

Madras High Court

Tmt. Kalachi @ Rajalakshmi vs State By The Deputy ... on 22 March, 2006

Equivalent citations: 2006 CriLJ 2053

Author: M Jeyapaul

Bench: M Jeyapaul

ORDER M. Jeyapaul, J.

1. As against the order of dismissal passed in Crl.M.P.No.51 of 2006 filed under Section 70(2) of the Code of Criminal Procedure, Crl.R.C.No.191 of 2006 has been preferred before the learned Special Judge No. 1/X Additional Judge, Chennai.
2. As against the order of dismissal passed in Crl.M.P.No.52 of 2006 filed under Section 317 of the Code of Criminal Procedure, Crl.R.C.No.192 of 2006 has been preferred before the learned Special Judge No. 1/X Additional Judge, Chennai.
3. As against the order of dismissal passed in Crl.M.P.No.53 of 2006 filed under Section 205 of the Code of Criminal Procedure, Crl.R.C.No.193 of 2006 has been preferred before the learned Special Judge No. 1/X Additional Judge, Chennai.
4. The petitioner has been arraigned as third accused in a case under Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988 and under Section 109 of the Indian Penal Code r/w Section 13(2) r/w Section 13(1)(e) of Prevention of Corruption Act, 1988 launched totally against 20 accused.
5. The learned Special Judge, having taken cognizance of the aforesaid case, issued summons to all the accused to appear on 29.7.2005. The case thereafter stood posted to 23.9.2005 and then to 25.1.2006. As some of the accused were found absent, non-bailable warrants were issued after the petitions filed under Section 317 of the Code of Criminal Procedure for condoning their absence were dismissed.
6. The other absentee accused, except the third accused, surrendered and the non-bailable warrants issued against them were recalled. The third accused, who has not chosen to show up before the Court in spite of the non-bailable warrant pending against her, has filed the aforesaid petitions under Section 70(2) of the Code of Criminal Procedure to recall the non-bailable warrant, under Section 317 of the Code of Criminal Procedure to condone her absence and under Section 205 of the Code of Criminal Procedure to dispense with her presence and permit her to appear by her Pleader.
7. The learned trial Judge, having adverted to the various authorities ruling the subject, returned a decision that the petitioner against whom non-bailable warrant is pending, cannot seek for the reliefs under Sections 70(2), 317 and 205 of the Code of Criminal Procedure.
8. Learned counsel for the petitioner would submit that the petitioner, who is an Octogenarian aged 87 years, is suffering from serious ailment and therefore she could not attend the Court.

9. The learned Public Prosecutor would submit that the petitioner is hale and healthy and she avoids receiving the copies of the documents and statements under Section 207 of the Code of Criminal Procedure just to facilitate the other accused to drag on the matter.

10. On a perusal of the records, it is found that the case was originally registered way back in the year 1996, but the chargesheet was laid only in the year 2005. The trial Court has given ample opportunity for the present accused to appear before the Court to receive the copies of the documents and statements under Section 207 of the Code of Criminal Procedure. But the accused has not turned up to receive the copies of documents and statements. The learned Special Judge has chosen to issue non-bailable warrant as against the petitioner to compel her presence before the Court to comply with the mandates of the provision under Section 207 of the Code of Criminal Procedure in letter and spirit.

11. Of Course, the Court has ample power to dispense with the appearance/attendance of the accused on a particular hearing when the accused is represented by a Pleader under Section 317 of the Code of Criminal Procedure and to dispense with the personal attendance of the accused and permit the accused to appear by her Pleader under Section 205 of the Code of Criminal Procedure.

12. But the power of the Court to compel the attendance of the accused, even such concession or accommodation is granted to the accused whenever it is quite necessary for the purpose of an enquiry or trial of the case, is recognised under the scheme of the Code of Criminal Procedure.

13. When Section 207 of the Code of Criminal Procedure specifically refers to furnishing of the copies of police report and other documents only to the accused, the presence of the accused when the matter has been posted for furnishing the copy of the police report and other documents is very much necessary.

14. The Hon'ble Supreme Court in *V.K. Jain v. Union of India* 2000 SCC (CRI) 302 and in *R. Annapurna v. Ramadugu Anantha Krishna Sastry* 2004 SCC (Cri) 1135 recognised the power of the Court to compel the attendance of the accused whenever such attendance becomes imperatively needed. For receiving the copy of the police report and other documents and for answering the questionnaire framed under Section 313 of the Code of Criminal Procedure, the presence of the third accused is quite necessary.

15. In a case where the accused undertook before the Hon'ble Supreme Court that the accused would not make any statement under Section 313 of the Code of Criminal Procedure and would not raise any question of prejudice, if any, caused to him due to non-examination under Section 313 of the Code of Criminal Procedure at any subsequent stage of trial, appeal or revision, the Hon'ble Supreme Court, in *Chandu Lal Chandraker v. Puran Mal* 1988 SCC (Cri) 907, has directed to dispense with the presence of the accused at the time of making statement under Section 313 of the Code of Criminal Procedure.

16. Even when the personal appearance of the accused is dispensed with under Section 205 of the Code of Criminal Procedure whenever there is necessity for her personal attendance, the same can

be enforced. In a case where the learned Judicial Magistrate adopted uniform policy of dismissing the petitions under Section 205 of the Code of Criminal Procedure, a Division Bench of this Court in *A.S.K. Rama Iyer v. T. Kannan* 1980 L.W. CrL. 31 has observed that such a learned Judicial Magistrate will refuse permission to the accused to appear by his Pleader as contemplated under Section 205 of the Code of Criminal Procedure even if the accused is in death-bed, adhering blindly and undeviatingly to some unreasonable principle.

17. Only in an extreme and exceptional circumstance brought to the satisfaction of the Court that the accused is unable to appear before the Court, the Court may consider the request to dispense with his presence under Section 205 of the Code of Criminal Procedure, it has been ruled by the Hon'ble Supreme Court in *Lily Begum v. Joy Chandra Nagbanshi* 1994 SCC (Cri) 303.

18. It is a well settled proposition of law that the power to grant exemption from a personal appearance is totally discretionary and once the discretion is judiciously exercised by the trial Court, the same cannot be interfered with in revision merely because the accused feels aggrieved by the order passed by the trial Court.

19. There is a non-bailable warrant pending against the petitioner. The petitioner has to appear before the trial Judge to recall the warrant under Section 70(2) of the Code of Criminal Procedure. Unless she makes her appearance and the warrant is recalled, it would be a mockery of judicial process if her application filed either under Section 317 or under Section 205 of the Code of Criminal Procedure is entertained.

20. The medical certificate produced by the petitioner to show that she is suffering from ailment at the ripe old age is seriously disputed by the respondent-police. Therefore, the petitioner has to appear and invoke Section 70(2) of the Code of Criminal Procedure to recall the warrant issued against her.

21. The Court holds that the hearing posted for furnishing copy of the final report and documents collected by the Investigating Agency is a very crucial hearing where the participation of the accused is contemplated under the scheme of the Code of Criminal Procedure. She cannot refuse to participate in such process of furnishing copy of final report and documents to her.

22. The petitions filed by the petitioner under Sections 317 and 205 of the Code of Criminal Procedure, when the non-bailable warrant is pending against her, are found not sustainable. The trial of a case, which originated way back in the year 1996, cannot be further postponed on account of the non-participation and non-cooperation of the petitioner herein. She cannot delegate her function of receipt of copies furnished under Section 207 of the Code of Criminal Procedure to the Advocate of her choice. She must be present to receive the copy of the final report and documents to set the trial process to move further.

23. The learned Special Judge has rightly concluded that all the three petitions as detailed above are not maintainable.

24. Such a common order passed by the learned trial Judge is found not tainted with any illegality or irregularity. No interference therefore is warranted.

25. In the result, Crl.R.C.Nos. 191 to 193 of 2006 stand dismissed. Consequently, connected criminal miscellaneous petitions also stand dismissed.