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Court : Madhya Pradesh

Decided On : Jan-19-1950

Reported in : 1951CriLJ73

Judge : Mehta, J.

Appellant : Rajkumar Singh

Respondent : State Through Director of Food, Madhya Bharat

Judgement :

ORDER

Mehta, J.

1. This application under Section 56IA, Criminal P.C. has been submitted by the pleader for the accused-applicant, Shree Rajkumarc singh. The shore facts leading to this application are that Rajkumarsingh has been prosecuted for contravention of a notification issued under the Essential Supplies Order, 1946. The accused is being prosecuted in the Court of Municipal Magistrate : Vide criminal case no. 6854 of 1949. The Municipal Magistrate had issued a bail warrant against the applicant to which he has surrendered.

2. Now this application is made for exemption of the accused from personal attendance in the trial Court on the ground that the applicant Rajkumarsingh is the managing Director of Rajkumar Mill, Hukumchand Mill and Hira Mill, Ujjain, and he

has to attend the day to day business of the mills and has very often to move out of Indore in connection with the affairs of the aforesaid mills and textile industry, The question for decision is whether this Court should exercise its inherent jurisdiction under Section 561A and grant exemption to the applicant from attendance in trial Court. In my opinion, the inherent power is recognised only to meet those cases for which no provision is made by the Criminal Procedure Code. It, therefore, follows that when there are express provisions of law, there is no inherent power in the High Court to override them. The general rule is that all enquiries and trials should be conducted in the presence of the accused. Section 205, Criminal P.C., applies only to cases in which the Magistrate has issued a summons in the first instance and not where the accused has been arrested without or after the issue of a warrant. Section 205 provides that when a Magistrate has issued summons, he may dispense with the personal attendance of the accused and permit him to appear by pleader. Section 540A provides for enquiries and trial being held in the absence of the accused where there are two or more accused before the Court and if the Court is satisfied that any one or more of such accused is or are incapable or remaining before the Court, the Court may dispense with the attendance of the accused and proceed with enquiries or trial, if the accused is represented by a pleader. Section 540A, Criminal P.C., would not apply to the case where there is only one accused in the case.

3. It appears to me that there is no express provision in the Code of Criminal Procedure which would empower the Magistrate to dispense with the personal attendance of the accused during the course of trial. However, in *In re Ummal Hasanath A.I.R. (34) 1947 Mad. 483 : (48 Or. L.J. 874)*). Rajamannar J. was inclined to take the view that Section 535, Criminal P.C., by necessary implication confers power on the presiding officer whether he is a Magistrate or a Sessions Judge or a Judge of the High Court to dispense with the personal attendance of an accused person. Chapter XVIII would cover an enquiry before the Committing Magistrate also. There appears to be a difference between the stage contemplated by Section 205 and that contemplated by Section 358, Criminal P.C. Section 205 deals with initial appearance of the accused person before the Magistrate whereas Sections 353 deals with the presence of the accused during the trial of the case of during enquiry. The learned Judge further holds that in any event the language of

Section 561A is wide enough to confer such power on this Court. This shows that Rajamannar J, was not absolutely certain in his mind about the application of Section 358 to dispense with the personal attendance of an accused person.

4. In *Madhao Rao v. Ishwardas Sheoratan* A.I.R. (36) 1949 Nag. 334 : 50 Cr. L.J. 952 a Division Bench has held that Section 353, Criminal P.C. does not by necessary implication confer on a presiding officer whether he is a Magistrate or a Sessions Judge or a Judge of the High Court to dispense with the personal attendance of the accused. This Nagpur case dissents from the view taken in *In re Ummal Hesanath* A.I.R. (34) 1947 Mad. 433:(48 cr. L.J. 874). The view taken by the Division Bench of the Nagpur High Court is that where there is neither specific provision of law nor any general principle of criminal jurisprudence which would conflict with the exercise of inherent power, it can be exercised, if it is necessary to do so by the High Court to give effect to any order under the Criminal Procedure Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. High Court has inherent powers under Section 561A to exempt an accused from appearance in Court beyond those contained in Sections 205 and 540A, Criminal P.C. This is also the view taken by Rajamannar J, in *In re Ummal Hesanath* A. I. E. (34) 1947 Mad, 433 : (48 Cr. L.J. 874) wherein he held that language of Section 561A, Criminal P.C. was wide enough to confer power on the High Court to direct the Magistrate to dispense with the presence of the accused during an inquiry before him.

5. I, therefore, hold that under Section 661A, Criminal P.C. this Court has inherent power to excuse the personal attendance of the accused in the trial and permit him to appear by a pleader. The grounds alleged for exemption are cogent. In the present context of critical condition of textile industry, it is imperatively necessary that the accused who is a managing director of no less than 3 textile mills should be allowed unfettered and free scope to look after the day to day management of the mills and the attendance in Court would hamper the smooth working of the mills.

6. I, therefore, allow the application under Section 561A and direct that the personal attendance of the accused be dispensed with during the enquiry and he

should be allowed to be represented by his pleader. In case when the presence of the accused is urgently necessary he may be directed to attend the Court.

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