

(2014) 09 AP CK 0050

Andhra Pradesh High Court

Case No: Criminal Revision Case Nos. 1798 and 1799 of 2014

Vijay Mallya

APPELLANT

Vs

GMR Hyderabad International
Airport Ltd.

RESPONDENT

Date of Decision: Sept. 9, 2014

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145(2), 190, 200, 205, 251
- Negotiable Instruments Act, 1881 (NI) - Section 138, 143

Citation: (2015) 1 ALD(Cri) 93 : (2015) 1 ALT(Cri) 176 : (2015) 2 Crimes 520

Hon'ble Judges: B. Siva Sankara Rao, J

Bench: Single Bench

Advocate: H. Sudhakara Rao, Advocate for the Appellant; S. Niranjan Reddy, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dr. B. Siva Sankara Rao, J.

These revisions, under Sections 397 and 401 of Cr.P.C., are filed by the petitioners against the orders, dated 13.08.2014, in CrI.M.P. Nos. 1430 and 1435 of 2014 respectively in C.C. No. 102 of 2014 on the file of III Special Magistrate, Hyderabad.

2. The petitioners are A. 2 and A. 3 among three accused including A. 1 entity, M/s. Kingfisher Airlines Limited. Criminal case was taken cognizance and numbered as C.C. No. 102 of 2014 (old C.C. No. 22 of 2014) for the offence under Section 138 of N.I. Act on a private complaint lodged by M/s. G.M.R. Hyderabad International Airport Limited, for the respective cheques issued, dishonoured, from issuing the statutory notice and non payment within the time stipulated period from the date of cause of action accrued. Whereas, the petitioners filed CrI.M.P. Nos. 1430 and 1435 of 2014 seeking to dispense with their personal appearance in the above private complaint. The learned Magistrate, in the impugned order by referring to several

expressions of the Apex Court, more particularly, in [T.G N. Kumar Vs. State of Kerala and Others](#), that Section 205 of Cr.P.C. confers a discretion on the Court to exempt personal appearance of the accused till such time his appearance is considered by the Court to be not necessary during the trial, and observed that A. 2 representing A. 1 entity is permitted representation by his counsel - Sri. D. Vijayanand under special power except on the following stages viz., shall present in person before the Court for examination of accused under Section 251 Cr.P.C.; shall be present in person whenever the case is posted for examination of accused under Section 313 Cr.P.C. and shall also be present in person before Court whenever this Court directs him to be present in the Court when the Court opines that the presence of petitioner - accused before the Court necessitates to proceed with the case and for final disposal of the case and the petitioners shall submit an undertaking by way of sworn affidavit that he would not raise any grievance at any stage of the case stating that a great prejudice or hardship is caused to him due to such exemption from physical appearance. It is impugning the said orders for A. 2 and A. 3 equally.

3. With similar lines, both the revisions are preferred contending that imposing of said three conditions by the learned Magistrate while permitting to represent through the advocate under Section 205 Cr.P.C. in exempting personal appearance is unsustainable and contrary to law besides onerous and unnecessary. Hence, to allow the revision by setting the impugned orders of the learned Magistrate.

4. The learned counsel for the revision petitioners reiterated the same. Whereas it is the contention of the learned counsel for the de facto complainant-first respondent in the respective two revisions that the learned Magistrate has exercised the power of judicial discretion under Section 205 Cr.P.C. therefore, for this Court while sitting in revision, there is no practically nothing to interfere or to modify or to set aside any of the three conditions and sought for dismissal of the respective two revisions also on the ground that it is prohibited from entertaining on the bar under Section 397(2) Cr.P.C. being interlocutory in nature.

5. Heard the learned counsel for the petitioners and the learned counsel for the first respondent, in both the revisions. Perused the material available on record.

6. Both the revisions are taken up for common disposal and now the common points that arise for consideration are,

01. Whether the orders, dated 13.08.2014, in CrI.M.P. Nos. 1430 and 1435 of 2014, passed by the learned Magistrate in allowing the application under Section 205 Cr.P.C. imposing the conditions for appearing to examinations under Sections 251 Cr.P.C. and 313 Cr.P.C. and also as and when required for the necessity is unsustainable and outside the purview of the exercise of judicial discretion? and whether the impugned order is interlocutory in nature no way effects rights of the parties to the lis and the very revisions are not maintainable?

02. To what relief?

POINT NO. 1:

7. Coming to the very maintainability of the revisions, no doubt, Section 397(2) of Cr.P.C. speaks, the powers of revision conferred by Sub-Section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceeding. The impugned order is, if not, in trial, once summons are served and accused appeared either in person or through Advocate, it is being a summary procedure under Section 143 N.I. Act, trial commenced for all practical purposes subject to the Section 251 Cr.P.C. examination.

8. Now coming to the core, as to the orders impugned are interlocutory in nature or not; law is fairly settled from the expression of the Apex Court in [M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others](#), that the criteria to decide whether the order is interlocutory in nature or not, is not to decide from mere look of the order but consequent on its result. Needless to say what is an interlocutory order in nature is well laid down by the Apex Court in [Amar Nath and Others Vs. State of Haryana and Another](#), [Madhu Limaye Vs. The State of Maharashtra](#), [Mohit alias Sonu and Another Vs. State of U.P. and Another](#), [Raj Kapoor and Others Vs. State and Others](#), wherein it was distinguished power of revision and inherent powers of High Court. In fact, in [Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and Others](#), it was held that on the scope of revision or inherent power, the controversy is no longer res Integra as the controversy has been set at rest by Madhulimaye (3 Judges Bench) supra. Further, when there is a specific provision that is applicable, inherent power cannot invoke to exercise.

9. From the above, so far as the lis covered by the revision concerned, it is not a mere an order of interlocutory in nature as it effects the right of the party. Thereby the revision is maintainable and the bar under Section 397(2) Cr.P.C. has no application as it effects the right in insisting the personal appearance and whether insisting personal appearance is sustainable or not, no doubt, is required to be decided herein now.

10. Coming to the scope of the revision under Section 397(1) of Cr.P.C., it is for the purpose of satisfying as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. Here it is not confined to only illegality or impropriety but even irregularity or correctness of the order to decide by sitting in revision within the limited scope, but for to say, the scope of the revision to the Court of Session under Section 397(1) Cr.P.C. is different to the scope of revision before the High Court as per Section 397 R/W Section 401 Cr.P.C., where it speaks the power conferred on a Court of Appeal also can be exercised in deciding the revision.

11. Coming to the scope of Sections 205, 251 and 313 of Cr.P.C.; (a) Section 313(1) of Cr.P.C. mandates personal appearance of the accused for purpose of enabling him personally to explain any circumstances appearing in the evidence against him in an

enquiry or trial to answer. No doubt the proviso to Section 313(1) enables the Court to dispense with the personal appearance of the accused and it may also dispense with the examination of the accused. It is to say either exemption from personal appearance or even examination under Section 313, otherwise, mandatory to dispense with is depending upon facts of the case, as to whether there is any incriminating evidence or not whether personal appearance can be dispensed with, if somebody represents either as a GPA holder or special vakalath holder or the like, as the case may be.

(b) So far as examination under Section 251 Cr.P.C. concerned, as the NI Act proceedings are even summary in nature, the procedure required to adopt under Section 143 N.I. Act, the learned Magistrate proceeds as a summons case by giving C.C. Number. The procedure for summary trial, to invoke Section 251 Cr.P.C. examination in questioning after his appearance concerned, where the accused appears or brought before the Magistrate, the particulars of the offence of which the accused shall be stated to him and shall be asked to him whether he pleads guilty or whether he has defence to make it, it shall not be necessary to frame formal charge. So far this examination and the scope of Section 251 Cr.P.C. is concerned, it is to be read with invariably Section 205 Cr.P.C. the word "accused appearance" need not be confined to personal appearance, it can be even through GPA holder or special vakalath holder. If we read with Section 205 Cr.P.C. if it is brought before the Court invariably the accused must be brought before the Court for the examination under Section 251 Cr.P.C. In such event, examination in person is only limited, as to whether he pleads guilty or claims to be tried or any defence.

(c) Section 205 Cr.P.C. confers that (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.

12. Undisputedly, the learned Magistrate after taken cognizance of a private complaint under Section 200 Cr.P.C. read with 190 Cr.P.C., issued summons to the accused, for which he appeared through advocate or through special vakalath holder under Section 205 Cr.P.C. and it is, on contest, allowed to the above extent, more particularly, referring to TGN Kumar (supra) and other expressions including general guidelines issued by the Apex Court regarding disposal of N.I. Act cases under Section 143 of N.I. Act as a summary trial. The expression of the Apex Court reported in [Indian Bank Association and Others Vs. Union of India \(UOI\) and Another,](#) in fact, the case referred above has no more relevancy so far as the present facts concerned, but for, to say there was in guideline No. 23(4) observed in giving direction that the Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice

under Section 251 Cr.P.C. to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) Cr.P.C. for re-calling a witness for cross-examination. There it speaks relating to 251 Cr.P.C. examination and did not consider the scope regarding Section 205 Cr.P.C. and thereby application under Section 205 Cr.P.C. and dispensing with of personal appearance and in such event for 251 Cr.P.C. examination, it can be done through the special vakalath holder was not fallen for consideration in the above guideline/direction.

13. From this, now so far as Section 205 Cr.P.C. examination concerned, at the cost of repetition, the Apex Court in TGN Kumar (supra), more particularly at paras 7 to 9 categorically observed that, the discretion conferred on the Court to exempt the accused from personal appearance till such time the personal appearance is considered by the Court to be unnecessary during trial. Here from that observation now to consider once the accused is permitted through special vakalath under Section 205 of Cr.P.C., the personal attendance required to be insisted is where necessary. So far as Section 251 Cr.P.C. examination concerned, that too when the special vakalath holder is willing to answer the questions that are put to the accused under Section 251 Cr.P.C. examination, the learned Magistrate did not consider this aspect, even the expression of Apex Court in TGN Kumar (supra) mandates that once permitted under Section 205 Cr.P.C. the personal appearance shall be exempted of course where not necessary during enquiry or trial.

14. Here when the special vakalath holder advocate is thereon permitted and he is willing to answer questions that are put to the accused under Section 251 Cr.P.C. as to whether he pleads guilty or enters his defence; there is practically no necessity in exercise of the judicial discretion for insisting personal appearance of the accused, so far as Section 251 Cr.P.C. examination concerned. Thereby, to that extent the trial court orders is not correct and requires to revise by sitting in revision within the scope of Section 397(1) read with 401 Cr.P.C. Accordingly, the point No. 1 is answered.

Point No. 2:

15. In the result, while modifying the order of the learned Magistrate by setting aside the portion in so far as condition to appear in person to answer Section 251 Cr.P.C. examination concerned, now by dispensing with and permitting to answer through advocate special vakalath holder; in other respects, the order of the learned Magistrate confirmed as holds good. Needless to say the lower court as observed above within its discretion can always insist for any personal appearance of accused after 251 Cr.P.C. examination in the course of enquiry/trial at any stage.

16. It is also needless to observe that the lower court is supposed to take care of the requirement of execution of bond by the accused under Section 88 R/w. Section 89 Cr.P.C. A bond shall be insisted and such bond if disobeyed in future, the accused

has to face penal consequences as contemplated. Thereby the accused through the special vakalath holder shall execute said personal bond under Section 88 R/W. Section 89 Cr.P.C. by next hearing or within such time being granted by the Court for said purpose.

17. The revisions are accordingly partly allowed. Miscellaneous petitions pending, if any, in this revision shall stand closed.