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2005 PLRonline 0009

PUNJAB & HARYANA HIGH COURT

Surya Kant, J.

**K.K.Vij v. Gautam Goel**

Criminal Miscellaneous No. 14318 of 2005,

12.03.2005

**Cr.P.C., S. 205, 317 - Magistrate shall grant exemption to the petitioners from personal appearance and will permit them to be represented through the counsel till their application under Section 245 Cr.P.C is decided.**

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**Surya Kant, J.** — This petition under Section 482 Cr.P.C has been directed for quashing of complaint No. 17 dated 7th April 2003, under Section 406 IPC and the orders dated 5.11.2003, 27.4.2004, 12.10.2004 and 20.12.2004 passed by the Judicial Magistrate 1st Class, Chandigarh as well as the order dated 16th February 2005 passed by the learned Addl. Sessions Judge, Chandigarh in Criminal revision No. 41 of 15.6.2004 whereby the revision petition filed by the petitioner against the order dated April 7, 2004 passed by learned Judicial Magistrate, Chandigarh has been dismissed being not maintainable.

2. During the course of hearing, the learned counsel for petitioner has confined his prayer against the legality of the order dated 27th April 2004, the copy of which has been appended as Annexure P-3 whereby an application under Section 205 Cr.P.C for dispensing the personal attendance of the petitioners was dismissed and their application for discharge under Section 245 Cr.P.C has been kept pending, to be taken up only after they put in appearance.

3. I have heard Sh. Manoj Bajaj, learned counsel for the petitioner in support of the prayer made in this petition.

4. Since the nature of order, which I intend to pass, will not cause any prejudice to the case of the complainant-respondent, there is no need to issue notice of motion to him.

5. The reasons and on what conditions that an accused can be granted exemption from personal appearance are well settled. Their lordships of the Supreme Court in **[Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd.](#)** AIR 2001 SC 3625 have held 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. 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 seeking 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 within in order to make himself present in the Court in that particular case....."*

*"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. It, thus, emerges out that the power under Section 317 Cr.P.C to grant exemption to an accused from personal appearance can be exercised by the Court for the reasons like :—

- (a) if the evidence can be taken in the absence of the accused but in the presence of his counsel;
- (b) there is no obstruction caused to the primary concern of the Court in relation to the administration of criminal justice;
- (c) the Court would keep in view that the presence of the accused is not required merely to mark his presence but to expedite the trial;
- (d) the magnitude of the sufferings which the accused may have to bear in order to make himself present in the Court, cannot be altogether overlooked;
- (e) the accused is willing to give an undertaking that he would not dispute his identity and he will have no objection in taking evidence in his absence and in the presence of his counsel etc.

7. Keeping in view the peculiar facts and circumstances of this case and in the light of the principles quoted above, it is directed that the learned Magistrate shall grant exemption to

the petitioners from personal appearance and will permit them to be represented through the counsel till their application under Section 245 Cr.P.C is decided subject to, however, their furnishing an undertaking and/or comply with the conditions which the learned Magistrate like to impose upon them.

8. Having regard to the facts and circumstances of this case, learned Magistrate is also directed to decide the application under Section 245 Cr.P.C moved by the petitioners within a period of two months from the date of receipt of a copy of this order and in accordance with law.

9. It will be open for the petitioner to raise rest of the pleas raised in this petition at an appropriate time and stage before the learned Judicial Magistrate. The observations made here-inabove do not relate to the merits of this case and will have no bearing thereupon.

10. This petition stands disposed of accordingly.

Petition allowed.