

HON'BLE SRI JUSTICE K. SREENIVASA REDDY

Criminal Petition No.1807 of 2023

Order:

This Criminal Petition, under Section 482 Cr.P.C., has been filed against the order, dated 09.01.2023, passed in CrI.MP No.718 of 2022 in STC No.52 of 2022 by the learned Special Judicial Magistrate of First Class (Mobile) for trial of Cases under the PCR Act-cum-III Additional Junior Civil Judge, Eluru.

2. A private complaint has been filed against the petitioner herein/A-2 and another for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, which was numbered as STC No.52 of 2022 on the file of the learned Special Judicial Magistrate of First Class (Mobile) for trial of Cases under the PCR Act-cum-III Additional Junior Civil Judge, Eluru. Pending the said case, petitioner herein/A-2 filed an application in CrI.MP No.718 of 2022 in STC No.52 of 2022, under Section 205 Cr.P.C., praying to dispense with his personal attendance in the said case on the ground that his children are studying in the United Kingdom and as such he is required to travel abroad frequently and because of the said reason attending before the Court on every adjournment would be difficult for him. He further prays to permit his counsel to attend on his behalf in the said case. Learned Magistrate, by an order dated 09.01.2023, dismissed the said

application, on the ground that the petitioner has to undergo examination under Section 251 Cr.P.C.

3. Sri P. Veera Reddy, learned Senior Counsel representing Sri P. Badrinath, learned counsel for the petitioner, submits that since the petitioner herein is being represented by a duly authorized pleader, his personal appearance is not necessary for examination under Section 251 Cr.P.C., and his duly authorized pleader can be examined under Section 251 Cr.P.C. without insisting for the presence of the petitioner herein, and in support of his contention he relied on a decision of this Court reported in **K. Rama Chandra Murthy v. State of Andhra Pradesh, (Cri.RC.No.2323 of 2012, dated 12.12.2012)**¹.

4. On the other hand, learned Assistant Public Prosecutor opposed to the extent that the petitioner may be asked to give an undertaking that he would not take the plea of prejudice of his being not personally examined under Section 251 Cr.P.C.

5. Section 251 Cr.P.C. reads as hereunder.

"251. Substance of accusation to be stated:-

When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge."

¹ MANU/AP/1054/2012

6. A perusal of the above provision goes to show that in a summons case, when the accused appears or is brought before the Magistrate, the particulars of the offence shall be put to him and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. The object of the said Section is only to the extent of apprising the accused person of the particulars of the offence that has been alleged against him and it is only to enquire from him whether he pleads guilty or he has any defence to make. For such a common questionnaire, it is not essential for the accused to be present before the Court, instead his counsel can also represent the same. A perusal of the said provision does not say that the same is mandatory. If the accused comes forward with an undertaking that his counsel would appear on his behalf and whatever his counsel represents before the Court will be accepted by the accused, presence of the accused can be dispensed with.

7. In **K. Rama Chandra Murthy's** case (supra), relied upon by the learned counsel for the petitioner, this Court held thus.

"3. Sri N.Vidya Prasad, learned counsel appearing for the petitioners contends that since the petitioners are being represented by the Special Vakalat holder, their personal appearance is not necessary for examination under Section 251 Cr.P.C and therefore, the order passed by the learned Magistrate to the extent of directing them to appear

personally for examination under Section 251 Cr.P.C is required to be set aside. In support of his contentions, reliance has been placed on the judgment of this Court in **Ramoji Rao v. V.V.Rajam, Dy. Conservator of Forests**² and the judgments of Supreme Court in **Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.**³ and **S.V.Muzumdar v. Gujarat State Fertilizer Co. Ltd**⁴. In **Ramoji Rao's** case (supra), a learned Single Judge of this court held that the accused need not personally attend the court for examination under Section 251 Cr.P.C when his presence has been dispensed with under Section 205 Cr.P.C., and when a duly authorized pleader appears before the court in place of the accused. In **Bhaskar Industries Ltd.'s** case (2 supra), the Supreme Court held that a Magistrate in his judicial discretion is empowered to dispense with the personal appearance of the 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 on him and the comparative advantage would be less. For better appreciation, I may refer paragraphs (17) to (19) of the cited judgment and they read thus:-

“(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

² 1998(1) ALD (CrI.) 126 (AP)

³ (2001) 7 SCC 401

⁴ (2005) 4 SCC 173

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, on 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 in his behalf would be present in Court and that 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, boils 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.”

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6. The object of the section is merely to appraise the accused of the particulars of the offence and to just enquire from him whether he pleads guilty or if he has any defence to make. It is difficult to construe how the object of the section is defeated if a pleader duly authorised by the accused appears before the Court in the place of the accused at the stage of Section 251 Cr.P.C. Therefore, I am of the view that the accused need not personally attend the court for examination under Section 251 Cr.P.C when his presence has been dispensed with, as provided under

Section 205 Cr.P.C. I may hasten to add that it is within the powers of a Magistrate, in his judicial discretion, to dispense with the personal appearance of the accused either throughout or at any particular stage of such proceedings in a summons case. Since the petitioners are being represented by a duly authorised pleader, their duly authorised pleader can be examined under Section 251 Cr.P.C. Therefore, personal appearance of the petitioners at the stage of Section 251 Cr.P.C examination, unless otherwise specifically essential, is not required. Therefore, the order passed by the learned Magistrate directing the petitioners to be present before the Court for their being examined under Section 251 Cr.P.C is set aside, subject to the petitioners placing on record a Memo that they would not take the plea of prejudice of their being not personally examined under Section 251 Cr.P.C.

8. In **Vijay Mallya v. GMR Hyderabad International Airport Limited, (Crl.RC Nos.1798 and 1799 of 2014, dated 09.09.2014)**⁵, and in **Y.S. Jagan Mohan Reddy v. Central Bureau of Investigation (CBI), (Crl.P.No.607 of 2020, dated 26.08.2022)**⁶, the said principle has been enunciated and the same has been reiterated in other judgments also.

⁵ MANU/AP/2113/2014

⁶ MANU/TL/1524/2022

9. I am in total concurrence with the principle enunciated in the above said judgments and since the petitioner herein is being represented by a duly authorized pleader, his duly authorized pleader can be examined under Section 251 Cr.P.C. and personal appearance of the petitioner herein at the stage of Section 251 Cr.P.C. examination is not required.

10. In view of the aforesaid facts and circumstances of the case, the order passed by the learned Magistrate in CrI.MP No.718 of 2022 in STC No.52 of 2022, dated 09.01.2023, is set aside, and consequently, the said petition stands allowed, subject to condition of the petitioner herein giving an undertaking that he would not take the plea of prejudice of his being not personally examined under Section 251 Cr.P.C.

11. Accordingly, the Criminal Petition is allowed.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Criminal Petition, shall stand closed.

K. SREENIVASA REDDY, J.

Date:09.03.2023

Note:

Issue CC by tomorrow

(B/O)

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HON'BLE SRI JUSTICE K. SREENIVASA REDDY

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Nsr