal Misc. Petition No. 723 of 2003. Another misc. petition was also filed by the persons who were nominated as directors of the erstwhile Bank of Rajasthan by the Reserve Bank of India and the same was registered as S.B. Criminal Misc. Petition No. 801 of 2003 H.R. Khan and others vs. State of Rajasthan. It is further alleged in the petition that vide order of this court dated 29.6.2003 the petitions were admitted and this court was pleased to stay the proceedings pending before the court below. The aforesaid criminal misc. petitions were disposed of by a common order dated 9.7.2012 stating that the grounds and contentions raised in the petitions may be urged by way of objections to be raised before the court below and the court below may conduct further proceedings only after deciding such objections. It is further alleged that the order dated 9.7.2012 was based on the premise that the same was being passed with consent of the counsel appearing for the petitioners and hence the accused petitioners filed criminal misc. application No. 317/2012 for recalling the said order dated 9.7.2012. The said application was posted for hearing on 19.11.2012 and it is alleged in the petition that despite this the court below vide order dated 5.11.2012 rejected the application filed by the accused petitioners seeking exemption from personal appearance. This order dated 5.11.2012 has been challenged in all the above criminal misc. petitions. It is alleged in the petition that the court below has rejected the accused petitioners application for exemption from personal appearance on erroneous and patently contrary to law as well as material available on record. The court below has overlooked the provisions of section 317 Cr.P.C. It is also alleged that the court below has also overlooked the fact that this court having stayed that proceedings the petitioners could not be accused or alleged to have evaded appearance before the court below. It is also alleged that the accused petitioners have been implicated in the criminal proceedings solely with a view to create pressure and the directions given by the court below requiring the accused petitioners to be present in person instead of serving any valid purpose would only compound the vexatious harassment of the accused petitioners. In these circumstances it was prayed that the petitions be allowed and the accused petitioners application for exemption from personal attendance may be allowed and the order of the court below in this regard be set aside.

4. Mr. Biri Singh Sinsinwar, Sr. Advocate assisted by Miss Suruchi Kasliwal appearing for the accused petitioners in Cr. Misc. Petitions Nos. 3833, 3834 and 3908 of 2012 and Mr. Mahendra Singh, Advocate appearing for the accused petitioners in S.B. Cr. Misc. petition No. 3846 of 2012, have contended that the trial court has committed a manifest error in dismissing the application for exemption from personal appearance on the ground that section 205 Cr.P.C. was not invocable in the instant case. Section 205 Cr.P.C. does not in absolute terms prohibit the Magistrate from granting exemption in a case of this kind. Apart from section 205 Cr.P.C. powers are also vested in the court below u/s 317 Cr.P.C. to grant exemption from personal appearance. Reliance has been placed on 1992 Cr.L.R. (Raj.) 425 Rajendra Kumar vs. State of Rajasthan and 1994 (1)

RLR 108 Gopal Ram and others vs. State of Rajasthan and another. It is further argued that there is no dispute about the identity of the accused persons and that their personal presence is not necessary for the progress of the case. The order passed by the court below is contrary to the law laid down by this court in Jai Ram Vs. State of Rajasthan, . Reliance has also been placed on Dhiria and Others Vs. Jainarain and Another, in support of the contention that the accused persons cannot be insisted upon if the same would cause undue hardship and that such exemption can be granted even in the first instance. Reliance has also been placed on Sheoraj Singh Ahlawat and Others Vs. State of U.P. and Another, . Kursedji Wookerji Bananji Vs. State of Mysore, , Mt. Kamal Debi and Others Vs. Pannalal Agarwalla, Aditya Pd. Bagchi Vs. Jogendra Nath Maitra, and Dr. Prakash Amrut Mody and B.K. Sharma Vs. The State of Jharkhand, .

5. Mr. R.S. Shekhawat, Public Prosecutor appearing for the State and Mr. Vijay Singh Poonia, appearing for the respondent No. 2, have argued that the order dated 5.11.2012 passed by the court below in rejecting the application dated 7.7.2003 seeking exemption from personal appearance by the accused petitioners is absolutely in accordance with law and has been passed by a detailed discussion and considering the rulings cited by the parties. The court below vide order dated 2.5.2003 took cognizance against 17 accused persons and the Bank of Rajasthan for the offence u/s 406 and 120B IPC after a protest petition filed by the complainant on the FR submitted by the police and after recording the statement of the complainant u/s 200 Cr.P.C. The accused persons have been summoned through a bailable warrants in the amount of Rs. 3,000/- and the matter was directed to be taken up by the court below on 7.7.2003. It is alleged in the written submission submitted by the complainant and respondent No. 2 that the application for exemption from personal appearance dated 7.7.2003 was decided by the court below after lapse of 9 years. The accused petitioners have not put in appearance before the court below after service of bailable warrants against them for a single day. It is not a summon case in which application seeking exemption from personal appearance can be considered and the accused persons should be kept free during whole trial. There are serious allegations of committing crime for the offence under sections 406 and 120B IPC against the accused petitioners and in these circumstances the accused petitioners are not entitled for any exemption from personal appearance. The learned counsel for the complainant placed reliance on Harbin Arora vs. Jatindra Kaur decision dated 16.7.2012 of the Delhi High Court, Kajal Sen Gupta vs. M/s. Ahalkon Reddy Mix Kakrit dated 27.4.2012 of the Delhi High Court and TGN Kumar vs. State of Kerala decision dated 14.1.2011 of the Apex Court. Lastly they have contended that the criminal misc. petitions filed by the accused petitioners against the order of the court below rejecting the application for exemption from personal appearance deserve to be rejected.

6. I have heard learned counsel for the parties. I have also gone through the application dated 7.7.2003 filed by the accused petitioners for exemption from personal appearance and the order rejecting the application passed by the court

below. Before proceeding further it would be necessary to have a look at the provisions of section 205 Cr.P.C. and section 317 Cr.P.C. and the same read as under:

205. Magistrate may dispense with personal attendance of accused.--(1) 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.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided.

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.

From the above it is clear that the Magistrate may dispense with personal attendance of accused whenever he issues a summons and, and if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader, but the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused. Section 317 Cr.P.C. provides provision for inquiries and trial being held in the absence of accused in certain cases, at any stage of an inquiry or trial, 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. Sub section (2) of this section further provides that 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.

7. It is also necessary to have a look at the important rulings of the Apex Court

and High Courts on which reliance has been placed by the parties.

In *Habeen Arora vs. Jatinder Kaur*, judgment dated 16th July, 2012 of the Delhi High Court in Crl. M.C. 2777/2010 in para 2, 13, 14 and 15 held as under:

2. Learned counsel for the Petitioner contends that the learned Metropolitan Magistrate erred in law while granting the permanent exemption to the Respondent herein, Jatinder Kaur. It is contended that the present case was not an appropriate case to grant permanent exemption from personal appearance to the Respondent. Learned Metropolitan Magistrate failed to appreciate the fact that the demeanor of the Respondent herein was not appropriate and she failed to respond to the summons issued to her twice by the learned Trial Court. The first application moved by the Respondent herein for permanent exemption from appearance was rejected by the learned Metropolitan Magistrate observing insufficiency of grounds and frivolity in the application. Thus, when the learned Trial Court granted/allowed the second application on same grounds, the same was an abuse of process of law and the learned Trial Court could not have reviewed its own order. Principles of natural justice have been violated in the present case as the learned Metropolitan Magistrate while granting/allowing the application of the Respondent herein did not grant opportunity to be heard to the Petitioner. Application of the Respondent was not supported by any document fortifying the facts stated by the Respondent in her application. The order of the learned Metropolitan Magistrate allowing the application of the Respondent unconditionally is in contravention of the law laid down in *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others*, wherein the Hon'ble Supreme Court held that while granting an application for permanent exemption from personal appearance in Summon cases, precaution has to be taken. No condition has been imposed while granting permanent exemption to the Respondent. When the Respondent appeared in the Court on 23rd March, 2012, she stated that she was not aware of the statement made by her counsel. Thus the implied terms of the exemption are also violated by the Respondent. Hence the impugned order is erroneous and is liable to be set aside.

13. Thereafter when the matter was fixed for pre-charge evidence on 23rd March, 2012, Respondent Jatinder Kaur entered appearance in Court before learned Metropolitan Magistrate and her statement was recorded on SA wherein she stated that she did not want to settle the dispute as per the mediation settlement. She further stated that she was not aware about the statement made on her behalf by her counsel through whom she had been permanently exempted from appearance on 13th January, 2012. Thus, it is relevant to note that the Respondent resiled/negated the statement made by her counsel on her behalf through whom she was permanently exempted. Such a demeanour of the Respondent is unwarranted.

14. A perusal of the order dated 12th July, 2010 passed by learned Metropolitan Magistrate shows that the order was passed vaguely without keeping in mind the precautions imbibed in the Section. The Court could not have passed a blanket

order without imposing appropriate conditions.

15. Keeping in view the facts and circumstances of the present case, I deem it proper to allow the present petition. The order dated 12th July, 2010 passed by learned Metropolitan Magistrate granting permanent exemption to Respondent is set aside. The Respondent is at liberty to file an application seeking exemption from personal appearance as and when required. The learned Metropolitan Magistrate will consider the same in accordance with the law.

In *Kajal Sengupta vs. M/s. Ahlcon Ready Mix Concrete* decided by the Delhi High Court Cr.M.C. 1640/2011 on 27.4.2012 observed in para 12 as under:

12. Now, if at any subsequent stage, the Magistrate desires the presence of the accused person, he may summon him to appear in-person, and in failure to do so, he may take coercive steps by forfeiting the bail bond or attach his movable property. This procedure, could only be effective if the accused had previously surrendered to the Court and obtained bail.

In *T.G N. Kumar Vs. State of Kerala and Others*, , the Apex Court relying on the decision in *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others*, and of the Kerala High Court in *Saseendran Nair Vs. General Manager, State Bank of Travancore and Others*, *Kerala State Road Transport Corpn. Vs. S. Abdul Latheef*, , *Raman Nair v. State of Kerala* (1999) 3 KLT 714, *Noorjahan Vs. T.T. Moideen and Others*, and *Helen Rubber Industries Kottayam and Others Vs. State of Kerala and Others*, , the learned Single Judge has issued the following "rules of guidance", with a direction that these can and must certainly be followed by the court below in the instant case as also by all criminal courts which are called upon to deal with trials u/s 138 of the NI Act:

(i) Hereafter in all Section 138 prosecutions, the very fact that the prosecution is one u/s 138 of the Negotiable Instruments Act shall be reckoned as sufficient reason by all criminal courts to invoke the discretion u/s 205 CrPC and only a summons u/s 205 CrPC shall be issued by the criminal courts at the first instance. In all pending Section 138 cases also applications u/s 205 CrPC shall be allowed and the accused shall be permitted to appear through their counsel.

(ii) The plea whether of guilty or of innocence can be recorded through the counsel duly appointed and for that purpose personal presence of the accused shall not be insisted.

(iii) Evidence can be recorded in a trial u/s 138 of the Negotiable Instruments Act in the presence of the counsel as enabled by Section 273 CrPC when the accused is exempted from personal appearance and for that purpose, the personal presence of the accused shall not be insisted.

(iv) Examination u/s 313(1)(b) CrPC can be dispensed with under the proviso to Section 313(1) and if the accused files a statement explaining his stand, the same can be received by the court notwithstanding the absence of a provision similar to Sections 233 and 243 CrPC in the procedure for trial in a summons

case. The power and the obligation to question the accused to enable him to explain the circumstances appearing in evidence against him must oblige the court in such situation to accept and consider the written statement made by the accused.

(v) to receive the judgment also, it is not necessary or essential to insist on the personal presence of the accused if the sentence is one of fine or the judgment is one of acquittal. After the pronouncement of judgment, the case can be posted to a specific date with directions to the accused to appear in person to undergo the sentence. By that date, it shall, of course, be open to the accused to get the order of suspension of the superior court produced before court.

(vi) Where warrants are to be issued in a Section 138 prosecution, ordinarily a bailable warrant u/s 88 CrPC must be issued at the first instance before a non-bailable warrant without any stipulations u/s 87 CrPC is issued.

(vii) The above stipulations can only be reckoned as applicable in the ordinary circumstances and are not intended to fetter the discretions of the court to follow any different procedure if there be compelling need. In such event, the orders/directions of the Magistrate shall clearly show the specific reasons as to why deviations are resorted to.

(viii) Needless to say, any person having a grievance that the above procedure has not been followed unjustifiably shall always have the option of approaching this Court for directions u/s 482 CrPC. The Sessions Judges and the Chief Judicial Magistrates must also ensure that these directions are followed in letter and spirit by the subordinate courts. Commitment to human rights and the yearning to ensure that courts are user-friendly are assets to a modern judicial personality and assessment of judicial performance by the superiors must make note of such commitments of a judicial officer.

(ix) Even though the above directions are issued with specific reference to prosecutions u/s 138 of the Negotiable Instruments Act, they must be followed in all other cases also where the offence alleged is technical and involves no moral turpitude.

In *M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others*, the Apex Court had laid down the following guidelines, which are to be borne in mind while dealing with an application seeking dispensation with the personal appearance of an accused in a case u/s 138 of the NI Act:

19. ... it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical

or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. In *TGN Kumar Vs. State of Kerala and Others*, , the Apex Court in paras 11, 20, 22 and 22 held as under:

11. In the light of the afore-extracted legal principles, the impugned order is clearly erroneous inasmuch as the discretion of the Magistrate u/s 205 of the Code cannot be circumscribed by laying down any general directions in that behalf. In *Manoj Narain Agrawal Vs. Shashi Agrawal and Others*, this Court, while observing that the High Court cannot lay down directions for the exercise of discretion by the Magistrate u/s 205 of the Code, had echoed the following views: (SCC p. 397, para 42)

42. ... Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the learned Magistrate. We are sure that the Magistrate would exercise his jurisdiction in a fair and judicious manner.

20. It is true that in Direction (vii) supra, the learned Judge has clarified that the stipulations in the preceding paragraphs are not intended to fetter the discretion of the court to follow any different procedure, if there be compelling need but the requirement of recording "specific reasons" by the Magistrate for deviating from the directions given in the order, as stipulated in the same paragraph, in our view, is by itself tantamount to putting fetters on the jurisdiction of the Magistrate. This is not warranted in law.

21. Thus, in the instant case, we have no hesitation in holding that the High Court exceeded its jurisdiction u/s 482 of the Code and/or Article 227 of the Constitution by laying down the afore-extracted general directions, which are inconsistent with the clear language of Sections 205 and 313 of the Code, as noted above. We feel that in the light of the aforementioned guidelines laid down by this Court, further directions on the same issue by the High Court were wholly uncalled for. In this regard, the following observations in *S. Palani Velayutham and Others Vs. The District Collector, Tirunelveli, Tamil Nadu and Others*,

19. The courts should avoid the temptation to become authoritarian. We have been coming across several instances, where in their anxiety to do justice, the courts have gone overboard, which results in injustice, rather than justice. It is said that all power is trust and with greater power comes greater responsibility.

22. In the light of the foregoing discussion, the appeal is allowed, and the impugned order containing general directions to the lower courts is set aside. However, we direct that if the accused moves the trial court with an application u/s 205 of the Code for exemption from personal attendance within four weeks of the receipt of a copy of this judgment, the exemption granted to her by the High Court shall continue to be in force till her application is disposed of by the trial

court.

8. In view of the rulings of the Apex Court and the High Courts, I may now examine the application dated 7.7.2003 filed by the accused petitioners/accused persons through their counsel for their exemption from personal appearance in the criminal case pending before the court below. In para No. 3 of the application grounds and reasons have been given for exemption of personal appearance of the accused petitioners/accused persons. In relation to accused No. 1 Praveen Kumar Tayal, it has been stated that he was Chairman of the erstwhile Bank and generally he used to reside at Mumbai. He is suffering from heart ailment and getting treatment from the doctors at Mumbai and he is not in a position to do travelling. Accused person No. 2 K.M. Bhattacharya was Managing Director of erstwhile Bank for some period. He is aged about 60 years on the date of filing of the application. It is stated in the application that he used to do most of the work of the Bank day to day and hence it is difficult for him to attend the court on account of important work with him. Accused person No. 3 P.K. Agarwal, was company secretary of the erstwhile Bank and on account of company secretary to discharge the duties as per the Companies Act is very necessary. Accused persons Deepak Saruparia (No. 5), B.R. Gupta (6), Sanjay Kumar (7), Prem Prakash Kapur (9), Naveen Kumar (10), Anil Anand Rao (11) and A.N. Chakaravarti (12) are Board of Directors of the Bank and generally they are residing at Mumbai. Accused person No. 9 Som Prakash Arya is residing in Haryana (Yamuna Nagar). Accused No. 13 Neeraj is residing at Chandigarh and accused No. 14 is resident of Udaipur. In these circumstances it was requested that they are not in a position to attend the court on each and every date during trial. Accused person No. 9 Shri B.R. Gupta is aged about 62 years, accused person No. 8 Som Prakash is aged about 75 years, Accused person No. 9 Prem Prakash Kapur is aged about 64 years, accused person No. 12 A.N. Chakaravarti is aged about 62 years and accused person No. 14 R.C. Mehta is aged about 70 years. All these persons are old age persons and day to day their health is deteriorating. It was prayed that in these circumstance exemption from personal appearance may be granted in their favour. In the application in paras and it was stated as under:

From the above it is clear that most of the accused petitioners are aged about 60 or 70 and Board of Directors of the Bank and nominees of the Reserve Bank of India and suffering from some ailment on the date of filing of the application dated 7.7.2003 for exemption from personal appearance. The accused petitioners have not submitted any document in support of their ailment. It has been alleged in the application that FR has been filed and their advocates will look after their cases and on these grounds the application for exemption from personal appearance has been filed.

9. At this stage it is very necessary to look into the order dated 5.11.2012 rejecting the application for exemption from personal attendance by the trial court.

In relation to considering of objections of the accused petitioners with reference to order passed by this Court on the earlier criminal misc. petition filed by the accused petitioner, the court below observed as under:

In relation to the rulings M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, and TGN Kumar Vs. State of Kerala and Others, cited by the counsel for the accused petitioners before the court below, the court below observed as under:

10. The court below in the order dated 7.7.2003 also stated that during the course of hearing the counsel for the complainant has filed the photocopy of the misc. petition by the accused petitioners showing that most of the accused petitioners have shown themselves to be resident of Jaipur. It was observed by the court below that on account of distance from their residence outside Jaipur the accused petitioners are not in a position to reach the court and will feel uncomfortable. In relation to other grounds like old age persons and ailments, the trial court observed that the accused petitioners have not produced any documentary proof in support of their contentions in order to get exemption from personal appearance during the course of trial. The court below also observed that as per the guide lines laid down in M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, has not been made out in the instant matter. In these circumstances the court below rejected the application for personal exemption filed by the accused petitioners on 7.7.2003. I have again and again gone through the findings given by the court below in the impugned order in the light of the rulings quoted above of the Apex Court and High Courts. In my view the order dated 5.11.2012 passed by the court below does not call for any interference in the inherent jurisdiction of this court u/s 482 Cr.P.C. I am in fully agreement with the findings arrived at by the court below. In my view the criminal misc. petitions filed by the accused petitioners deserve to be rejected.

11. For the reasons mentioned above, all the four criminal misc. petitions being devoid of merit are rejected. The stay applications also stand rejected. But in the facts and circumstances of these cases and in the interest of justice I pass the following directions:

- (i) The trial court is directed to conclude the trial as early as possible.
- (ii) The accused petitioners will appear before the trial court within a period of one month from the date of the order of this court.
- (iii) The non-bailable warrants issued by the trial court against the accused petitioners are converted into bailable warrants.
- (iv) If the accused petitioners do not appear before the trial court within the time stipulated hereinabove the trial court shall be free to issue non-bailable warrants against the accused petitioners.
- (v) After appearing before the trial court if the accused petitioners move any application u/s 205 Cr.P.C. the same shall be decided in accordance with law on

merits in the facts and circumstances of each case.

(vi) The earlier interim orders passed by this court stand modified accordingly.