

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

CRIMINAL PETITION No.607 OF 2020

ORDER:

Heard Mr. S.Niranjan Reddy, learned Senior Counsel for the petitioner and Mr. K.Surender, learned Special Public Prosecutor for Central Bureau of Investigation (CBI) (as his Lordship then was).

2. This criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (briefly 'CrPC' hereinafter) for quashing the order dated 01.11.2019 passed by the Principal Special Judge for CBI Cases, Hyderabad in CrI.M.P.No.1766 of 2019 in C.C.No.24 of 2013 and for a direction to allow the petitioner to be represented by his counsel holding Vakalat during the proceedings in C.C.No.24 of 2013 on the file of Principal Special Judge for CBI Cases, Hyderabad.

3. Petitioner is presently the Chief Minister for the State of Andhra Pradesh and is residing at Vijayawada in the State of Andhra Pradesh.

4. It is stated that a writ petition was filed before the combined High Court of Andhra Pradesh in the form of a public interest litigation being W.P.No.794 of 2011 seeking investigation by CBI into alleged deeds of corruption committed by the petitioner and others leading to sudden increase in wealth. The High Court by order dated 10.08.2011 directed CBI to cause investigation, whereafter CBI registered R.C.No.19(A)/2011 against the petitioner and others. In the course of investigation petitioner was arrested. CBI filed altogether eleven charge sheets arraying the petitioner as accused No.1. These proceedings are pending before the Court of Principal Special Judge for CBI Cases, Hyderabad (briefly 'CBI Court').

5. Petitioner was enlarged on bail by the CBI Court on 23.09.2013 with certain conditions. The conditions were as follows:

- i. Mr. Y.S.Jagan Mohan Reddy/PetitionerA-1 shall be enlarged on bail on his executing a bond of Rs.2,00,000/- (Rupees two lakh only) with two sureties each for like sum to the satisfaction of this Court.

- ii. The Petitioner/A-1 shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him to disclose such facts to the Court or to any other authority.
- iii. Petitioner/A-1 shall stay at Hyderabad and shall not leave Hyderabad without prior permission of the Court.
- iv. The Petitioner/A-1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court.
- v. The Respondent/CBI has liberty to make a proper application for cancellation of the bail, if the Petitioner/A-1 violates any of the conditions imposed by this Court.

6. It is stated that after the petitioner was enlarged on bail, respondent/CBI filed subsequent charge sheets. Additionally, Enforcement Directorate has also filed several complaints. Because of multiplicity of charge sheets and complaints involving several agencies, proceedings against the petitioner have become complex. Further, following the directions of this Court dated 10.08.2015 passed in PIL No.145 of 2015, the cases against the petitioner are being taken up on a weekly basis.

7. In view of continuation of the proceedings over a long period of time due to filing of lengthy supplementary charge sheets by the respondent/CBI, followed by complaints by the Enforcement Directorate, petitioner approached the CBI Court and sought relaxation of the bail conditions. In CrI.M.P.No.1540 of 2013, petitioner was permitted to visit New Delhi and other places in the State of Andhra Pradesh. Again in CrI.M.P.No.1648 of 2014, the requirement of two days advance intimation for leaving Hyderabad was dispensed with.

8. Petitioner filed CrI.M.P.No.2323 of 2015 praying for relaxation of the following bail conditions:

- iii. Petitioner/A-1 shall stay at Hyderabad and shall not leave Hyderabad without prior permission of the Court.
- iv. The Petitioner/A-1 shall appear before this Court on the dates fixed for hearing of the case without fail. He may remain absent only in unavoidable circumstances and with the permission of the Court.

9. By order dated 11.12.2015, CBI Court partly allowed CrI.M.P.No.2323 of 2015. Condition No.(iii) as extracted above

was relaxed, but petitioner's prayer for relaxation of condition No.(iv) was rejected.

10. At the time when petitioner was enlarged on bail, petitioner was a Member of Parliament (MP) from Kadapa Constituency in the State of Andhra Pradesh. He was also the leader of a political party called 'Yuvajana Shramika Rythu Congress Party' (YSRCP). With Lok Sabha elections round the corner in 2014, petitioner filed an application before the CBI Court under Section 205 CrPC being CrI.M.P.No.1753 of 2013 seeking dispensation from personal appearance. However, learned Principal Special Judge rejected the aforesaid request of the petitioner vide order dated 04.02.2014.

11. In 2014, Parliament enacted the Andhra Pradesh Reorganization Act, 2014, whereby the composite State of Andhra Pradesh was bifurcated into the new State of Telangana and the residuary portion being retained as the State of Andhra Pradesh. In the assembly elections held during April – May, 2014 for the State of Andhra Pradesh, petitioner was elected as a Member of Legislative Assembly

(MLA) from Pulivendula Constituency and was also elected as the Leader of Opposition in the Andhra Pradesh Legislative Assembly.

12. In view of the aforesaid development, petitioner filed another application under Section 205 CrPC seeking dispensation from personal appearance being CrI.M.P.No.1307 of 2016. However, the learned Principal Special Judge rejected the said application vide order dated 23.09.2016.

13. Aggrieved by the order dated 23.09.2016, petitioner preferred criminal petition before this Court being CrI.P.No.7452 of 2017. Similar petitions were filed in respect of the other calendar cases. By a common order dated 31.08.2017, this Court dismissed the criminal petitions filed by the petitioner.

14. Elections were again held to the Andhra Pradesh Legislative Assembly in April, 2017. This time, petitioner's political party YSRCP got absolute majority. Petitioner was elected as Leader of the Party and was sworn in as the Chief

Minister for the State of Andhra Pradesh in May, 2019. Though initially petitioner was residing at Hyderabad and was regularly commuting between Hyderabad and Vijayawada, after assuming the Office of Chief Minister for the State of Andhra Pradesh, petitioner shifted his residence to Vijayawada as his presence in Vijayawada was required for carrying on official duties.

15. In view of the aforesaid development, petitioner filed a petition before the CBI Court under Section 205 CrPC for dispensation of personal appearance which was registered as CrI.M.P.No.1766 of 2019 in C.C.No.24 of 2013. Petitioner had stated that in view of his election as Chief Minister of the State, he was required to work round the clock; attending Court on each date of hearing would adversely affect the administration; and further since petitioner was holding the Office of Chief Minister, there is a mandatory security protocol to be followed which would disrupt or affect appearance of other litigants and lawyers in the Court on the day petitioner attended, besides entailing significant financial burden on the State exchequer.

16. The above application was opposed by respondent/CBI by filing counter to which petitioner filed rejoinder. Learned Principal Special Judge by the impugned order dated 01.11.2019 rejected the petitioner's application seeking dispensation from personal appearance.

17. Aggrieved thereby, present criminal petition has been filed seeking the reliefs as indicated above.

18. Respondent has filed counter affidavit contending that the criminal petition is not maintainable after earlier criminal petition was dismissed by this Court. Order dated 01.11.2019 is a well reasoned one and calls for no interference. Learned Principal Special Judge had exercised his judicial discretion while dismissing the application of the petitioner under Section 205 CrPC. It is further stated that following the order of this Court dated 10.08.2011 passed in W.P.Nos.794 and 6604 of 2010 directing CBI to register a crime against the petitioner and others regarding the largesse granted to several accused persons by the Government of Andhra Pradesh during the period 2004-2009 in an illegal manner and into

the allegation of alleged investments made by the beneficiaries into the companies promoted by the petitioner as part of *quid pro quo* arrangement, CBI, Anti Corruption Bureau, Hyderabad registered R.C.No.19(A)/2011 under Section 120-B read with Sections 420, 409 and 477A of Indian Penal Code, 1860 (IPC) read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988.

19. In the course of investigation, petitioner was arrested on 27.05.2012. On completion of investigation, CBI filed eleven charge sheets in respect of different instances of criminal conspiracy wherein petitioner has been arrayed as accused No.1. Learned Principal Special Judge took cognizance of all the charge sheets and allotted calendar case numbers as follows:

Sl. No.	Charge Sheet	Conspiracy & quid pro quo payments in the matter of	CC Number
1	1 st Charge Sheet	M/s.Hetero & Aurobindo Pharma	CC-8/2012
2	2 nd Charge Sheet	Individual Investors	CC-9/2012
3	3 rd Charge Sheet	M/s. Ramky	CC-10/2012
4	4 th Charge Sheet	M/s. VANPIC	CC-14/2012
5	5 th Charge Sheet	M/s. Dalmia Cements	CC-12/2013
6	6 th Charge Sheet	M/s. India Cements	CC-24/2013
7	7 th Charge Sheet	M/s. Raghuram Cements	CC-25/2013
8	8 th Charge Sheet	M/s. Penna Cements	CC-26/2013
9	9 th Charge Sheet	M/s. Indu Techzone	CC-27/2013
10	10 th Charge Sheet	M/s. Lepakshi Knowledge Hub	CC-28/2013
11	11 th Charge Sheet	A.P.Housing Projects	CC-26/2014

20. On completion of investigation, CBI Court granted bail to the petitioner on 23.09.2013 with certain conditions.

21. After obtaining bail, petitioner started filing criminal miscellaneous petitions under Section 205 CrPC seeking dispensation from personal appearance one after the other which were all rejected by the CBI Court. Against one such dismissal order dated 23.09.2016, petitioner preferred CrI.P.No.7452 of 2017 before this Court. The said criminal petition was heard with other batch cases. By a detailed order dated 31.08.2017, this Court dismissed the criminal petitions filed by the petitioner.

22. Notwithstanding the same, petitioner again filed CrI.M.P.No.1766 of 2019 under Section 205 CrPC. Learned Principal Special Judge by order dated 01.11.2019 dismissed the same in the light of the previous orders passed by the CBI Court and also in the light of the order passed by this Court.

23. Contending that there is no merit in the criminal petition, respondent/CBI seeks dismissal of the same.

24. Mr. S.Niranjan Reddy, learned Senior Counsel for the petitioner submits that the Court below had failed to consider the provision of Section 205 CrPC in the proper perspective. He submits that a petition under Section 205 CrPC can be filed at any stage of the proceeding and any number of times. He submits that Court below had failed to take note of the changed circumstances. When the earlier orders were passed petitioner was not holding the responsible office of Chief Minister. Considering the responsibilities and the nature of duties discharged by the petitioner, it is not at all just and appropriate to insist upon the personal attendance of the petitioner on each and every date of hearing of the case. If it is insisted upon, public interest will be adversely affected. He submits that reasons given by the learned Principal Special Judge while rejecting the petition of the petitioner under Section 205 CrPC are wholly erroneous and untenable in law. When other accused persons have been granted exemption from personal appearance, it is beyond comprehension to why the Court below is insisting on personal appearance of the petitioner on each and every date of hearing.

25. On the other hand, learned Special Public Prosecutor for CBI submits that filing of petitions under Section 205 CrPC one after the other is part of a well thought out strategy to delay the proceedings. For the last ten years, the case is only at the stage of framing of charges. A prayer for exemption from personal appearance can be made and considered when the trial actually commences. Petitioner's presence will expedite speedy trial. Relying upon the earlier order of this Court rejecting the criminal petitions of the petitioner, it is contended that the sole object of the petitioner is to drag on the proceedings for an indefinite period, thereby diluting the prosecution case.

26. In his reply submissions, learned Senior Counsel for the petitioner submits that it is beyond comprehension as to how insisting upon personal appearance of the petitioner on each and every date of hearing will expedite the proceedings. He submits that the circumstances which prevailed when this Court had earlier rejected the criminal petitions filed by the petitioner have changed. The changed circumstances were not

taken into consideration by the CBI Court while passing the impugned order dated 01.11.2019 rejecting the prayer of the petitioner for exemption from personal appearance. In support of his submissions, learned Senior Counsel for the petitioner has placed reliance on the following decisions:

- (1) **Ajit Kumar Chakraborty v. Serampore Municipality**¹,
- (2) **M.Shyam Prasad Reddy v. State of Andhra Pradesh**²,
- (3) **Bhaskar Industries Limited v. Bhiwani Denim & Apparels Limited**³,
- (4) **Chandramauli Prasad v. State of Delhi**⁴,
- (5) **TGN Kumar v. State of Kerala**⁵,
- (6) **Hiremagalur Parthasarthy Shamaiah v. State of Bihar**⁶,
- (7) **Sonia Gandhi v. Subramaniam Swamy**⁷, and
- (8) **Arvind Kejriwal v. State**⁸.

27. After the hearing was over, respondent filed a memo stating that after filing of charge sheets petitioner has filed discharge petitions before the CBI Court for the first time after

¹ 1988 SCC OnLine Cal 118

² 1992 SCC OnLine AP 62

³ (2001) 7 SCC 401

⁴ ILR (2009) II Delhi 48

⁵ (2011) 2 SCC 772

⁶ 2009 SCC OnLine Pat 497

⁷ MANU/SC/0325/2016

⁸ Crl.M.C.No.3306 of 2016 & Crl.M.A.No.14056 of 2016, dated 06.12.2016

several years. After nearly a decade, the cases are still at the stage of arguments for discharge. This according to the respondent/CBI is a clear indication that petitioner and the other accused persons are working to procrastinate the proceedings on one pretext or the other. The factum of filing discharge petitions by the petitioner could not be intimated during the arguments due to inadvertence.

28. Submissions made by learned counsel for the parties have received the due consideration of the Court.

29. Before reference is made to Section 205 CrPC, it would be apposite to deal with the orders of the CBI Court as well as the previous decision of this Court. It is not necessary to advert to the previous orders passed by the CBI Court rejecting petitions filed under Section 205 CrPC prior to 11.12.2015. CrI.M.P.No.2323 of 2015 was filed by the petitioner to relax condition Nos.(iii) and (iv) of the bail order which we have extracted above. However for a recap, it may be mentioned that as per condition No.(iii), petitioner was directed to stay at Hyderabad, with the further direction not

to leave Hyderabad without prior permission of the CBI Court. In so far condition No.(iv) was concerned, petitioner was directed to appear before the CBI Court on the dates fixed for hearing of the case without fail. He can remain absent only in unavoidable circumstances, that too, with the permission of the CBI Court. Learned Principal Special Judge took the view that condition No.(iii) curtailed the liberty of the petitioner and, therefore, the said condition could be relaxed. However, in respect of condition No.(iv), no blanket permission as was sought for could be granted. Therefore, vide the order dated 11.12.2015, CrI.M.P.No.2323 of 2015 was disposed of by relaxing condition No.(iii) and modifying condition No.(iv) to the extent that petitioner could remain absent though represented by his advocate in case of absolute necessity due to any unavoidable circumstances but for that he was required to file appropriate application. Learned Principal Special Judge clarified the position that petitioner was not being granted a blanket permission to remain absent on all the dates of hearing on account of the aforesaid order.

30. Similar order came to be passed on 23.09.2016 in subsequent CrI.M.P.No.1307 of 2016 which came to be challenged before this Court in CrI.P.No.7452 of 2017 which was heard along with other petitions assailing similar order. By the common order dated 31.08.2017, CrI.P.No.7452 of 2017 and the other connected cases were dismissed. It may be mentioned that petitioner sought exemption from personal appearance in order to enable him to participate in political activities like taking out '*pada yatra*'. After perusing the materials on record and considering the rival contentions, this Court framed the following question for consideration:

Whether the appearance of the petitioner on all dates of adjournments in CrI.M.Ps filed under Section 205 Cr.P.C referred in Column (B) of the table be dispensed with, permitting his authorised advocate G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing of the cases on the ground that the petitioner is a President of Y.S.R. Congress Party and Leader of Opposition of Andhra Pradesh State Legislative Assembly, as he is involved in various political activities to serve the public?

31. After due deliberation, Court took the following view:

In view of the limited power, this Court has to examine the legality of the order passed by the Court below, keeping in mind the grounds urged before this Court in the present batch of criminal petitions. The main ground urged before the Court

below and this Court is to dispense with the presence of the petitioner permitting his authorised advocate G. Ashok Reddy to appear on his behalf permanently on all the dates of hearing the cases as the petitioner being a politician and President of Political Party i.e. Y.S.R. Congress Party to move to every corner of the State and also Leader of Opposition, he is required to move to from every nook and corner of the State to discuss the public issues in the Legislative Assembly. If he is not allowed to interact with the public in various corners of the State of Andhra Pradesh, he would be failing to discharge his duties as an Opposition Leader in the Legislative Assembly of the State of Andhra Pradesh in Assembly Sessions, which would have its own impact on the public. It is an undisputed fact that the petitioner was elected as a Member of Legislative Assembly from Pulivendula Constituency from Y.S.R Kadapa District of the State of Andhra Pradesh. Apart from that, the petitioner is also President of Y.S.R. Congress Party and also Leader of Opposition Party in the Andhra Pradesh Legislative Assembly. The petitioner occupied highest position in the political party as the President of Political Party and Leader of Opposition Party in the Andhra Pradesh Legislative Assembly. But, the status of the petitioner by itself is not a ground to dispense with his presence under Section 205 Cr.P.C.

32. This Court also held as follows:

Undoubtedly, it is the obligation of the petitioner in different capacities stated above to be in public life and to interact with the public and to raise public issues in the Andhra Pradesh State Assembly. But, that itself is not a ground to exempt the petitioner from his appearance before the Court, as he is required to appear before the Court on one day in a week i.e. on Friday, as per the allegations made in the petitions.

33. After considering various judicial pronouncements, this Court further observed as under:

No doubt, the petitioner is entitled to pursue his political career as he has chosen politics as his profession or avocation. But, on the alleged reason of pursuing his political career, the petitioner cannot avoid appearance before the Court on the dates of adjournment. The petitioner is required to appear before the Court on the date of adjournment only once a week i.e. on Friday, on all other days including Sunday, the petitioner can conveniently pursue his politics without any holiday. Moreover, the petitioner and the other accused for one reason or other are causing hurdles to the Court below from proceeding further and latches or delay in dispensation of justice is not on the part of the Court, but the delay is attributable to the petitioner due to filing of successive applications under different provisions of law, one after the other, either by the petitioner or the co-accused in different Courts, and obtaining interim orders. If the delay is on the part of the Court, there is some justification to lament the Court for non-disposal of the case and keeping the matter pending for many years. But, when the delay is attributable to the petitioner/accused in all the cases, the petitioner by taking advantage of such delay cannot claim exemption of his appearance who involved in serious and grave financial fraud which dent the financial health of the entire country. Therefore, appearance of the petitioner cannot be exempted in view of the gravity and seriousness of the economic fraud involving crores of rupees.

34. Finally, this Court took the view that learned Principal Special Judge committed no error in dismissing the petition of the petitioner seeking exemption from personal appearance,

further holding that no interference by the High Court under Section 482 CrPC was warranted.

35. Though thereafter petitioner filed further petitions under Section 205 CrPC, it would be apposite to deal with the related CrI.M.P.No.1766 of 2019 filed by the petitioner before the CBI Court. The said petition was filed under Section 205 CrPC requesting the Court to exempt him from personal appearance on each and every date of hearing; instead to allow him to be represented by advocate Mr. G.Ashok Reddy before the CBI Court. Petitioner pointed out the changed circumstances that in the general assembly elections held on 11.04.2019, petitioner's political party secured absolute majority, whereafter he was elected as Chief Minister of the State of Andhra Pradesh. He assumed office as Chief Minister on 30.05.2019. As Chief Minister of a State, he has to attend to various meetings and discharge several functions; besides attending office round the clock. Appearance before the Court on each and every date of hearing would adversely affect functioning of the petitioner as Chief Minister besides creating severe inconvenience to the litigant public as well as lawyers

in the Court on his frequent dates of appearance. However, petitioner pointed out that he is duty bound to appear before the Court when his presence is directed by the Court.

36. This petition of the petitioner was opposed by the respondent/CBI contending that there was no ground to alter the previous order(s) passed under Section 205 CrPC which was confirmed by the High Court. Court below framed two points for determination as under:

1) Whether the present application is maintainable in view of the dismissal of the first application in CrI.M.P.No.1753/2013 dt. 04.02.2014, second application in CrI.M.P.No.1307/2016 dt. 23.09.2016 filed under Section 205 CrPC confirmed by the Hon'ble High Court in CrI.P.No.7446 of 2017 and batch vide order dt.31.08.2017 (against the order dt.23.09.2016)? If so,

2) Whether appearance of the petitioner/A-1 be dispensed with by permitting Sri G.Ashok Reddy, Advocate to represent on his behalf as Special Vakalat Holder?

37. In so far point No.1 was concerned, Court below was of the opinion that in view of the changed circumstances, the instant petition under Section 205 CrPC was maintainable. However, as regards point No.2, learned Principal Special Judge relied upon the decision of this Court dated 31.08.2017

and decided the same against the petitioner. It was held as under:

40. Though the present application is filed on the changed circumstances, the Hon'ble High Court has discussed in CrI.P.No.7446 of 2017 and batch about the gravity of offence and the Hon'ble Supreme Court has also described that the offences committed by the petitioner/A-1 are grave offences causing dent to the economy of the State and affecting the economy of the country and they are grave in nature.

41. Insofar as security protocol which are to be maintained at public expenses, and being away for 2 days from Andhra Pradesh (Amaravathi) is also not a ground to invoke the discretion of the Court, when viewed from the allegations in the charge sheet. As rightly contended by the Special Public Prosecutor that change of status of the petitioner/A-1 is not a ground to consider the application.

42. Taking into consideration the facts and circumstances of the case and the changed circumstances set out by the petitioner/A-1 in the application, has no bearing when the offences and allegations made by the respondent/CBI are grave in nature.

43. The decisions cited by the learned senior counsel in *Bhaskar Industries, Basavaraj R.Patil, M.Shyam Prasad Reddy* were already considered by the Hon'ble High Court in CrI.P.Nos.7446 of 2017 and batch and the rest of the rulings do not support the case of the petitioner/A-1 as the facts therein differ from the case on hand. In criminal proceedings, trial should be conducted in presence of the accused as contemplated under Section 273 of Cr.P.C.

44. In view of the reasons above and considering the material on record, taking into consideration the gravity of the

offence, petitioner/A-1 is not entitled for the relief under Section 205 Cr.P.C. warranting discretion of this Court. Hence, the petition is dismissed.

38. The reasons given for rejecting the petition of the petitioner will be adverted to a little later. Before that Section 205 CrPC may be examined. Section 205 CrPC reads as under:

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.

39. From the above, we find that as per sub-section (1) of Section 205, whenever a Magistrate issues a summons, he may dispense with the personal attendance of the accused and permit him to appear by his pleader, if he sees reason so to do. However, as per sub-section (2), at any stage of the proceedings, the trying Magistrate may direct personal attendance of the accused and if necessary, enforce such attendance in the manner provided. Therefore, the Magistrate

has the discretion to dispense with the personal attendance of the accused and to permit him to appear by his pleader, if he sees reason so to do. The expression *reason so to do* is not qualified to the extent that the reason should be good or sufficient. The requirement of the law is that if the Magistrate sees reason, he may dispense with the personal attendance of the accused. Of course, he is empowered thereafter to direct the personal attendance of the accused at any stage of the proceedings.

40. In **Ajit Kumar Chakraborty** (supra), Calcutta High Court in the facts and circumstances of the case observed that the second petitioner was a member of the West Bengal Higher Judicial Service. He had to remain busy with the case pending on his file and could not afford to attend the Court of the Sub Divisional Judicial Magistrate at Serampore on the dates fixed without serious disruption of his official work and harassment to the litigant public whose cases were pending in his Court.

41. This Court in **M. Shyam Prasad Reddy** (supra), after referring to previous decisions held that in a case where the accused himself applies to the Court to be exempted from personal appearance, then the Court should grant the request unless Court is of the opinion that in the interest of justice, it is necessary that the accused should be present through out the course of the trial or unless there are some other good reasons for directing the presence of the accused throughout the course of the trial. It is the basic principle of criminal jurisprudence that nothing shall take place behind the back of the accused. It is on the basis of this principle that fair trial is given to the accused and that the accused is required to be present during trial. It is nowhere laid down in CrPC that the accused has to be present on each and every date of hearing of the case. It would cause hardship to the accused and would also stand in the way of expeditious trial.

42. One of the points which arose for consideration in **Bhaskar Industries Limited** (supra) was the plea made by the second accused before the trial Court for exempting him from personal appearance. Supreme Court posed the question to

itself, when a Court feels that insisting on the personal attendance of the accused in a particular case would be too harsh on account of a variety of reasons, can't the Court afford relief to such an accused in the matter of facing prosecution proceedings? Supreme Court answered 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.

42.1. After referring to Section 205 CrPC, Supreme Court held that it is within the powers of the 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 on his personal presence would itself inflict

enormous suffering or tribulations on the accused and the comparative advantage would be less.

43. Delhi High Court in **Chandramauli Prasad** (supra) examined Section 205 CrPC in the light of the decision of the Supreme Court in **Bhaskar Industries Limited** (supra) and held that provisions requiring the presence of the accused which mandate that the trial be held in his presence are enacted for the benefit of the accused. If the accused person himself does not wish to avail of the right of personal appearance on every date; if he reposes the fullest confidence in the court and in his advocate, and is confident that justice will be meted out to him even in his absence, then, provided his absence does not prejudice him in any way or hinder the progress of the trial, it is not necessary for the trial court to insist on his presence.

This is what the Delhi High Court held:

13. Provisions requiring the presence of the accused which mandate that the trial be held in his presence are enacted for the benefit of the accused and have their genesis in the limited approach of the legal system in England of the late 16th and early 17th Centuries that operated to the prejudice of the accused, such as the court of the Star Chamber. If the accused person himself does not wish to avail of the right of personal appearance on every date; if he reposes the fullest

confidence in the court and in his advocate, and is confident that justice will be meted out to him even in his absence, then, provided his absence does not prejudice him in any way or hinder the progress of the trial, it is not necessary for the Trial Court to insist on his presence.

44. Section 205 CrPC again came up for consideration before the Supreme Court in **TGN Kumar** (supra). After referring to its earlier decision in **Bhaskar Industries Limited** (supra), Supreme Court held as follows:

10. We respectfully concur with the above guidelines and while reaffirming the same, we would add that the order of the Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The court must ensure that the exemption from personal appearance granted to an accused is not abused to delay the trial.

44.1. One of the criteria for exercising the power under Section 205 CrPC is that personal appearance of the accused on each and every date of trial should not result in unnecessary harassment of the accused. However, the Court must ensure that exemption from personal appearance is not abused to delay the trial.

45. In **Hiremagalur Parthsarthy Shamalah** (supra), Patna High Court while adverting to Section 205 CrPC and its

discretionary nature, opined that power under Section 205 CrPC has to be exercised in a reasonable manner; Court should be liberal in granting exemption from personal appearance except where serious issues or allegations of moral turpitude are involved. Even after issuance of warrant, the High Court may dispense with the personal appearance in exercise of power under Section 482 CrPC if a proper case is made out for the ends of justice. In that case, the revision petitioners were high officials posted at Pune and Shillong while the trial was to be conducted at Patna. It was held that inconvenience would be caused if they were required to be present on each and every date of hearing; more so when the revision petitioners had given undertaking to be physically present in Court when so ordered by the Court. Mere fact that cognizance had been taken and the offences alleged are non-bailable cannot be reasons for rejecting the prayer under Section 205 CrPC.

46. Supreme Court in **Sonia Gandhi** (supra), after considering the position occupied by the petitioner took the view that presence of the petitioner during the hearing before the trial

court would cause more inconvenience than convenience. Accordingly, direction was issued to the effect that petitioner should be exempted from personal appearance before the trial court.

47. In **Arvind Kejriwal** (supra), Delhi High Court considering the nature of duties required to be performed by the petitioner being the Chief Minister of Delhi held that it would be in the interest of justice to grant permanent exemption to the petitioner from personal appearance before the trial court. Delhi High Court directed that petitioner should be exempted from appearance before the trial court and to be represented by a duly nominated counsel on his behalf, filing an affidavit to the effect that petitioner would not dispute recording of pleas made by the counsel on his behalf nor evidence in his absence; petitioner would also not dispute the identity of the witnesses nor his own identity nor raise objections of similar nature. Liberty was granted to the trial court that if it needed presence of the petitioner it could direct his presence in person. It was further directed that if the trial court found that unnecessary adjournments were being sought for by

learned counsel for the petitioner, it would be at liberty to pass appropriate orders.

48. In so far the impugned order is concerned, the trial court has taken note of the changed circumstances i.e., petitioner occupying the constitutional office of Chief Minister of the neighbouring State of Andhra Pradesh. However, trial court referred to certain observations made by this Court in the order dated 31.08.2017 that “offences committed by the petitioner are grave offences affecting the economy of the country”. I am afraid it is not open to the trial court to rely upon such observations at the very threshold. These are allegations against the petitioner brought in the form of charge sheet. At this stage, it cannot be said that petitioner had committed the offence(s). Further, the trial court erred that being away from Andhra Pradesh for two days was not a ground to invoke the discretion of the court. The trial court further erred in taking the view that the changed circumstances has no bearing having regard to the offences and allegations made by the respondent/CBI being grave in nature.

49. In my considered opinion, learned Principal Special Judge fell in grave error by bringing in the above factors while considering the request of the petitioner for exemption from personal appearance. This is further aggravated by the observation of the learned Principal Special Judge that in criminal proceedings trial should be conducted in presence of the accused and therefore, his request for exemption from personal appearance should not be considered. I am afraid learned Principal Special Judge failed to appreciate the fact that the principle that trial has to be conducted in presence of the accused is to ensure that the accused gets a fair trial; nothing is done behind the back of the accused. Provision seeking exemption from personal appearance is intended for the benefit of the accused. Those cannot be interpreted in a manner which causes hardship and prejudice to the accused.

50. That being the position and upon thorough consideration of all aspects of the matter, impugned order dated 01.11.2019 is hereby set aside and quashed. It is ordered that personal appearance of the petitioner on each

and every date of hearing in C.C.No.24 of 2013 pending on the file of CBI Court is exempted. Petitioner shall be represented by his duly authorized counsel holding Vakalat. However, as is provided under sub-section (2) of Section 205 CrPC, if the CBI Court feels that appearance of the petitioner is necessary on a particular date of hearing, petitioner shall appear on such date.

51. Criminal Petition is accordingly allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

UJJAL BHUYAN, CJ

26.08.2022
pln