

MAHESH KUMAR KEJRIWAL v. BHANUJ JINDAL, 2022 SCeJ 0495, (2022-2)206 PLR 337 (SC)

SUPREME COURT OF INDIA

Before: Justice Dinesh Maheshwari and Justice Aniruddha Bose.

MAHESH KUMAR KEJRIWAL and Anr . – Appellant

Versus

BHANUJ JINDAL and Anr. – Respondents.

Special Leave to Appeal (Crl.) No. 3382/2022;

(i) Negotiable Instruments Act, 1882 , Section 138 - Exemption from personal appearance - Even while observing that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel - Such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence. *M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.: (2001) 7 SCC 401, referred, observations therein essentially co-relate with the facts of the said case.*

(ii) Negotiable Instruments Act, 1882 , Section 138 - Exemption from personal appearance - Prayer for exemption altogether from appearance - Order of Sessions court to furnish bail bonds / surety bonds to the satisfaction of the Trial Court by putting in appearance before the Trial Court; and on their furnishing undertaking to the effect that no dispute regarding identity would be raised and that their counsel would regularly appear, the Trial Court shall exempt them from personal appearance, subject to other requirements of presence, as and when necessary - Stipulations appear reasonable and cannot be said to be unjustified - Difficult to appreciate that in the case of the present nature, the petitioners seek to avoid appearance even once in terms of the order of the learned Sessions Judge.

Cases referred to:

1. (2001) 7 SCC 401, *M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.*

(Arising out of impugned final judgment and order dated 11-02-2022 in CRMM No. 9107/2020 passed by the High Court of Punjab & Haryana at Chandigarh)

For Petitioner(s) Mr. Soubhik Mitter, Adv. Mr. Anjan Datta, Adv. Mr. Rajasmit Mondal, Adv. Mr. Vipin Sandu, Adv. Mr. Maneesh Saxena, Adv. Mr. Vipin Kumar Saxena, Adv. Mr. T. N. Saxena, Adv. Mr. V.A. Mishra, Adv. Mr. Pawan Kumar, Adv. Mr. Ujjwal Bhardwaj, Adv. Mr. Khushal Aagarwal, Adv. M/S. Mukesh Kumar Singh And Co., AOR

ORDER

(18.04.2022) – Learned counsel for the petitioner has attempted his best to persuade us to interfere with the orders impugned, whereby the petitioners' prayer for exemption altogether from appearance in the case pertaining to the offence under Section 138 of the Negotiable Instruments Act, 1881 has not as such been granted. However, we do not feel inclined to interfere in the matter.

2. Learned counsel has referred to a decision of this Court in the case of *M/s Bhaskar Industries Ltd. v. M/s Bhiwani Denim Apparels Ltd.*,¹ (2001) 7 SCC 401. The said decision was cited before the High Court too and the High Court has rightly indicated that therein, this Court was not dealing with a claim for blanket exemption from personal appearance.
3. Having gone through the said decision, we are satisfied that the observations therein essentially co-relate with the facts of the said case. Moreover, even while observing that in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel, this Court has also indicated that such discretion needs to be exercised only in rare instances and there ought to be good reasons for dispensing with the presence.
4. In the present case, pertaining to the dishonour of a cheque in the sum of Rs.43,50,000/-, the learned Sessions Judge, while dealing with the revision petition filed by the petitioners, has provided that the petitioner Nos. 2 and 3, shall furnish bail bonds /surety bonds to the satisfaction of the Trial Court by putting in appearance before the Trial Court; and on their furnishing undertaking to the effect that no dispute regarding identity would be raised and that their counsel would regularly appear, the Trial Court shall exempt them from personal appearance, subject to other requirements of presence, as and when necessary. The stipulations in the order dated 08.01.2020, as passed by the learned Sessions Judge, appear reasonable and cannot be said to be unjustified so as to call for interference at the instance of the petitioners.
5. It is difficult to appreciate that in the case of the present nature, the petitioners seek to avoid appearance even once in terms of the order of the learned Sessions Judge.
6. We find no reason to entertain this petition.
7. Hence, this petition seeking special leave to appeal is dismissed. All pending applications stand disposed of.

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