
(2006) 05 P&H CK 0178

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 4912-M of 2006

Smt. Anita Nanda

APPELLANT

Vs

State of Punjab and another

RESPONDENT

Date of Decision : 23-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2007) 1 CivCC 151 : (2006) 4 RCR(Criminal) 257

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : C.L. Verma, for the Appellant; N.S. Gill, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Smt. Anita Nanda, who is facing trial before Sub-Divisional Judicial Magistrate, Samrala, in complaint No. 30/2 dated 14.5.2001, filed by respondent No. 2 u/s 138 of the Negotiable Instruments Act (hereinafter referred to as 'the Act'), has filed this petition u/s 482 of the Code of Criminal Procedure for setting aside the order dated 17.9.2005, passed by the trial Court, whereby an application filed by the petitioner for exemption from personal appearance has been dismissed.

2. I have heard the arguments of learned counsel for the parties and have gone through the impugned order.

3. Counsel for the petitioner submits that the aforesaid complaint filed by respondent No. 2 against the petitioner is pending before the trial Court since 2001 and the petitioner is continuously appearing in the aforesaid case. Counsel contends that the petitioner is a house hold lady having two school going children. She has also to look after her grandmother, who is about 90 years of age, suffering from many diseases, and is unable to move about. In view of these facts, the petitioner filed an application for her exemption from personal

appearance before the trial Court. Counsel for the petitioner submitted that the above said application of the petitioner was dismissed by the trial Court arbitrarily, without properly considering the case of the petitioner in the light of the law laid down by the Supreme Court in *M/s. Bhaskar Industries Ltd. v. M/s. Bhiwani Denim & Apparels Ltd.*, 2001 (4) RCR (Cri) 137. While referring to the decision of the Andhra Pradesh High Court in *Dasari House of Publications Pvt. Ltd. v. M/s. Apple Credit Corporation Ltd.*, Secunderabad and another, 2003 (1) RCR (Cri) 368, counsel for the petitioner contends that in case of a female accused involved in a case u/s 138 of the Act, exemption from personal appearance should be granted.

4. A perusal of the impugned order shows that the trial Court, without giving any reason, has dismissed application of the petitioner only by observing that it is not a fit case to dispense with personal appearance of accused. In my opinion, the order passed by the trial Court is not sustainable. Section 205 of the Code of Criminal Procedure provides that whenever 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. No further guidelines are mentioned u/s 205 of the Code. It is left to the discretion of the Magistrate to exercise his discretion judicially after recording reasons. The Supreme Court in *M/s. Bhaskar Industries*" case (supra) has observed as under :-

14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the Court, provided he has been granted exemption from attending the Court. The concern of the criminal Court should primarily be the administration of criminal justice. For that purpose the proceedings of the Court in the case should register progress. Presence of the accused in the Court is not for marking his attendance just for the sake of seeing him in the Court. It is to enable the Court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the Court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the Court in that particular case.

15. These are days when prosecutions for the offence u/s 138 are galloping up in criminal Courts. Due to the increase of inter-State transactions through the facilities of the banks it is not uncommon that when prosecutions are instituted in one State the accused might belong to a different State, sometimes a far distant State. Not very rarely such accused would be ladies also. For prosecution u/s 138 of the NI Act the trial should be that of summons case. When a Magistrate feels that insistence of personal attendance of the accused in a summons case, in a particular situation, would inflict enormous hardship and cost to a particular accused, it is open to the Magistrate to consider how he can relieve such an accused of the great hardships, without causing prejudice to the prosecution proceedings.

5. The Andhra Pradesh High Court in Dasari House of Publications Pvt. Ltd.'s case (supra) has laid down the following guidelines for exercising the discretion u/s 205 of the Code :-

(1) x x x

(2) If an accused is sick, he can be granted exemption at the initial stage u/s 251 of Cr.P.C.

(3) If the offences are of severe nature involving moral turpitude, the presence of the accused shall be insisted.

(4) Whenever there are natural calamities and the accused is unable to attend the Court due to the reasons beyond his control he may be exempted from the appearance.

(5) Whenever law exempts him from appearance in person in the Court, exemption shall be granted.

(6) Whenever summons are issued dispensing with his personal presence by the Court and permitting him to take the plea by post, he can be exempted.

(7) In a petty case, where he has his right to plead by post, he may be granted exemption.

(8) Where females are involved, they may be given exemption.

(9) Where a person is residing outside the country, he may be given exemption.

(10) Where a person resides in a place, outside the jurisdiction of the Court, and where natural calamities occur, he may be given exemption.

(11) Where a person is infirm or sick or suffering with any contagious disease or bed-ridden due to old age, may be given exemption.

(12) Person who is aged beyond 65 years, shall also be entitled to exemption provided he is not hale and healthy and not capable of attending the Court.

(13) Exemption can be granted to persons who are entitled to invoke Section 305 of the Cr.P.C.

(14) Exemption can also be granted to such of the persons to whom the Magistrate feels that the exemption has to be given. It shall be given by order after recording elaborate reasons for the same.

(15) The guidelines provided by the Supreme Court for exemption u/s 313 shall also be followed for dispensing personal presence of the accused u/s 251 of Cr.P.C.

(16) Such exemption shall be granted only on an undertaking given stating that he will not claim prejudice to his rights vested u/s 205 or 251 of Cr.P.C.

6. In the instant case, the petitioner is a house-hold lady having two children.

She has to look after her two school going children and her old mother-in-law who is suffering from many diseases. In view of these facts and circumstances, the trial Court should have granted exemption from personal appearance to the petitioner and dismissal of the application without giving specific reasons is not maintainable.

7. In view of the above, this petition is allowed and the impugned order dated 17.9.2005, passed by Sub-Divisional Judicial Magistrate, Samrala is set aside. The personal appearance of the petitioner is exempted, subject to the condition that if her presence is required by the trial Court on a particular date, she will attend the Court on the notice to be issued by the Court.