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**(1992) 08 KAR CK 0035**  
**In the Karnataka High Court**  
**Case No : Criminal Petition No. 1315 of 1992**

K.K. Aurora

APPELLANT

Vs

President, S.K.F. (India) Employees" Union, Bangalore

RESPONDENT

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**Date of Decision :** 26-08-1992

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 205

**Citation :** (1992) 4 KarLJ 546

**Hon'ble Judges :** C. Shivappa, J

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## Judgement

1. The petitioner in this petition has questioned the legality of the order of the Chief Judicial Magistrate, Bangalore, in C.C.4641 of 1978, dated 14-8-1992 wherein he has dismissed the application of A. 2, petitioner herein, seeking general exemption from appearing before the court. That application was filed under Sections 205, 273 and 317, Cr. P.C. Now before this court the learned counsel submitted that he would confine the relief only to Section 205, Cr. P.C. to the stage under Section 251, Cr. P.C. and he is giving up his request to the subsequent stages.

2. The two questions that calls for decision in this petition are:

- i) Whether an accused can answer the plea of guilt or otherwise under Section 251, Cr. P.C. through a Pleader;
- ii) Whether the discretion rejecting the request of the petitioner to answer the plea through a pleader exercised by the learned Magistrate is judicious.

3. The facts which are relevant to consider these two questions are:

A criminal case was filed by the SKF (India) Ltd. Employees" Union against the management for contravention of Sections 29 and 32 of the Industrial Disputes Act, 1947. The court below took cognizance of the offence and issued summons against A. 2, the petitioner herein, who is the Managing Director of the said industry. He preferred a criminal petition before this court in CrI. P. No. 129 of 1979 challenging the issue of process and sought for quashing the entire

proceedings. That petition ended in dismissal. Against which he filed an SLP before the Supreme Court in Crl. A. No. 472 of 1980. It was disposed of on 5-8-1982 staying the proceedings of the criminal court because of the pendency of the case between the parties before the Industrial Tribunal, Bangalore. On termination of the proceedings before the Industrial Tribunal the criminal case was ordered to be posted on 6-7-1990. Subsequently, there was a proceeding pending on the file of this court wherein the records were transmitted to the court below in the month of April 1992. Thereafter the case was posted to 27-6-1992 to record the plea of the accused. On that day an application was filed seeking exemption from personal appearance. That application was rejected by the learned Chief Judicial Magistrate. It is against that order the present petition has been filed.

4. Regarding the first point whether a plea can be recorded through a pleader, the word "Pleader" in Section 2(q) is defined thus:

"2(q) "Pleader", when used with reference to any proceeding in any court, means a person authorised by or under any law for the time being in force, to practise in such court, and includes any other person appointed with the permission of the court to act in such proceeding."

Section 205, Cr. P.C. is a general provision from the scope of which Section 251 has not been exempted. Therefore in a summons case, the accused has been exempted from personal attendance. He can be permitted to appear through his pleader and the pleader may answer the plea in the examination under Section 251, Cr. P.C. The presence of the accused is not an absolute necessity while being examined under Section 251, Cr. P.C. This is the principle laid down in a decision reported in S.R. Jhunjhunwalla v B.N. Poddar and Another, 1988(2) Criminal Law Journal page 51. This principle is enunciated to prevent the accused from raising a question of prejudice on account of his non-examination in the event of conviction. Therefore, no prejudice is caused to the complainant by granting exemption to the accused, under Section 205, Cr. P.C. that too when it is not an absolute necessity while being examined under Section 251, Cr. P.C. Therefore I answer the first point in the affirmative.

5. Regarding the second question, whether the learned Chief Judicial Magistrate has exercised his discretion judiciously: Normally the discretion under Section 205, Cr. P.C. has to be exercised liberally, but it does not mean for mere asking. Where offences are economic offences, where accused are ladies, old, sickly persons, workers in factories, daily wage earners, other labourers and busy business people or industrialists, courts should invariably exercise the discretion liberally and exempt such persons from personal appearance. In the instant case the petitioner is a Managing Director of a company. When the law provides that he can avail the services of a pleader and answer the plea through the pleader, having regard to his position and exigencies of circumstances, it cannot be said that his request is unjust or barred in law. The position of the petitioner herein and the stage in which he is asking exemption are lost sight of by the learned

Magistrate. The statement of the learned Magistrate at para 8 of his order reads thus:

"But, in the instant case, it is not that the accused cannot be granted exemption, but the stage when we have already reached for recording the plea of the accused is not the stage at which exemption of accused can be granted under Sections 205 and 273, Cr. P.C."

Exemption can be granted at the stage when the case is set down for recording the plea, under Section 251, Cr. P.C. But the statement of the learned Magistrate quoted above comprises of both the stages, probably it is because the application was one for general exemption. However, while making such statement the learned Magistrate ought to have taken into consideration the surrounding circumstances exist in each case. The learned Magistrate has also observed that there are no exigencies which are preventing the accused from personally appearing before the court for the purpose of recording the plea. The circumstances to warrant such an opinion is not discussed in the order. Therefore exercise of the discretion by the learned Magistrate rejecting the application at that stage is not judicious. Exercise of judicial discretion means exercise of the discretion in accordance with law. When the law enables a party to appear through his pleader in a summons case to answer the plea, it is the mandate of the law that has to prevail and to construe strictly the circumstances that warrant such construction and reasons for exercising the discretion has to be narrated in the order. In the absence of application of mind to such circumstances, it has to be held that the discretion has not been exercised judiciously. Therefore, I answer the second point in the negative.

6. Since the petitioner has confined his relief only to the stage under Section 251, Cr. P.C. the order of the learned Magistrate has to be set aside in part. So far as the order touching the stage under Section 273, Cr. P.C. that stage is not yet reached. Section 205, Cr. P.C. deals with the initial appearance and Section 273 deals with presence during trial. Therefore, when such a stage is not yet reached the application for general exemption is misconceived.

7. In the result, this application is partly allowed. The Chief Judicial Magistrate is directed to record the plea of the petitioner through the pleader and to proceed with the trial in accordance with law.