

**IN THE COURT OF THE JUDICIAL MAGISTRATE, FAST TRACK COURT,
OMALUR.**

PRESENT: THIRU. M.A. SUVEDHARANYAN, B.A., B.L., (Hons)

Judicial Magistrate, Fast Track Court, Omalur.

FRIDAY, this the 5th day of March 2021

CMP.No.316/2021 In STC . No.43/2020

R. Rajarajeswari

... Petitioner/Accused

Vs

A. Shanmugasundaram

... Respondent/Complainant

This petition came up before me on 05-03-2021 for both side enquiry in the presence of Tr. P. Vijayakumar Advocate for thePetitioner/Accused and Tvl. M. Thiyagarajan, D. Senthilkumar and A.M. Sathish, Advocates for the Respondent/Complainant. Records perused. Both side arguments heard, considering the records and arguments advanced, this Court delivered the following:

//ORDER//

This petition is filed U/s 205 Crpc by the Petitioner/Accused praying for dispensing with the appearance of accused before this court and permit her counsel to appear on her behalf. The petitioner herein is the accused in main case and the Respondent herein is the complainant in main case. The parties are referred to as per their original status in the main complaint herein after.

1.The concise of Petitioner/Accused's Application:-

The Accused submits that the case has been posted for her questioning. She states that she is running cloth shop- Parampariyam Silks in Salem and she has to travel often to various out stations for purchasing and selling goods and for collection. She has jaundice and taking local green leaves treatment and she is adviced to take food and rest in house for six months. She has filed petition in Crl. O.P.S.R. No. 3057 of 2021 before the Hon'ble High Court to quash the main complaint. In such circumstances she is unable to attend the case proceedings

personally each and every hearing. The accused ends up with the prayer for dispensing with the appearance of accused before this court and permit her counsel to appear on her behalf.

2.The Respondent/Complainant's counter in brief:-

The complainant contested the application by submitting that the accused has not submitted any medical certificate so far. She has not appeared before this court so far. She has appeared only once before this court at the time of recalling the warrant against her. The accused herself has admitted that she has been going out stations but she has not appeared before this court. The reason of illness as stated by the accused is fallacious. The case stated to be filed before the the Hon'ble High Court to quash the main complaint by the accused is in the stage of SR Numbering and hence it doesn't affect the instant case in anyway. If this petition is allowed, the accused will be absconded. Hence this petition is deserves to be dismissed with costs.

3. The moot point to be determined is whether there is any ground to allow the application filed under section 205of CrPC for dispensing with the appearance of accused before this court and permit her counsel to appear on her behalf, at this stage?

Heard both sides. Perused the records.

4. The accused counsel put forth his submissions by reiterating the averments in the application. He argued that the petition is to be necessarily allowed.

5. The complainant counsel put forth his submissions by reiterating the averments in the counter statement. He argued that the petition is to be necessarily dismissed with exemplary costs.

6. On perusal of case records this court finds that the accused has not appeared before this court for a single time on 18-02-2020 except at the time of recalling the bailable warrant against her. Further the accused has not provided any medical certificate as she stated that she is suffered with illness and jaundice. This court doesn't believe the version of accused since she has not made any single appearance before this court throughout the case proceedings from the date of service of summons

to till date except at the time of her surrender and warrant being recalled by the court. Now this case is posted for questioning of accused U/s 313 (I) (b) Crpc,. At this juncture the present petition is opted by the accused praying for dispensing with the appearance of accused before this court and to permit her counsel to appear on her behalf. Also there is no stay order granted by the Hon'ble High Court, in staying the case proceedings before this court. Hence, as per the ratio laid down by Hon'ble Supreme court in **Asian resurfacing case**, the trial court can proceed the case on its file if there is no stay order granted by the Apex courts to stay the proceedings.

7. This court reiterates that the version of accused that she has been affected with illness and jaundice is not believable, on looking the complete absence of accused throughout the case porceeding till date.

8. Hence, this court dismisses the application since the reason stated by the accused is not proved with any reliable material evidence and the accused is directed to appear before this court herein after except in situations warranting reasonable excuses. No costs.

This Order directly dictated to the Typist and typed by her in computer and taken print out and after rectification of mistake, Pronounced by me in open court, this the 5th day of March 2021.

**Sd/ M.A. Suvedharanyan,
Judicial Magistrate,
Fast Track Court,
Omalur.**