2015-4-L.W. 873

IN THE HIGH COURT OF JUDICATURE AT MADRAS

25.9.2015/Crl.R.C.Nos.993 and 994 of 2015

S.Vaidyanathan, J.

Ajay Kumar Bisnoi
.. Petitioner in CrlOP 993 of 2015
Amul Gabrani
.. Petitioner in CrlOP 994 of 2015

Versus

M/s.KEI Industries Limited, rep. by its Authorized representative, Mr.Kishore Kunal, D-90, Okhla Industrial Area Phase-I, New Delhi-110 020.
.. Respondent in both petitions

Prayer: Petitions are filed under Section 397 and 401 Cr.P.C., against the orders, dated 11.8.2015 passed in dispensing the personal appearance of the petitioner in Crl.M.P.Nos.1922 and 1923 of 2015 in C.C.Nos.305 of 2015 pending on the file of the Fast Track Court-II, Metropolitan Magistrate, Egmore.

Practice/Advocates, boycott, effect of, litigants to claim damages,

Negotiable Instruments Act (1881), Section 138, litigants to claim damages,

Criminal Procedure Code, Sections 200, 205, personal appearance, exemption, scope, 273, 317, litigants to claim damages.

Personal appearance, exemption of, in cheque dishonour cases — when can be allowed — Representation by counsel — non-appearance of advocates, court to report to Bar Council of India for action — Subordinate Courts, direction to— Scope— Boycott of courts by lawyers — effect of.

No Advocate has a right to abstain from Court without first returning the briefs to his clients and refunding the fees received from them — Failure of a lawyer to attend to his case in Court, not only breach of contract and breach of trust, but also professional misconduct.

It is open to litigants to claim damages and also to move the consumer forum, for damages caused by advocates by not representing the matters in Courts — No Advocate shall be permitted to represent the matter without robes (dress-code) on boycott day — order set aside.

It is not doubt true that in the matter of exempting the accused from personal appearance in appropriate cases, Criminal Procedure Code has given ample discretion to the Courts. Section 205(1) enables the Magistrate to dispense with the personal attendance of the accused and permit him to appear by his pleader if he is satisfied with the reason mentioned by the accused. Ordinarily in a criminal case, evidence has to be rerecorded in the presence of the accused, however, Section 273 Cr.P.C. envisages that in appropriate cases, the personal appearance of the accused could be dispensed with and evidence could be recorded in the presence of the pleader. Likewise, Section 317 Cr.P.C. also empowers the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before Court is not necessary in the interest of justice, the Judge or Magistrate can dispense with the personal attendance of the accused and proceed with the enquiry or trial in his absence. Para 5

The respondent/complainant herein has filed petitions under Sections 200 Cr.P.C. against the petitioners herein before the Fast Tract Court-II/Metropolitan Magistrate, Egmore for punishing them under Section 138 of Negotiable Instruments Act, for having committed dishonour of cheques. The said

complaint were taken on file by the trial Court as C.C.Nos.1922 and 1923 of 2015. Pending trial of the said petitions, the petitioners moved petitions under Section 205 Cr.P.C., praying to dispense with the personal appearance for the reasons that they are busy businessmen and frequently travel abroad and also to look after day today affairs of their company and to permit their counsel Mr.R.Aneesan to appear and represent on their behalf on all hearing dates. By orders, dated 11.8.2015 in Crl.M.P.Nos.1922 and 1923 of 2015, the Court below has dismissed the petitions. Para 1

A perusal of the impugned orders, it appears that the Court below has mainly dismissed the petitions only with a view that the petitions were filed only to drag on the proceedings. I am failed to understand the view taken by the Court below. When the appearance of the petitioners/accused has been undertaken by their counsel, their absence has nothing to do with the progress of the case and there is no impediment for the Court below in proceeding with the case in the presence of the counsel of the petitioners/accused. The said reason cited by the petitioners, is in my opinion, is reasonable and hence, their personal appearance can be dispensed with by permitting their counsel to appear and represent on their behalf. In fact, the absence of the petitioners will not hamper the progress of the case, that too in 138 N.I.Act proceedings, wherein, the main burden lies on the complainant to discharge regarding the dishonouring cheques by the accused and therefore, it is not at all necessary to insist on the presence of the petitioners/accused for the sake of disposal of the case and their appearance if at all necessary before the Court, is only for the purpose of compounding the offence, if the complainant sucessfully proved the guilt of the petitioners/accused. I feel that interest of justice has suffered in these cases by the refusal to grant exemption prayed for.Para 12

However, this Court is much concerned if the counsel who is permitted to represent the petitioners/accused is absent on the ground of boycott. In such circumstances, the Court below is at liberty to proceed in accordance with law. No Advocate has a right to abstain from Court without first returning the briefs to his clients and refunding the fees received from them. It is well known that several clients are paying through their nose by borrowing heavily to their advocates and it is a matter of life and death for them. Advocates who are boycotting the Courts for one cause of so, should not ignore the fact that there have been several causes before the Courts pending for disposal and their act of boycotting would lead to a travesty of justice and destroy the basic democracy, which would tantamount to failure of administration of justice. Failure of a lawyer to attend to his case in Court would not only be breach of contract and breach of trust, but also professional misconduct. Para 15

In such circumstances, this Court feels it appropriate to make the following:

i) No advocate has right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott any particular court. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act.

ii) It is always open to the litigants to claim damages and also to move the Consumer forum for appropriate compensation and for damages that had caused to them by theirs Advocates by not representing the matters in Courts;

ii) No Advocate shall be permitted to represent the matter without robes (dress-code) on boycott day;

iii) The Courts below shall record the non-apperance of the Advocates due to boycott in the listed case proceedings and proceed with the matters on merits;

iv) After recording such non-apperance of the Advocates, the Courts below shall report the same to the Bar Council of India for

appropriate action and it would facilitate the litigants to pursue the matter with the Bar Council of India. Para 15

Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd. and others (2001) 7 SCC 401;

N.Dinesan versus K.V.Baby 1981 CriLJ 1551;

Helan Rubber Industries versus State (1972) KLT 794; and

TGN Kumar versus State of Kerala and others (2011)2 SCC 772; — **Referred to.**

Criminal revision allowed.

For Petitioners : Mr.N.R.Elango, S.C. for M/s.RRN Legal

COMMON ORDER

The respondent/complainant herein has filed petitions under Sections 200 Cr.P.C. against the petitioners herein before the Fast Tract Court-II/Metropolitan Magistrate, Egmore for punishing them under Section 138 of Negotiable Instruments Act, for having committed dishonour of cheques. The said complaint were taken on file by the trial Court as C.C.Nos.1922 and 1923 of 2015. Pending trial of the said petitions, the petitioners moved petitions under Section 205 Cr.P.C., praying to dispense with the personal appearance for the reasons that they are busy businessmen and frequently travel abroad and also to look after day today affairs of their company and to permit their counsel Mr.R.Aneesan to appear and represent on their behalf on all hearing dates.

2. By orders, dated 11.8.2015 in Crl.M.P.Nos.1922 and 1923 of 2015, the Court below has dismissed the petitions, on the ground that the petitioners were absent on previous hearing dates and their counsel appeared and filed petitions under Section 317 Cr.P.C., and the present petitions to dispense with the personal attendance were filed only with an intent to prolong the case and hence, not maintainable. Aggrieved by the same, the petitioners have come forward with the present petitions.

3. Mr.N.R.Elango, learned senior counsel appearing for the petitioners would contend that Sections 251 and 205(1) make it clear that in appropriate cases, the Magistrate can allow the accused to make even the first appearance through a counsel and the learned Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. He also pointed out that the Magistrate can, in his discretion, direct the personal attendance of the accused at any stage of the proceedings and therefore, it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings. He pointed out that this discretion vested in the Magistrate will have to be exercised liberally on the relevant facts. However, the learned Magistrate, without considering the bona fide reasons specified by the petitioners for their inability to make appearance before the Court, has simply dismissed the petitions with a view that the petitions were filed with an intention to prolong the case. He also submitted that when the accused makes an application to the Magistrate through his duly authorised counsel, praying for affording the benefit of his personal presence being dispensed with, the Magistrate ought to have considered all the aspects and passed the appropriate orders, which was not done in the present case. With these contentions, the learned senior counsel sought for setting aside the orders of the Court below and urged to dispense with the personal attendance of the petitioners. In support of his contentions, the learned senior counsel relied upon the various decisions rendered

by the Hon'ble Supreme Court and this Court.

4. Heard the learned senior counsel for the petitioners and perused the entire materials available on record.

5. It is not doubt true that in the matter of exempting the accused from personal appearance in appropriate cases, Criminal Procedure Code has given ample discretion to the Courts. Section 205(1) enables the Magistrate to dispense with the personal attendance of the accused and permit him to appear by his pleader if he is satisfied with the reason mentioned by the accused. Ordinarily in a criminal case, evidence has to be rerecorded in the presence of the accused, however, Section 273 Cr.P.C. envisages that in appropriate cases, the personal appearance of the accused could be dispensed with and evidence could be recorded in the presence of the pleader. Likewise, Section 317 Cr.P.C. also empowers the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before Court is not necessary in the interest of justice, the Judge or Magistrate can dispense with the personal attendance of the accused and proceed with the enquiry or trial in his absence.

6. In "*Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd. and others*" reported in (2001) 7 SCC 401, the Hon'ble Supreme Court has held as under in para 17 to 19:

"17. Thus, in appropriate cases the magistrate can allow an accused to make even the first appearance through a counsel. The magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.

"18. A question could legitimately be asked - what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205(2) says that the magistrate can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

"19. The position, therefore, bogs down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and

pass appropriate orders thereon before proceeding further."

7. In "*N.Dinesan versus K.V.Baby*" reported in 1981 CriLJ 1551, the Kerala High Court has observed as under in para 3:

"3. .... The provisions to dispense with the personal attendance of the accused and to permit him to appear by his pleader are contained in Sections 205, 273 and 317of the Code. Though Section 205 provides for dispensing with the personal appearance of the accused bv the Magistrate when he issues the summons it has been provided in Sub-section (2) therein that the Magistrate has the power to direct personal attendance of the accused if necessary at a later stage. The indication in Section 273 is that evidence can be taken in the pre- sence of the accused or in the presence of his pleader if his personal attendance was dispensed with. Under Section 317 the Magistrate has the power to allow the accused to appear by his pleader at any stage and continue the Inquiry or trial if he is satisfied that the personal attendance of the accused is not necessary in the interests of justice. This section also empowers the Magistrate to direct the personal attendance of the accused at any subsequent stage, it goes without saying that the scheme of the provisions is that a Magistrate has to dispense with the personal appearance of the accused and allow him to appear by his pleader except when the personal attendance of the accused before court is necessary in the interests of justice. If for example a witness has to identify the accused then the Magistrate has to direct the accused to be present in court. However, fertile one's imagination may be, it cannot be said that the personal attendance of the accused in court is necessary on a day when the case is adjourned on the request of the complainant. At any rate in the interests of justice it cannot be insisted that he should attend the court on that day. In that case if the accused applies for permission to appear by his pleader, a Magistrate has no power under the Code to reject that application. Rejection of the application will only result in injustice. Courts are there to mete out justice and not to persecute the poor citizen who happens to be a party in a case. The salutary provisions permitting the accused to appear by his pleader are there in the Code to help the accused and not to harass him. To put in a mild language the impugned order happened to be passed because the learned Magistrate did not advert to the cardinal principle contained in the provisions in the Code for dispensing with the personal attendance of the accused and permitting him to appear by his pleader. The discretion the Magistrate has in these matters is a judicial discretion and this cannot be forgotten."

8. In "*Helan Rubber Industries versus State*" reported in (1972) KLT 794, it has been held as under:

"By the joint operation of Section 205(1) and Sub-section (1) of Section 540A and Section 353 of the Code, a Magistrate was enabled to exercise jurisdiction to exempt the accused from personal attendance both at the time of issuing summons and during enquiry or trial. These salutary provisions have been incorporated in the Code to be resorted to, to help the accused and not to deny them their benefits. The refusal to extend to the accused the benefits of these sections in appropriate cases is to deny them justice. Courts should try to dispense justice more than law. The dignity of Courts will be preserved by being generous and liberal towards parties generally but harsh and even cruel when justice demands it. The lower Courts should not tend to derive a sadistic pleasure in making large number of accused to crowd the Court without sufficient cause and make them wait from morning till evening. The lower Courts should also guard against any tendency which leads to harassment of the parties coming before them. In cases where the Court finds 'that the appearance of the accused is not necessary for a disposal of 'the case and where an Advocate undertakes on behalf of the accused to be present in Court, the Courts should be liberal in exempting the accused from personal attendance. It is useful to remember that an Advocate before Court is a responsible officer and when he undertakes on behalf of an accused to be present in Court it has to be given due weight Courts should be generous in extending the benefits of Sections

205. 353 and 540. A to the accused. In cases which are grievous in nature involving moral turpitude, personal attendance is the rule. But in cases which are technical in nature, which do not involve moral turpitude and where the sentence is only fine, exemption should be the rule. The Courts should insist upon the appearance of the accused only when it is in his interest to appear or when the Court feels 'that his presence necessary for effective disposal of the case. When the accused are women labourers, wage. earners and other busy men. Courts should as a rule grant exemption from personal attendance. Courts should see that undue harassment is not caused to the accused appearing before them. I wish to make it clear that the above observations are subject to the fact that In special cases where the Courts feel Presence of the accused necessary it should be insisted upon."

9. A learned single Judge of the Kerala High Court, in Crl.M.C.No.1977 of 2007, filed to dispense with the personal appearance and while allowing the said application, and permitting the accused to appear before the Trial Court through her counsel, felt that there was great need for rationalising, humanising and simplifying the procedure in criminal courts with particular emphasis on the attitude to the "criminal with no moral turpitude" or the criminal allegedly guilty of only a technical offence, including an offence under Section 138 of the N.I. Act. Relying on the decision of this Court in *Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. & Ors.* and of the Kerala High Court in *Saseendran Nair Vs. General Manager ; K.S.R.T.C. Vs. Abdul Latheef; Raman Nair Vs. State of Kerala; Noorjahan Vs. Moideen* ((2001) 7 SCC 401); (1996 (2) KLT 482); (2005 (3) KLT 955); 1999 (3) KLT 714); (2000 (2) KLT 756) and *Helen Rubber Industries & Ors. Vs. State of Kerala & Ors.*6, the learned Judge has issued the following 'rules of guidance', with a direction that these can and must certainly be followed by the court below in the instant case as also by all criminal courts which are called upon to deal with trials under Section 138 of the N.I. Act:-

"i) Hereafter in all 138 prosecutions, the very fact that the prosecution is one underSection 138 of the Negotiable Instruments Act shall be reckoned as sufficient reason by all criminal courts to invoke the discretion under Section 205 Cr.P.C and only a summons under Section 205 Cr.P.C shall be issued by the criminal courts at the first instance. In all pending 138 cases also applications under Section 205 Cr.P.C shall be allowed and the accused shall be permitted to appear through their counsel.

ii) The plea whether of guilty or of innocence can be recorded through counsel duly appointed and for that purpose personal presence of the accused shall not be insisted.

iii) Evidence can be recorded in a trial under Section 138 of the Negotiable Instruments Act in the presence of the counsel as enabled by Section 273 Cr.P.C when the accused is exempted from personal appearance and for that purpose, the personal presence of the accused shall not be insisted.

iv) Examination under Section 313(b) Cr.P.C can be dispensed with under the proviso to Section 313(1) and if the accused files a statement explaining his stand, the same can be received by the court notwithstanding the absence of a provision similar to Section 233 and 243 1972 K.L.T. 794 Cr.P.C in the procedure for trial in a summons case. The power and the obligation to question the accused to enable him to explain the circumstances appearing in evidence against him must oblige the court in such situation to accept and consider the written statement made by the accused.

v) To receive the judgment also, it is not necessary or essential to insist on the personal presence of the accused if the sentence is one of fine or the judgment is one of acquittal. After the pronouncement of judgment, the case can be posted to a specific date with directions to the accused to appear in person to undergo the sentence. By that date, it shall, of course, be open to the accused to get the order of suspension of the superior court produced before court.

vi) Where warrants are to be issued in a 138 prosecution, ordinarily a bailable warrant under Section 88 Cr.P.C must be issued at the first instance before a non-bailable warrant without any stipulations under Section 87 Cr.P.C is issued.

vii) The above stipulations can only be reckoned as applicable in the ordinary circumstances and are not intended to fetter the discretions of the court to follow any different procedure if there be compelling need. In such event, the orders/directions of the Magistrate shall clearly show the specific reasons as to why deviations are resorted to.

viii) Needless to say, any person having a grievance that the above procedure has not been followed unjustifiably shall always have the option of approaching this Court for directions under Section 482 Cr.P.C. The Sessions Judges and the Chief Judicial Magistrates must also ensure that these directions are followed in letter and spirit by the subordinate courts. Commitment to human rights and the yearning to ensure that courts are user friendly are assets to a modern judicial personality and assessment of judicial performance by the superiors must make note of such commitments of a judicial officer.

ix) Even though the above directions are issued with specific reference to prosecutions under Section 138 of the Negotiable Instruments Act, they must be followed in all other cases also where the offence alleged is technical and involves no moral turpitude."

10. The above said order of the learned single Judge of the Kerala High Court, however, came to be set aside by the Full Bench of the Hon'ble Supreme Court in "*TGN Kumar versus State of Kerala and others*" reported in (2011)2 SCC 772, with the following observation:

"5. Having heard learned counsel for the parties, we are convinced that the impugned order is unsustainable.

"6. Section 205 of the Code, which clothes the Magistrate with the discretion to dispense with the personal appearance of the accused, reads as follows: "205. Magistrate may dispense with personal attendance of accused.

(1) Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

"7. The Section confers a discretion on the court to exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary during the trial. It is manifest from a plain reading of the provision that while considering an application under Section 205 of the Code, the Magistrate has to bear in mind the nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. (See: S.V. Muzumdar & Ors. Vs. Gujarat State Fertilizer Co. Ltd. & Anr.7) . Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate, who is the master of the court in so far as the progress of the trial is concerned and none else.

"8. In "*Bhaskar Industries Ltd.* (2005) 4 SCC 173), this Court had laid down the following guidelines, which are to be borne in mind while dealing with an application seeking dispensation with the personal appearance of an accused in a case under Section 138 of the N.I. Act:

"19. ...it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the

far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course."

We respectfully concur with the above guidelines and while re-affirming the same, we would add that the order of the Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The Court must ensure that the exemption from personal appearance granted to an accused is not abused to delay the trial.

"9. In light of the afore-extracted legal principles, the impugned order is clearly erroneous in as much as the discretion of the Magistrate under Section 205 of the Code cannot be circumscribed by laying down any general directions in that behalf. In Manoj Narain Agrawal Vs. Shashi Agrawal & Ors.8, this Court, while observing that the High Court cannot lay down directions for the exercise of discretion by the Magistrate under Section 205 of the Code, had echoed the following views:

"Similarly, the High Court should not have, for all intent and purport, issued the direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the learned Magistrate. We are sure that the Magistrate would exercise his jurisdiction in a fair and judicious manner."

11. While observing the above and after following its various decisions, ultimately, the Hon'ble Supreme Court has held as under in para 17:

"17. Thus, in the instant case, we have no hesitation in holding that the High Court exceeded its jurisdiction under Section 482 of the Code and/or Article 227 of the Constitution by laying down the afore-extracted general directions, which are inconsistent with the clear language of Sections 205 and 313 of the Code, as noted above. We feel that in light of the afore-noted guidelines laid down by this Court, further directions on the same issue by the High Court were wholly uncalled for. ...."

12. Reverting to the case on hand wherein, a perusal of the impugned orders, it appears that the Court below has mainly dismissed the petitions only with a view that the petitions were filed only to drag on the proceedings. I am failed to understand the view taken by the Court below. When the appearance of the petitioners/accused has been undertaken by their counsel, their absence has nothing to do with the progress of the case and there is no impediment for the Court below in proceeding with the case in the presence of the counsel of the petitioners/accused. It is well settled that the process of the Courts should not be used for harassment of litigants and the insistence on the appearance of the parties before the Court need be only if it becomes absolutely necessary for some purpose. In fact, the very existence of the Courts is only for dispensation of justice. The reason cited by the petitioners for their inability to make appearance before the Court is that busy businessmen and frequently travel abroad and also to look after day today affairs of their company and to permit their counsel Mr.R.Aneesan to appear and represent on their behalf on all hearing dates. The said reason cited by the petitioners, is in my opinion, is reasonable and hence, their personal appearance can be dispensed with by permitting their counsel to appear and represent on their behalf. In fact, the absence of the petitioners will not hamper the progress of the case, that too in 138 N.I.Act proceedings, wherein, the main burden lies on the complainant to discharge regarding the dishonouring cheques by the accused and therefore, it is not at all necessary to insist on the presence of the petitioners/accused for the sake of disposal of the case and their appearance if at all necessary before the Court, is only for the purpose of compounding the offence, if

the complainant sucessfully proved the guilt of the petitioners/accused. I feel that interest of justice has suffered in these cases by the refusal to grant exemption prayed for.

13. Having regard to the various decisions extracted supra and for the reasons stated above, this Court is of the view that the impugned orders passed by the Court below are set aside and accordingly, the learned Magistrate is directed to permit the petitioners/accused to be represented by their counsel Mr.R.Aneesan on all hearing dates and it is always open to the Court below to insist upon the presence of the petitioners/accused if it feels it is essentially required in the interest of the petitioners/accused as well as for effective disposal of the case.

14. Accordingly, these Criminal Revision Cases are allowed.

15. However, this Court is much concerned if the counsel who is permitted to represent the petitioners/accused is absent on the ground of boycott. In such circumstances, the Court below is at liberty to proceed in accordance with law. Persons belonging to the legal profession are concededly the elite of the society. They have always been in the vanguard of progress and development of not only law but the polity as a whole. Citizenry looks at them with hope and expectations for traversing on the new paths and virgin fields to be marched on by the society. The profession by and large, till date has undoubtedly performed its duties and obligations and has never hesitated to shoulder its responsibilities in larger interests of mankind. The lawyers, who have been acknowledged as being sober, task-oriented, professionally-responsible stratum of the population, are further obliged to utilise their skills for socio-political modernisation of the country. The lawyers are a force for the preservance and strengthening of constitutional government as they are guardians of the modern legal system. But now-a-days, unfortunately, strikes, boycott calls and even unruly are becoming a frequent spectacles and boycotting the Courts by Advocates has come a regular feature in this state and almost throughout a year, one section or the other of the members of the Bar abstain from Courts and thereby making this Chartered High Court into shattered position. No Advocate has a right to abstain from Court without first returning the briefs to his clients and refunding the fees received from them. It is well known that several clients are paying through their nose by borrowing heavily to their advocates and it is a matter of life and death for them. Advocates who are boycotting the Courts for one cause of so, should not ignore the fact that there have been several causes before the Courts pending for disposal and their act of boycotting would lead to a travesty of justice and destroy the basic democracy, which would tantamount to failure of administration of justice. Failure of a lawyer to attend to his case in Court would not only be breach of contract and breach of trust, but also professional misconduct. In such circumstances, this Court feels it appropriate to make the following:

i) No advocate has right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott any particular court. With the strike by the lawyers, the process of court intended to secure justice is obstructed which is unwarranted under the provisions of the Advocates Act.

ii) It is always open to the litigants to claim damages and also to move the Consumer forum for appropriate compensation and for damages that had caused to them by theirs Advocates by not representing the matters in Courts;

ii) No Advocate shall be permitted to represent the matter without robes (dress-code) on boycott day;

iii) The Courts below shall record the non-apperance of the Advocates due to boycott in the listed case proceedings and proceed with the matters on merits;

iv) After recording such non-apperance of the Advocates, the Courts below shall report the same to the Bar Council of India for appropriate action and it would facilitate the litigants to pursue the matter with the Bar Council of India.

The Registry is directed to issue a copy of this order to all the subordinate Courts dealing with civil and criminal matters.

VCJ/VCS

2015-4-L.W. 882

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

07.09.2015/Tr.C.M.P.(MD) No.218 of 2015 and M.P.(MD) No.1 of 2015

P.Devadass, J.

Shanmugapriya ... Petitioner

-vs-

K.Jegatheeswaran ... Respondent

PRAYER: Petition filed under Section 24 of C.P.C., praying to withdraw the G.O.P.No.7 of 2015 on the file of Family Court, Salem and transfer the same to the Principal District Judge, Thoothukudi District.

C.P.C., Section 24.

Transfer relating to matrimonial matters— Petitioner-wife from Salem filed petition for divorce before sub-court thoothukudi, respondent filed guardian O.P. before family court, salem — wife sought transfer of it — Respondent financially well and coming to thoothukudi to attend two matrimonial matters — G.O.P. tranferred from family court, salem to principal district court, Thoothukudi.

For Petitioner: Mr.RM.Arun Swaminathan

For Respondent: Mr.K.K.Senthilvelan

ORDER

This Transfer Civil Miscellaneous Petition arises out of guardianship petition having its repercussion in a matrimonial dispute.

2. As between the petitioner and the respondent it is an arranged marriage. It seems that after marriage and after birth of a boy, there is no love last between them. Petitioner filed H.M.O.P.No.250 of 2014 before the Sub Court, Thoothukudi seeking divorce from the respondent on the ground of cruelty. She had also filed M.C.No.133 of 2014 before the learned Judicial Magistrate No.I, Thoothukudi complaining of his commission of domestic violence.

3. Petitioner is a Salem women. She is in Thoothukudi in view of her avocation. The respondent is residing at Salem. It is because of his avocation. Their 9 year old son is studying 5th Standard in a School in Salem. He is now under the custody of his father.

4. The respondent filed G.O.P.No.7 of 2015 before the Family Court, Salem for appointing himself as guardian for his son. It is pending. As the petitioner was set exparte, an exparte order was passed but decree has not been passed. Now the case is posted for exparte evidence on 01.10.2015.

5. Under these circumstances, the wife filed this Tr.C.M.P. to transfer the said G.O.P. from the Family Court, Salem to the Principal District Court, Thoothukudi.

6. The reasons for the transfer of G.O.P. on the side of the petitioner are that she has positioned in Thoothukudi, two matrimonial disputes are going on in Thoothukudi and to attend the Family Court at Salem, she has to travel a vast distance. She carries on her avocation in Thoothukudi itself. In such circumstances, she finds it difficult to go all the way from Thoothukudi to Salem. If she goes to Salem she fear for his life if she comes to Salem.