

Larsen and Toubro Ltd., Mumbai and others Vs Anand Bangad and others

Court: Madhya Pradesh High Court (Indore Bench)

Date of Decision: Sept. 17, 2002

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 200, 201, 202, 204, 204(1)(b)

Citation: (2008) ILR (MP) 600 : (2002) 4 MPLJ 581

Hon'ble Judges: S.L. Kochar, J

Bench: Single Bench

Advocate: A.M. Mathur, with Shrivastava, for the Appellant; Ashok Kutumbale, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

S.L. Kochar, J.

This Criminal Revision, has been filed by applicants against order dated 4-7-2002, passed by learned II ASJ Ujjain, in Criminal Revision No.

88/02, arising out of order dated 8-2-2002, passed by learned ACJM Ujjain thereby allowing revision of the non-applicants in part and directing

learned trial Court to issue directions for appearance of the applicants before the Court to execute personal bonds and surety bonds.

For disposal of this Criminal Revision, brief facts are as follows:

Non-applicants No. 2 and 3 filed private criminal complaint through their attorney non-applicant No. 1 Anand Bagad against applicants and one

more co-accused u/s 420 of the Code of Criminal Procedure (for short, "the Code"). There is some dispute between them about transfer of shares

and it is alleged by the non-applicant/complainant that the applicants and one more co-accused Discovery Credit Mauritius Ltd. committed

cheating with them.

Learned Magistrate, after recording the statements of the complainant and his witnesses u/s 200-202 of the Code issued process u/s 204(1)(b) of

the Code. Learned trial Court also issued summons for the appearances of the applicants personally or through their counsel. Out of 21 accused

person/applicants, 20 applicants were served and marked their presence through their duly instructed counsel before the trial Court on 2-2-2002.

21st accused could not be served. On 2-2-2002, learned counsel appearing for the applicants submitted an application u/s 205 of the Code for

dispensing with personal attendance of the applicants and allow them to appear through their pleader. The other application under sections 205

and 317 of the Code as well the third application were filed on 4-2-2002 for bringing additional facts and grounds on record.

Non-applicants/complainant while submitting written reply objected their prayer. Learned trial Court by its order dated 8-2-2002 granted

exemption from personal appearance of the applicants/accused persons and allowed them to appear through their pleader/counsel. Learned

Magistrate also directed learned counsel for the applicants not to delay the proceedings and also ordered for personal appearance of the

applicants as per directions of the Court in future. Against this order, non-applicants went up in revision and revisional Court while upholding the

order of the learned trial Court made some modifications and issued directions in paragraph 14 that the trial Court will direct applicants to remain

present in Court for executing bail bonds and personal bonds. This is the order impugned before this Court.

Having heard learned counsel for the parties and after perusing the entire record as also the judgment rendered by this Court in Mst. Makhaniya

vs. Badri Prasad and Others, 1973 MPLJ 678 as well as the judgment rendered by the Supreme Court in Bhaskar Industries Ltd. vs. Bhiwani

Denim and Apparels Ltd. and another, 2001(3) MPLJ 664, this Court is of the opinion that the order passed by the trial Court was well within the

periphery of the Provisions of sections 204(1)(b), 205, 317 of the Code. In a warrant case, at the first instance, learned Magistrate has discretion

to issue summons against accused persons. If he does so, it cannot be said that he has committed illegality. u/s 205 of the Code learned Magistrate

again has a power to dispense with attendance of the accused persons and direct them to appear through their pleader. u/s 205(2) of the Code the

magistrate again has discretion at any stage of the proceedings for directing the personal attendance of the accused before the Court. u/s 317 of the

Code, Court has power to try the case in absence of the accused.

In the present case, applicants have given in writing that they will not dispute the question of their identity. In application dated 4-2-2002, in

paragraph 2, applicants have also given undertaking that they will not dispute their identity and Mr. Balendu Dwivedi, Advocate on their behalf

would remain present in Court. They have no objection in taking evidence in their absence. For the sake of arguments, even after giving such

undertaking, suppose accused persons would not appear in future and take part in the proceedings, the trial Court has ample powers and

jurisdiction to secure presence of the accused persons by issuing warrant of arrest. The law has taken care to this effect as per Provision u/s

205(2) of the Code.

In the case on hand, factual matrix are also disclosing that presence of the applicants on each and every date would not require because they all,

are not active Director or Managing Director looking after day to day business of the company. At the time of recording evidence whenever they

will be required by the Court and whenever complainant will point out that presence of the applicants would be essential, the Court has power to

direct them to appear before the Court. It is not a case that once the applicants have exempt from their personal appearance, in future also they

cannot be directed to appear before the Court. The Supreme Court in the case of Bhaskar (supra) has held that if the magistrate finds that

insistence of personal appearance of the accused persons would itself inflict enormous suffering or tribulation on them and the comparative

advantage would be less. Under these situation, the discretion needs to be exercised by the Magistrate by granting exemption from personal

appearance. In the present case, complainants have arrayed as many as 21 persons as accused. Out of which, present 20 accused persons have

been served and they have also marked their presence. Now the case is fixed for service of summons for presence of 21st accused. Therefore, at

present no proceedings will be initiated by the trial Court in which presence of the applicants would be essential. Though discretion has been given

to the Courts below u/s 205 and 317 of the Code to exempt accused persons but the same has to be exercised judiciously. In the present case,

learned trial Court has exercised discretion judiciously.

Apart from this, 20 accused persons if directed to remain present personally they will have to appear personally at their own costs/expenses. As

they all come from Mumbai, they would suffer loss of their working at Mumbai as also suffer to and fro journey expenses. Ultimately it would not

only the loss of the citizen but loss of the Country. Learned Revisional Court has taken recourse to the judgment passed by this Court in Mst.

Makhaniya's case (supra). This judgment is not laying down the law that in a warrant case, u/s 204 of the Code, Magistrate has to issue warrant of

arrest and direct the accused persons to appear before the Court for furnishing personal bonds and surety bonds. In this case the trial Court

granted exemption from personal appearance to the applicants and thereafter at a later stage, exercising powers u/s 205(2) of the Code directed

for her appearance before the Court. Against that order, the accused filed revision and the said revision has been dismissed by this Court. This

judgment is not supporting the objection of the non-applicants. On the contrary, this judgment is supporting about the use of discretionary powers

by the learned Magistrate u/s 205 of the Code. Therefore, learned Revisional Court has erred in directing the trial Court to issue directions for

personal appearance of the applicants in Court to furnish bail bonds and surety bonds.

However, as per the statement made at bar by the learned counsel for the applicants that counsel for the applicants will appear on their behalf

before the trial Court on each and every date of hearing they will not dispute their identity and will not raise any question about their identification.

The applicants will also take effective part in the examination and cross-examination of the witnesses of the complainant even in their absence

through their counsel. They will also not delay the proceedings without showing sufficient cause.

In the result, this revision petition is allowed and the impugned order passed by learned Revisional Court directing the trial Court to issue direction

for appearance of the applicants before the trial Court for furnishing bail bonds and surety bonds, is hereby set aside.

Petition allowed.