

A

PUNEET DALMIA

v.

CENTRAL BUREAU OF INVESTIGATION, HYDERABAD

(Criminal Appeal No. 1901 of 2019)

B

DECEMBER 16, 2019

[ASHOK BHUSHAN AND M. R. SHAH, JJ.]

Code of Criminal Procedure, 1973 – s.205 – Appellant is accused no.3 in the case pertaining to the charge-sheet bearing C.C. No. 12 of 2013 pending before the Principal Special Judge for CBI Cases, Hyderabad – Granted bail – However, pursuant to the directions issued by the High Court, the appellant is required to attend the Trial Court on every Friday – Appellant made application before the Trial Court u/s.205 for dispensing with his personal appearance/attendance –Dismissed – Confirmed by the High Court – On appeal, held: Appellant, a permanent resident of Delhi, is the Director on the Boards of several companies and has been appearing before the Trial Court on each and every Friday since 2013 – Distance between Delhi and Hyderabad is approximately 1500 kms – Nothing is on record that at any point of time he has tried to delay the trial – In view of principles for grant of exemption as observed by Supreme Court in Bhaskar Industries Ltd. Case, the appellant can be granted the exemption on certain conditions and on filing an undertaking, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest – Further, in case of other two co-accused in cases arising of the same FIR, the applications for exemption on the very same grounds were allowed, one by the High Court and another by the Trial Court – Judgment passed by the High Court as well as the Trial Court rejecting the appellant’s application u/s.205 are quashed and set aside – Thus, application of the appellant for dispensing with his appearance before the Trial Court on all dates of adjournments and permitting his counsel to appear on his behalf is allowed, conditionally – Penal Code, 1860 – s.120-B r/w ss.420, 409 – Prevention of Corruption Act, 1988 – ss.9, 12, 13(2) r/w 13(1)(c) and (d).

H

Disposing of the appeal, the Court

A

HELD: 1.1 The appellant is required to appear before the Trial Court on every Friday and the appellant as such is appearing before the Trial Court on each and every Friday since 2013. Nothing is on record that at any point of time the appellant has tried to delay the trial. The appellant is represented through his counsel. The appellant is a permanent resident of Delhi. He is the Director on the Boards of several companies. The distance between Delhi and Hyderabad is approximately 1500 kms. However, the principles for grant of exemption as observed by this Court in the case of Bhaskar Industries Ltd. can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest. Nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial. In case of other two co-accused in cases arising of the same fir, the applications for exemption on the very same grounds have been allowed – one by the high court and another by the trial court. [Para 6][140-D-E; 142F-H; 143-A]

B

C

D

E

1.2 The impugned Judgment and order passed by the High Court as well as that of the Trial Court rejecting the application submitted by the appellant under Section 205 Cr.P.C. are hereby quashed and set aside and consequently the application submitted by the appellant to dispense with his appearance before the Trial Court on all dates of adjournments and permitting his counsel to appear on his behalf is allowed on the following conditions: (1) That the appellant shall give an undertaking to the Trial Court that he would not dispute his identity in the case and that the advocate who is permitted to represent the appellant, would appear before the Trial Court on his behalf on each and every date of hearing and that he shall not object recording of the evidence in his absence and that no adjournment shall be asked for on behalf of the appellant and/or his advocate;

F

G

H

- A (2) That the appellant shall appear before the Trial Court for the purpose of framing of the charges and also on other hearing dates whenever the Trial Court insists for his appearance; (3) If there is any failure on the part of the advocate who is to represent the appellant, either to appear before the Trial Court on each adjournment and/or any adjournment is sought on behalf of the appellant and/or if the Trial Court is of the opinion that the appellant and/or his advocate is trying to delay the trial, in that case, it would be open for the Trial Court to exercise its powers under Section 205(2) Cr.P.C. and direct the appearance of the appellant on each and every date of adjournment. [Para 7][143-B-G]

Bhaskar Industries Ltd. V. Bhiwani Denim & Apparels Ltd. (2001) 7 SCC 401 : [2001] 2 Suppl. SCR 219 – relied on.

- D *Rameshwar Yadav V. State of Bihar (2018) 4 SCC 608 : [2018] 4 SCR 1055 – referred to.*

Case Law Reference

- E [2001] 2 Suppl. SCR 219 relied on Para 4.3
[2018] 4 SCR 1055 referred to Para 4.3

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 1901 of 2019.

- F From the Judgment and Order dated 10.09.2018 of the High Court at Hyderabad for the State of Telangana and State of Andhra Pradesh in CrI. P. No. 3880 of 2016.

- G Ajay Bhargava, Mrs. Vanita Bhargava, Ms. Trishala Trivedi, Karan Gupta, M/S. Khaitan & Co., Advs. for the Appellant.

Vikramjit Banerjee, ASG, R. Bala, Sr. Adv., Joydip Roy, Sachin Sharma, Ms. Shruti Agarwal, Arvind Kumar Sharma, Advs. for the Respondent.

- H

The Judgment of the Court was delivered by

A

M. R. Shah, J.

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 10.09.2018 passed by the High Court for the State of Telangana and the State of Andhra Pradesh at Hyderabad in Criminal Petition No. 3880 of 2016, by which the High Court has dismissed the said application and has rejected the prayer of the appellant for dispensation with his personal appearance/attendance in a case that pertains to the charge-sheet bearing C.C. No. 12 of 2013, one of the original accused in the aforesaid case has preferred the present appeal.

B

C

3. That the appellant is accused No. 3 in the case pertaining to the charge-sheet bearing C.C. No. 12 of 2013 pending before the learned Principal Special Judge for CBI Cases, Hyderabad. That the appellant was summoned by the learned Trial Court vide order dated 13.05.2013 for the offences punishable under Sections 120-B read with Sections 420, 409 IPC and Sections 9, 12, 13(2) read with 13(1)(c) and (s) 12 of the Prevention of Corruption Act. That, by an order dated 07.06.2019 the appellant has been granted the bail. However, pursuant to the directions issued by the High Court, the appellant is required to attend the learned Trial Court on every Friday. It is the case on behalf of the appellant-original accused No. 3 that since 2013 the appellant has been remaining present before the learned Trial Court on every Friday.

D

E

3.1 That the appellant submitted an application before the learned Trial Court under Section 205 of the Cr.P.C. for dispensing with his personal appearance/attendance. It was submitted on behalf of the appellant that he is the Director on the boards of several companies and is pre-occupied with the management and attending day-to-day affairs on account of business exigencies of the companies. It was also submitted on behalf of the appellant that for attending the learned Trial Court on every Friday, he is required to travel from Delhi to Hyderabad spending not less than two days. Therefore, it was the case on behalf of the appellant that on account of posting the case on every Friday, he has been facing undue hardship in meeting his business commitments, in addition to continuous financial loss being caused to him. Therefore, it was prayed to dispense with his appearance permitting his counsel Sri Bharadwaj Reddy to appear on his behalf.

F

G

H

A 3.2 The said application was opposed by the respondent-CBI. It
was submitted on behalf of the CBI that the grounds on which the appellant
has requested to dispense with his appearance before the learned Trial
Court are not germane and cannot be a ground to dispense with his
appearance before the learned Trial Court under Section 205 Cr.P.C. It
B was also contended on behalf of the CBI that the appellant is facing
very serious charges/offences. The learned Principal Special Judge for
CBI Cases, Hyderabad dismissed the said application. Aggrieved by the
order passed by the learned Trial Court, the appellant preferred a petition
before the High Court. By the impugned judgment and order, the High
Court has dismissed the said petition and has confirmed the order passed
C by the learned Trial Court rejecting the application submitted by the
appellant and has refused the exemption from personal appearance of
the appellant before the learned Trial Court. Hence, the present appeal.

4. Shri Mukul Rohatgi and Shri Neeraj Kishan Kaul, learned Senior
Advocates appearing on behalf of the appellant have vehemently
D submitted that, in the facts and circumstances of the case, the High
Court as well as the learned Trial Court have committed a grave error in
not allowing the application submitted by the appellant from exempting
him to appear before the learned Trial Court on every Friday.

4.1 It is vehemently submitted by the learned Senior Advocates
E appearing on behalf of the appellant that since 2013, on every Friday, the
appellant is attending the learned Trial Court and the charge-sheet is
already filed. It is submitted that the trial is not likely to be concluded at
the earliest as 13 charge-sheets are filed in this case arising out of the
same FIR and there are number of accused. It is submitted that the
appellant is ready and willing to file an undertaking that non-appearance
F of the appellant before the learned Trial Court, on the exemption being
granted, shall not come in the way of proceeding with the trial and that
he shall appear through advocate and that he has no objection if the
evidence is recorded in his absence. It is submitted on behalf of the
appellant that he shall remain present before the Court as and when
G required and ordered by the learned Trial Court. It is further submitted
on behalf of the appellant that he is ready and willing to abide by any
other conditions which may be imposed by this Court and which may
deem fit and proper.

4.2 It is further submitted by the learned Counsel appearing on
H behalf of the appellant that in fact the learned Trial Court has already

granted permanent exemption from personal appearance to two of the accused persons in cases arising out of the same FIR and on the ground of their business commitments, though in fact both of them are based at Hyderabad only. A

4.3 The learned counsel appearing on behalf of the appellant has also relied upon the decisions of this Court in *Bhaskar Industries Ltd. V. Bhiwani Denim & Apparels Ltd.* (2001) 7 SCC 401 and *Rameshwar Yadav V. State of Bihar* (2018) 4 SCC 608 in support of the prayer to dispense with the presence of the appellant before the learned Trial Court on every Friday. B

4.4 Making the above submissions and relying upon the above decisions of this Court, it is prayed to allow the present appeal and consequently allow the application submitted by the appellant for dispensation with his personal appearance before the learned Trial Court. C

5. The present appeal is vehemently opposed by Shri Vikramjit Banerjee, learned ASG appearing on behalf of the respondent-CBI. D

5.1 It is vehemently submitted by Shri Banerjee, learned ASG appearing on behalf of the respondent-CBI that, as rightly held by the learned Trial Court as well as the High Court, the grounds on which the appellant has requested to dispense with his personal appearance, namely, on account of business commitments and pre-occupation in connection with his business activities and inconvenience being caused to the appellant to appear before the learned Trial Court, are not valid grounds for allowing the application under Section 205 Cr.P.C. E

5.2 It is further submitted by Shri Banerjee, learned ASG that in fact the High Court has specifically observed that if the appellant is exempted from personal appearance before the learned Trial Court, in that case, after such an exemption is granted, he may not co-operate in proceeding further with the trial and that the trial will be delayed. It is submitted that the appellant-accused and others are involved in the grave offences causing dent to the economy of the State and affecting the economy of the country. It is submitted that, therefore, the trial is required to be concluded at the earliest. It is submitted that in the impugned judgment and order the High Court has specifically observed and considered the conduct on the part of the appellant as well as the other accused causing delay in concluding the trial. It is therefore submitted that no case is made out to exempt the appellant from appearing before the learned Trial Court. F G H

A 5.3 Now, so far as the reliance placed by the learned counsel
appearing on behalf of the appellant upon the decisions of this Court in
Bhaskar Industries Ltd. (supra) and **Rameshwar Yadav** (supra) is
concerned, it is submitted by the learned ASG that the said decisions
shall not be applicable to the facts of the case on hand looking to the
B graveness and seriousness of the offences involved. It is submitted that
in **Bhaskar Industries Ltd.** (supra), it was a case for the offence under
Section 138 of the Negotiable Instruments Act and in **Rameshwar Yadav**
(supra), it was a case for the offences under Section 498-A IPC and
Section 4 of the Dowry Prohibition Act. It is submitted that, in the present
case, the allegations against the appellant are for the offences punishable
C under Sections 120-B read with Sections 420 and 409 IPC and Sections
9, 12, 13(2) read with Sections 13(1)(c) and (d) of the Prevention of
Corruption Act. Therefore, it is prayed to dismiss the present appeal.

6. Heard learned Counsel appearing on behalf of the respective
parties at length. At the outset, it is required to be noted that the appellant
is required to appear before the learned Trial Court on every Friday and
D the appellant as such is appearing before the learned Trial Court on each
and every Friday since 2013. Nothing is on record that at any point of
time the appellant has tried to delay the trial. The appellant is represented
through his counsel. The appellant is a permanent resident of Delhi. He
is the Director on the Boards of several companies. The distance between
E Delhi and Hyderabad is approximately 1500 kms. Therefore, the appellant
sought for exemption from personal appearance before the learned Trial
Court on each and every Friday and submitted the application under
Section 205 Cr.P.C. and submitted that on all dates of adjournments, his
counsel Sri Bharadwaj Reddy shall appear and no adjournment shall be
asked for on his behalf. In the cases of **Bhaskar Industries Ltd.** (supra)
F and **Rameshwar Yadav** (supra), this Court had the occasion to consider
the scope and ambit of the application under Section 205 Cr.P.C. In the
case of **Bhaskar Industries Ltd.** (supra), this Court has observed that
if a Court is satisfied that in the interest of justice the personal attendance
of an accused before it need not be insisted on, then the court has the
G power to dispense with the attendance of the accused. It is further
observed by this Court in the aforesaid decision that if a court feels that
insisting on the personal attendance of an accused in a peculiar case
would be too harsh on account of a variety of reasons, the court can
grant relief to such an accused in the matter of facing the prosecution
proceedings. It is observed and held by this Court in the aforesaid decision
H that 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. In Paragraphs 14, 17, 18 and 19, this Court has observed and held 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.

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.

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

- A does not cooperate in proceeding with the case? We may point out that the legislature has taken care of 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
- B 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 on 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.”
- C
- D
- E

- F It is true that in the aforesaid two cases before this Court, the offences alleged were less serious offences than alleged in the present case. However, the principles for grant of exemption as observed by this Court in the case of *Bhaskar Industries Ltd.* (supra) can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking
- G by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest. At this stage, it is required to be noted that nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial. At this stage, it is required to be noted that in case of other two co-accused in cases arising of the same FIR, the applications
- H

for exemption on the very same grounds have been allowed – one by the High Court and another by the learned Trial Court. A

7. In view of the above and for the reasons stated above and considering the facts and circumstances of the case, the present appeal is allowed. The impugned Judgment and order passed by the High Court as well as that of the learned Trial Court rejecting the application submitted by the appellant under Section 205 Cr.P.C. are hereby quashed and set aside and consequently the application submitted by the appellant to dispense with his appearance before the learned Trial Court on all dates of adjournments and permitting his counsel Sri Bharadwaj Reddy to appear on his behalf is hereby allowed on the following conditions: B

- (1) That the appellant shall give an undertaking to the learned Trial Court that he would not dispute his identity in the case and that Sri Bharadwaj Reddy-advocate who is permitted to represent the appellant, would appear before the learned Trial Court on his behalf on each and every date of hearing and that he shall not object recording of the evidence in his absence and that no adjournment shall be asked for on behalf of the appellant and/or his advocate Sri Bharadwaj Reddy; C
- (2) That the appellant shall appear before the learned Trial Court for the purpose of framing of the charges and also on other hearing dates whenever the learned Trial Court insists for his appearance; D
- (3) If there is any failure on the part of the advocate Sri Bharadwaj Reddy, who is to represent the appellant, either to appear before the learned Trial Court on each adjournment and/or any adjournment is sought on behalf of the appellant and/or if the learned Trial Court is of the opinion that the appellant and/or his advocate is trying to delay the trial, in that case, it would be open for the learned Trial Court to exercise its powers under Section 205 (2) Cr.P.C. and direct the appearance of the appellant on each and every date of adjournment. E

The present appeal is disposed of in the aforesaid terms. F