



ORDER BELOW EXH. 173 IN S.C.C. No.1/2023
Ambadas Vs. Omkar

This application is moved by the accused nos.2 & 3 for permanent exemption under section 205 of the Criminal Procedure Code, 1973, on the ground that he is running Sugarcane factories at various places in different districts i.e. Solapur, Ahmednagar, Kolhapur and Tal-Nilanga. Therefore, it causes hardship to accused persons to personally attend each and every date of the court due to his spread over business. It is stated that there is no dispute in respect of identification. Further accused persons are ready to give undertaking to attend the court as and when required. Hence, accused persons have prayed that they be granted permanent exemption.

2] The complainant resisted this application by filing his say at Exh.179 and strongly objected on the ground that the application is false and tends to be rejected. It is contended by the complainant that accused nos. 2 & 3 resides and carry out business at Ambulga(Bk) only which is at distance of 10 to 15 km from this court. It is further contended by the complainant that accused nos. 2 & 3 have personally attended dates. Lastly, it is contended that in order to delay the trial accused persons have moved present application. Hence, prayed to reject this application.

3] Perused material on record. Heard, both the Ld advocates for respective parties. It is worthy to note here that the purpose of attendance of the accused at the trial is not merely a formality or compulsion, rather it is followed so that the trial can be conducted in an expeditious manner and is not hampered or prejudice in the absence

of the accused. On perusal of documents by the complainant on record it appears that business of accused is at various places in different districts. However, it is to be bear in mind that for progressing with the proceedings of the case, it is not important to have the presence of the accused just for marking his attendance but to enable the court to proceed with the trial. In the instant case presence of accused is not necessary for progress of the case as they are represented by advocate. The cases under sec 138 of Negotiable Instrument Act, 1881, are technical in nature and do not include moral turpitude.

4] The question which requires consideration is that if permanent exemption is granted would it procrastinate the trial and cause any prejudice to the complainant is concerned. In that case an undertaking of accused that a counsel on his behalf would be regularly be present in court and that he has no objection in taking evidence in his absence would suffice the purpose. Taking into consideration the nature of the offence and that there is no dispute regarding of identification of accused, I find that there is sufficient and proper reason to exempt the presence of accused nos. 2 and 3 in the court till recording their statement under sec 313 Criminal Procedure Code, 1973 or further orders. Hence, this application deserves to be allowed. Resultantly, I pass following order:-

ORDER

- 1] The application is hereby allowed.
- 2] The presence of the accused nos.2 and 3 is hereby permanently exempted till further orders.

Date : 15/11/2024

(R. D. Kharate)
Judicial Magistrate F. C. Nilanga