

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M No.9107 of 2020 (O&M)

Date of Decision: 11.02.2022

M/s. Kejriwal Mining Private Limited and Others

..... Petitioners

V/s.

Bhanuj Jindal

.....Respondent

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKURPresent: Mr. Anshul Mangla, Advocate
for the petitioners.

(Through video conferencing)

Sureshwar Thakur, J. (Oral)

1. A complaint, for an offence constituted under Section 138 of the Negotiable Instruments Act, has been instituted against the petitioners and others, before the learned Judicial Magistrate, Nabha. A copy of the complaint is appended with the petition, as Annexure-P2.

2. The learned Magistrate concerned, on receipt of complaint (supra) proceeded to on 23.10.2018, make a summoning order upon the petitioner, for his causing (on 19.02.2019), his appearance before him. However, when the matter was taken up on 18.02.2019, as 19.02.2019 was a holiday, it became adjourned to 28.05.2019. On 28.05.2019, the learned Magistrate ordered for issuance of fresh notice upon the petitioner, for his making his personal appearance before him, and, it was made returnable, on 03.07.2019. However, the petitioner did not either in person or through counsel cause his appearance (on 03.07.2019) before the Magistrate concerned. Consequently, the learned Magistrate concerned was led to issueailable warrants upon the petitioner. The aboveailable warrants were made returnable for 23.08.2019. However, 23.08.2019 being a holiday, hence, the complaint (supra) was taken up for the said purpose on 26.08.2019, and, yet it

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became adjourned to 5.10.2019. On 05.10.2019, though the petitioner through his counsel moved an application claiming a blanket relief of his being exempted, on all dates, when the case would become listed before the learned trial Judge concerned, for his personal appearance. However, the learned trial Magistrate concerned, even declined even for a singular occasion, hence exemption to the petitioner herein, for his recording his personal appearance, before him.

3. However, the above order was challenged before the Court of the learned Sessions Judge, Patiala, in Criminal Revision No. 57 of 1.11.2019. The learned Sessions Judge concerned, modified the order as became impugned before him.

4. The learned Sessions Judge, Patiala through an order made on 8.1.2020, upon Criminal Revision petition (supra), proceeded to make an order that as and when the learned Magistrate, on an objective analysis of the material placed before him alongwith the petitioner's application, seeking his exemption from his personal appearance before him, hence, comes to an affirmative conclusion thereons, especially given the petitioner residing at a place distant from the trial Court concerned, he can proceed to in his discretion make an order for exempting the petitioner from causing his personal appearance before him. Moreover, though the leaned Sessions Judge, Patiala, allowed the Criminal Revision (supra), it also directed, that the aggrieved petitioner, to furnish personal surety bonds, before the trial Judge, rather, on the date fixed for the relevant purpose by the trial Court concerned.

5. The learned counsel appearing for the petitioners contests, the afore made order(s). Though the learned counsel for the petitioners contends, that the, direction (supra) as made in the impugned orders by the learned Sessions Judge,

Patiala, inasmuch as, unless the petitioners were, validly exempted for each date,
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and, on valid grounds,, from causing their personal appearance before the learned trial Judge concerned, no blanket personal exemptions, rather on all occasions, can be granted to the, petitioner, being legally infirm. In making the afore argument, he relied on a judgment made by the Hon'ble Supreme Court, in case titled "***M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim & Apparels Ltd., 2001(4) RCR (Criminal) 137***", rendered upon Criminal Appeal No. 858 of 2001, and, more specifically he refers to paragraph no. 17 thereof, para whereof stands extracted hereafter:

" 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."

6. However, the afore made submission cannot be accepted nor is well founded, upon, the judgment (supra) made by the Hon'ble Apex Court, as therein Hon'ble Apex Court, was not dealing, with the claim for blanket exemption from personal appearance, of the aggrieved therein. Moreover, there is no specific provision in the Cr.P.C., empowering the learned trial Judge concerned to, on all

appearance before him. Apparently, there cannot be any valid empowerment in the learned trial Judge, even, to grant exemption to the accused from his making personal appearance, before him, even when the accused has to face charge/ notice of accusation or when he has to face the proceedings drawn under Section 313 Cr. P.C. or when he has to adduce defence evidence.

7. Accordingly, the petition is devoid of merits, and, is rejected.

8. The learned counsel for the petitioner has argued, that a direction as made upon the petitioner by the learned Sessions Judge, Patiala qua upon his making his presence before the learned trial Judge concerned, his furnishing personal surety bond, rather being not well merited. However, the above laid condition is only for ensuring that the accused causes his personal appearance hence, before the learned trial Court concerned, unless validly exempted on valid grounds. Even otherwise the afore condition does not in any way curtail the personal liberty of the petitioner nor the afore made condition upon the petitioner, can be deemed to be cause his judicial custody, nor can he claim the facility of his being released from judicial custody, rather it becomes imposed only for the purposes of the learned trial Judge, ensuring that he causes his personal appearance before him, unless his personal appearance is exempted on valid grounds. There is no merit in the petition and the same is dismissed.

8. The petitioner is directed to furnish his personal surety bonds in the sum of ₹10,000/- each, within two weeks to the satisfaction of the learned trial Judge concerned, and, the learned trial Judge, may on an application for personal exemption being preferred before him, may make valid orders thereons, in accordance with law.

9. It is clarified that the import of the impugned order, obviously is that

