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**(2012) 07 DEL CK 0676**  
**In the Delhi High Court**  
**Case No : Criminal M.C. 2777 of 2010**

Harbeen Arora

APPELLANT

Vs

Jatinder Kaur

RESPONDENT

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**Date of Decision :** 16-07-2012

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 205, 205(2), 317, 317(1)  
Penal Code, 1860 (IPC) — Section 120B, 147, 201, 327, 352

**Citation :** (2012) 5 ILR Delhi 713

**Hon'ble Judges :** Mukta Gupta, J

**Bench :** Single Bench

**Advocate :** Siddharth Aggarwal with Mr. Simon Benjamin, for the Appellant;  
Kanwaljit Kochar with Mr. G.S. Arora, for the Respondent

**Final Decision :** Allowed

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## Judgement

Hon'ble Ms. Justice Mukta Gupta

1. By the present Petition, the Petitioner seeks setting aside of the order dated 12th July, 2010 passed in CC No. 1396/1/2004 granting permanent exemption from personal appearance to the Respondent herein. 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.

2. Per contra, learned counsel for the Respondent states that the dispute between the parties is of civil nature and a criminal complaint has been filed only to pressurize the Respondent to withdraw the civil suit filed against the Petitioner and her family members. It is further stated that the impugned order suffers from no illegality. She had produced the relevant record before the Trial Court when the application was heard and allowed. Further, the contention of the learned counsel for the Petitioner that the acts of the Respondent are only to cause delay has no merit as the Respondent was present on all occasions during the pendency of the proceedings and delay was always attributable to the Petitioner. Learned counsel contends that there was some miscommunication between the Respondent and her counsel thus she stated that she did not know the terms of settlement. There is no merit in the present petition and thus the same be dismissed.

3. I have heard learned counsels for parties.

4. Briefly, the case of the Petitioner is that the Petitioner had instituted Complaint Case No.1396/1/2004 before the learned Metropolitan Magistrate against the Respondent and two other accused persons for offences punishable under Sections 147/201/327/352/388/392/ 411/452/120B/506 IPC. In the complaint it is alleged that on 10th September, 1971, the residential plot at A-16/10 Vasant Vihar, New Delhi was granted to Petitioner's father's family i.e. late Giani Pratap Singh, Anand Singh (Petitioner's father), Satinder Kaur (other accused person) and Amrik Singh by Delhi Administration (Land and Building Department) byway of perpetual sub lease. The Respondent is the Petitioner's aunt who is a permanent resident of the United Kingdom. It is alleged that on 28th November, 2004 the accused persons began pressurizing the Petitioner to vacate the rooms/ portions in her occupation and on 29th November, 2004 they began throwing items belonging to Petitioner's family out of the garage which was in occupation of the Respondent. They threatened to throw her out of the property and even

kill her. On 30th November, 2004, the Petitioner lodged a written complaint with the SHO PS Vasant Vihar in relation to the events described above, which was duly received by him. Since the Petitioner's parents were out of town, and she was all by herself at the time, she employed two private security guards for the protection of her property and person from the accused persons. On being informed that the Petitioner has lodged a written complaint against them, the accused persons (along with two other unknown persons) barged into the Petitioner's room in a fury, and began throwing/ damaging/ destroying her belongings, including her Ph.D. thesis, which they tore apart. They threatened, abused and physically assaulted her. The Petitioner even appealed to the SHO, PS Vasant Vihar to restore possession of the said premises to her, but her plea fell on deaf ears. Therefore, the Petitioner was constrained to file a criminal complaint against the accused persons before the Ld. Metropolitan Magistrate, New Delhi, for offences under Sections 120B, 147, 201, 327, 352, 388, 392, 411, 452 and 506 IPC on 14th December, 2004. After recording pre-summoning evidence, the Ld. Metropolitan Magistrate was pleased to issue summons on 3rd July, 2008 to the accused persons including the Respondent herein for offences under Sections 352, 452 and 506 IPC for 19th December, 2008. The accused persons failed to appear before the Ld. Metropolitan Magistrate on the next date i.e., on 19th December, 2008 and fresh summons were issued to them for 17th July, 2009. However, even on that date the accused persons failed to appear before the Ld. Metropolitan Magistrate, thus again summons had to be issued to them for 26th November, 2009. On 12th July, 2010 the matter was fixed for recording of pre-charge evidence, but the Complainant was unable to be personally present as she was unwell. When the matter was called out by the Ld. Metropolitan Magistrate, counsel for the Petitioner was not present. The Petitioner's counsel thereafter found that the matter had already been heard for the day. Therefore, he mentioned the matter before the Ld. Metropolitan Magistrate and moved the application for exemption from personal appearance on behalf of the Petitioner which was allowed and duly recorded by the Ld. Metropolitan Magistrate in his order dated 12th July, 2010. However, on a subsequent inspection of the court file, it was found that the Respondent had moved an application for grant of permanent exemption from personal appearance before the Ld. Metropolitan Magistrate on 12th July, 2010 which had been allowed unconditionally. This order of learned Metropolitan Magistrate granting permanent exemption from appearance is impugned in the present petition.

5. Before proceeding further, it is relevant to reproduce Sec. 205 CrPC which reads as follows:

Section 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."

6. A bare perusal of Sec. 205 CrPC shows that the learned Metropolitan Magistrate has a discretion under this Section that he may dispense with the personal attendance of the accused in suitable cases at any stage. It is trite law that the exemption from appearance u/s 205 CrPC cannot be claimed by a person as a matter of right but while dealing with an application for exemption, the discretion of the Court is to be applied judiciously.

7. Hon"ble Supreme Court in M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, observed :

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 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.

18. A question could legitimately be asked - what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205(2) says that the magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

19. The position, therefore, bogs down to this: 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 to 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. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.

8. Hon"ble Supreme Court in S.V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Another, observed:-

13....It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, 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. We make it clear that if at any stage the trial court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance."

9. Thus, in view of the law laid down by Hon"ble Supreme Court, the clear position of law which emerges is that an accused at the first instance or at any stage can be granted exemption from appearing personally in Court where the learned Court deems it appropriate and the offences are not of serious nature. Secondly, while granting such exemption from personal appearance, the accused shall always be represented through an advocate who on his behalf will proceed in the trial/matter. Thirdly, the statements made by the counsel for the accused person shall be deemed to be made by the consent of the accused and the accused shall have no objection in taking evidence in his absence. Lastly, there is a word of caution attached to the use of discretion that a Court while granting such applications will not pass blanket orders, and has to make sure that the accused will not dispute his/her identity or any other proceedings that take places in his absence and in presence of his counsel. The Courts may impose conditions to secure the presence of the accused as and when required.

10. The requirement of attendance of the accused at the trial is not a mere formality, but is to ensure that the trial is allowed to be conducted in an expedient manner and is not hampered or prejudiced in the absence of the accused. Therefore, while granting permanent exemption from appearance, the Magistrate is deemed to have reserved his discretion to call the accused person to appear in person during the trial, at any stage of the proceeding, if necessary.

11. Applying the abovementioned criterions to the present case, it may be noted that the accused/Respondent along with the Petitioner and the co-accused Satinder Kaur and Harleen Kaur agreed to enter into mediation for settling the inter se dispute. The mediation order dated 4th June, 2011 was received by the learned Trial Court on 4th July, 2011. Subsequently, the matter remained pending before the learned Trial Court on the pretext that settlement talks were

going on between the parties and therefore the matter was adjourned. On 13th January, 2012, it was stated before the learned Metropolitan Magistrate by all the parties i.e. the Petitioner herein, the counsel for the Respondent herein and the other two accused persons that they are ready to agree to the settlement arrived between them before the Mediation Cell and that their statements have been recorded separately. Learned counsel for the Respondent on the same date made statement on behalf of the Respondent that he has authority to make statement on behalf of Respondent/accused No.1 who had been permanently exempted to appear before the Court. He stated that accused No.1/Respondent herein has no objection to the agreed terms of settlement before Mediation Cell on 4th June, 2011.

12. 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.

13. 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.

14. 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. Petition is disposed of.