

Weekly Update: 04/2023-24

Question: Can evidence be taken in the absence of the accused?

As per Section 273 of the Code of Criminal Procedure, 1973 (Cr.P.C), the evidence should be taken in the presence of the accused. However, in two situation personal appearance can be dispensed when:

- Accused's personal appearance is dispensed, and the accused's pleader is present.
- Accused is appearing through Video-conferencing. The term "presence" was liberally interpreted to mean "constructive presence", in the SC judgement in the case of **State of Maharashtra v. Dr. Prafull B. Mehta, 2003 4 SCC 601**
- The personal attendance of the accused can be dispensed with either under **Section 205** or **Section 317 of CrPC**.
 - o Section 205 gives discretion to the court to exempt a person from personal appearance right from the stage of commencement of the proceedings; Section 317 covers the stage after commencement of the inquiry or trial. **[Gopalram and Ors v. State of Rajasthan and Ors. MANU/RH/0781/1994]**
 - o Power under Section 205 CrPC is only available to the Magistrate, however, the power under Section 317 of CrPC can be exercised by both the Magistrate as well as the Sessions Judge.

Exemption from personal appearance is not available to an accused as a matter of right; and is subject to the discretion of the Court.

Section 273 r/w Section 299 Cr.P.C.

As stated in the case of **G.H. Abdul Kadri v. Mohammed Iqbal, CrI.RP.No.1323/2019,** "The only provision that provides for recording of evidence in the absence of the accused is section 299. Therefore, it is clear that except under Section 299, evidence cannot be recorded for any other reason in the absence of the accused".

Section 299 lays down two circumstances under which the evidence can be recorded in the absence of the accused. They are:-

- If the accused is absconding.
- Offence has been committed by person(s), which is punishable with death or imprisonment for life.

It is also imperative to highlight that absence of an accused unless personal appearance is dispensed with for valid reasons and there cannot be dispensation of examination of an accused under **section 313 Cr.P.C** if incriminating evidence appears in the evidence of the witness.

[G.H. Abdul Kadri v. Mohammed Iqbal, Cri.RP.No.1323/2019]

For further discussion or queries on the above-mentioned issue , we can be reached at **anbay.legal@gmail.com**.