

**S. Jayadev Vs. State**

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**Court :** Delhi

**Decided On :** May-21-1997

**Reported in :** 1997IVAD(Delhi)29; 1998(1)ALT(Cri)3; 67(1997)DLT564; 1997(42)DRJ88

**Judge :** J.K. Mehra, J.

**Appeal No. :** Criminal Miscellaneous Appeal No. 507 of 1997 and Criminal Miscellaneous (Main) Appeal No. 2322 of 1

**Appellant :** S. Jayadev

**Respondent :** State

**Advocate for Pet/Ap. :** S.S. Gandhi,; P.K. Behl and; Harish Gulati, Advs

**Judgement :**

**J.K. Mehra, J.**

(1) I have heard the parties. In this case, after the service of summons, the petitioner had approached the Trial Court for exemption from personal appearance under Section 205(1) Cr.P.C. The Trial Court rejected the application for exemption from personal appearance and directed that the accused must appear. The accused challenged the orders of the Trial Court rejecting the request for exemption from personal appearance. Justice N.G. Nandi after hearing the parties,

disposed of the matter on 17.12.1996, setting aside the order of the Trial Court dated 30.8.1996 whereby exemption from personal appearance had been declined. This Court granted the exemption from personal appearance to the petitioner. Before this Court the petitioner/accused through his counsel submitted that he does not dispute his identity and also does not object to the progress of the case in his absence and further that he will continue to appear through his counsel before the Trial Court Mr. Gulati also at that time, did not object to grant of exemption from personal appearance, but only qualified that if for any date, the Trial Court requires his presence, the accused should appear in the Court on that date. The matter was concluded with a direction that in case at any stage of the case, personal appearance of the petitioner is required, the Trial Court could direct the accused to personally appear on that date. No other condition was spelt out by this Court. The aforesaid direction did not mean that the accused should be directed to appear before the Trial Court to be admitted to bail even though no such condition was imposed by the High Court. However, if necessary, the petitioner could be directed by the Trial Court to appear only when his presence was essential for the purposes of the progress of the trial in the case.

(2) I am told that when the counsel for accused appeared on 6.1.1977 armed with the aforesaid order passed by this Court, the Metropolitan Magistrate though granted exemption from personal appearance for that date, which to my mind was absolutely superfluous because exemption from personal appearance had already been granted by this Court. The Trial Court further directed the petitioner to appear personally and file a personal bond in the sum of Rs. 10 lakhs with one surety. This direction of furnishing of the bond and surety for a sum of Rs. 10 lakhs, even in the absence of the aforesaid order of exemption without any conditions in the circumstances of the case could be deemed to be excessive. In my opinion, such order was not really called for in view of the matter relating to grant of exemption from personal appearance without any conditions having already been concluded by the order of Justice Nandi. Mr. Gulati had raised only one plea that obtaining personal bond and appearance once will be necessary so that later on the accused/petitioner may not resile from the authority given to his counsel and raise a plea that all that his counsel had been doing was without any authority. That question would not arise in a situation like the present case where absence of

dispute of authority is conceded before this Court. In any event, in order to satisfy myself, I had directed the accused/petitioner to appear in person before this Court. Pursuant to such direction, he is present in the Court and is identified by Mr. S.S. Gandhi, Advocate. The petitioner, in response to a specific question, has undertaken to this Court that he will appear as and when he is required to appear before the Trial Court for the purposes of trial in the case. Let an affidavit to this effect be filed in the Court in the course of the day. This meets with the main objection of Mr. Gulati. The judgment relied upon by the learned Magistrate will not be of any avail, particularly in view of the fact that he has to proceed with the trial only and cannot sit in judgment over the orders passed by this Court. Such matter could be considered by the Trial Court only if exemption from personal appearance had not been granted by Justice Nandi without any further conditions. Mr. Gulati has also relied upon the case of Mst. Makhaniya v. Badri Prasad & Ors., reported as 1973 Mplj 678. In that case all that the Court has decided is that the Trial Court has jurisdiction to direct accused later to furnish bond for appearance. There cannot be any quarrel with this proposition, but this would not be applicable after the matter has been considered by the High Court and exemption from personal appearance without any such conditions had been granted. Another order shown to me was passed by Justice Mohd. Shamim wherein this Court had specifically directed the accused to appear once and file his personal bond. No such condition was given by Justice Nandi in this case.

(3) I must deprecate the tendency of this Trial Court in his attempt to over-reach the High Court. The impugned order has been passed as if the Trial Court was sitting in appeal over High Court order. I do not wish to state or do anything further on this occasion for such conduct on the part of this Magistrate, except to caution him to act in accordance with the directions given by this Court and not to find ways to circumvent the orders.

(4) The only question which has been considered in several other judgments of different Benches, has been that the accused could be granted exemption from personal appearance if he does not challenge his identity and he further ensures that he will be represented by his lawyers and that the evidence can continue in his absence and he has no objection to the progress of the case being made in

any manner in his absence. This was the ratio of the judgment in Crl.M.(M) No.132/87 decided on 16.9.1987 by P.K. Bahri, J. More or less to the same effect, is the judgment in the case of Nihal Singh & Ors. Vs . Arjun Das, : 27(1985)DLT147 . The said considerations were before Justice Nandi and he felt satisfied about those at the time he passed his order dated 17.12.1996. In the face of this, I find that the Trial Court has erred materially in passing the order dated 6.1.1997, which is hereby set aside. A copy of the undertaking filed in this Court should be sent to the Trial Court also for being placed on his record. The Trial Court is directed to proceed with the trial of the case expeditiously even in the absence of the accused. The petitioner and Mr. Gandhi undertake that a counsel duly appointed by the accused/petitioner shall appear on each on behalf of the accused.

(5) This application is disposed of in the above terms.

(6) A copy of the order be given dasti.

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