

21.12.2024

Order

ORDERS

The accused No.2 has filed this application U/S 205 of Cr.P.C. to exempt his appearance permanently before this court.

In his application, he has stated that the Accused No.1 in the above case is a firm and that both Accused No.2 and 3 were partners. The above case is set down for recording plea of Accused. The Accused No.2 is suffering from Liver issue coupled with Type-3 diabetes. Currently, he is residing in Delhi and he is under the treatment for his Liver problem and Type-3 diabetes. In addition to the above, each time, the Accused No.2 has to travel to Bengaluru to attend to this case, he has to spend close to 25,000-00 for his travel and other expenses. Under the above circumstances, it is not advisable to the Accused No.2 to travel from Delhi to Bengaluru for a case where his liability is half of the amount that is Rs.1,50,000-00. Though the cheque in question was not issued by the Accused No.2, but it was Accused No.3, who issued the said cheque, the Accused No.2 undertakes to pay half of his liability that is Rs.1,50,000-00. In addition to the above, the cheque was given by Accused No.3, knowing fully well that the accounts were freezed by the Police. In the event, the Accused is compelled to attend the case, he will be unnecessarily spending huge sum of money on

his travel and boarding facilities, where the liability is less. If this Application is not allowed, the Accused No.2 will be subjected to severe loss and hardship. On the contrary no prejudice will be caused to the other side. Accordingly, prayed for allowing the application.

The counsel for the complainant has filed his objections contending that the Complainant has filed the above case as against the Accused for offenses punishable under Section 138 of NI Act. The Complainant got his sworn statement recorded and was examined himself as PW1. Thereafter, he got certain documents marked as exhibits. Consequently, this Court was pleased to issue process against the Accused persons. That the Accused appeared before this Hon'ble Court and were enlarged on bail. Thereafter, the above case came to be set down for the purpose of evidence. The Accused No.2 filed an application under Section 205 of Cr.P.C. stating reasons for suffering from health problems such as liver issues. In the said application, he has stated that the Accused No.2 has to travel all the way from Delhi to Bengaluru wherein the Accused would incur unnecessary sum of money more than his actual liability in the case, due to the aforementioned reasons the Accused No.2 may be exempted from appearing before this Court permanently. The Accused No.2 has not produced any medical reports showing any serious health issues but he has preferred this application only in order to escape from appearing before this Court. Time and again it is held by the various Hon'ble High Courts in India as well as Hon'ble Apex Court of India that if an application is moved

under Section 205 of the Act, the Court shall cautiously decide keeping in the mind gravity of the offence and on a serious grounds sort in the application wherein it would not be possible for the Accused to keep himself present before the Court. However, in the instant case, there is absolutely no efforts made by the Accused No.2 to show that he is suffering from health issues as stated in his application and it is hardship for the Accused No.2 to travel from Delhi to Bengaluru, which totally a baseless grounds seeking for permanent exemption. The liability of the Accused is partly and not wholly, this could not be ascertained only during the trial and at this stage wherein the trial has not been commenced. The application filed by the Accused is just a mere tactics to delay, protract the proceedings and to unnecessarily waste precious time of this Court. At the outset the application filed by the Accused under Section 205 of Cr.Pc does not hold water and same deserves to be rejected with exemplary cost. Accordingly, prayed for dismissal of the application.

In spite of sufficient opportunity, the learned counsel for the complainant has failed to address his arguments on the application. Heard the learned counsel for the complainant. Perused the materials on record.

Upon going through the averments made in the application, at the first instance as rightly contended by the counsel for the complainant the accused did not furnish any medical document to show that he is suffering from what type of liver ailment or if really has any such ailment. Further as

rightly contended by the complainant, he has to spend so and so sum to travel to this court to attend the proceedings is not a ground to consider his application for permanent exemption. It is his duty to be present before this court whenever there will be need for it and in other case, he may file application seeking exemption for the day from his personal presence through his counsel by assigning proper reasons and it will be considered by the court judiciously. Further as rightly contended by the counsel for the complainant, it appears that the accused is trying to drag on the matter without there being proper reason. Further the residential address and the business address of the accused No.2 shown in the cause title of the complaint is of Bangalore and not New Delhi. In view of the serious objections raised by the counsel for the complainant to the grounds stated in the application and considering the reasons stated in his application, I do not find any merits in the application to consider the prayer of the accused. Hence, I am of the opinion that the application is liable to be rejected. Hence, I pass the following,

ORDER

The application filed by the accused
No.2 U/s 205 of Cr.P.C. is hereby dismissed.
No order as to costs.

For Plea/313 Statement. Call on

XXXIII ACJM, BENGALURU.