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**(2013) 07 P&H CK 0508**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Criminal Miscellaneous No. M-19728 of 2013 (O and M)

Arjan Singh Kalra

APPELLANT

Vs

The State of Punjab

RESPONDENT

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**Date of Decision :** 01-07-2013

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313, 313(1)(b), 317, 482  
Penal Code, 1860 (IPC) — Section 201, 323, 34, 341, 506

**Citation :** (2013) 172 PLR 576

**Hon'ble Judges :** Ritu Bahri, J

**Bench :** Single Bench

**Advocate :** Dbhavyadeep Walia, for the Appellant; Shivali, AAG, Punjab, for the Respondent

**Final Decision :** Allowed

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## Judgement

Ritu Bahri, J.—An affidavit of Mr. Davinder Singh, Deputy Superintendent of Police, Samana, has been filed in the Court, which is taken on record. This petition u/s 482 Cr.P.C. is for quashing of the order dated 01.06.2013 (Annexure P-6) passed by the Judicial Magistrate, 1st Class, Patiala, whereby the application filed by the petitioner for permanent exemption from personal appearance, was dismissed.

2. The petitioner is facing trial under Sections 341, 323, 506, 201 34 IPC, which are bailable offences. The case in which the offence triable is punishable with imprisonment for a term not exceeding two years, is to be treated as a "summons case." As per Section 313(1)(b) of the Cr.P.C., the personal appearance of the accused can be exempted in the summons case. The said section reads as under:-

313. Power to examine the accused:-(1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-

(a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;

(b) shall after the witnesses for the prosecution have been examined and before he is called on for his defence question him generally on the case:

Provided that in a summons-case where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under Clause (b).

3. The Hon'ble Supreme Court in case Basavaraj R. Patil and Others Vs. State of Karnataka and Others, , has examined the provisions with regard to personal appearance of an accused, as provided u/s 313 of the Cr.P.C. In para No. 22 of the aforesaid case, the Hon'ble Supreme Court has observed as under:-

22. The one category of offences which is specifically exempted from the rigour of Section 313(1)(b) of the Code is "Summons cases." It must be remembered that every case in which the offence triable is punishable with imprisonment for a term not exceeding two years is a "summons case." Thus, all other offences generally belong to a different category altogether among which are included offences punishable with varying sentences from imprisonment for three years up to imprisonment for life and even right up to death penalty. Hence, there are several offences in that category which are far less serious in gravity compared with grave and very grave offences. Even in cases involving less serious offences, cannot the court extend a helping hand to an accused who is placed in a predicament deserving such a help?

4. The facts of the present case are that complainant-Rocky Rai is a neighbour of the petitioner. A dispute arose between the parties on account of a complaint made by the petitioner that the said complainant (Rocky Rai) was blowing the hooter of his car very loudly, which disturbed the family members of the petitioner.

5. The petitioner is 24 years old and is making an attempt to get appointment in U.A.E. The pendency of the trial and regular appearance of the petitioner before the trial Court can hamper his career. As per the affidavit dated 29.06.2013 submitted by the Deputy Superintendent of Police, Samana, the father of the petitioner is owner of a shop cum flat, situated at City Center, Patiala. He is also owner in possession of a flat bearing No. 47, Pocket-40, situated at Chitranjan Park, New Delhi. The petitioner's father and brother are also facing trial along with him.

6. In case M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, , the Hon'ble Supreme Court has observed that in a summons case, the benefit of exemption from personal appearance should be extended liberally. As per Section 317 Cr.P.C., the said benefit should be extended to the petitioner and in case the trial Court seeks his presence, the petitioner is bound to appear, otherwise he shall appear through his counsel.

7. As such, the impugned order dated 01.06.2013 is set aside and the trial Court is directed to accept the surety bonds of the petitioner as per the affidavit given by the Superintendent of Police, Samana, with regard to the property owned by the father of the petitioner and the personal appearance of the petitioner before the trial Court shall stand exempted as per Section 317 of the Cr.P.C.

8. Criminal Misc. petition stands allowed accordingly. A copy of this order be given to learned counsel for the petitioner under the signatures of the Court Secretary.