

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.17074 of 2015**

Arising Out of PS. Case No. -54 Year- 2012 Thana -GAYA KOTWALI District- GAYA

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NIKHAT PRAWEEEN D/O LATE AMIN UDDIN, R/O MOHALLA-  
MURARPUR, P.S.- KOTWARI, DISTRICT- GAYA

.... .... PETITIONER/S

VERSUS

1. THE STATE OF BIHAR

2. NIKESH KUMAR @ NISHU SON OF MANOHAR PRASAD  
RESIDENT OF MOHALLA- MURARPUR DEVI ASTHAN, P.S.-  
KOTWARI, DISTRICT- GAYA

.... .... OPPOSITE PARTY/S

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**Appearance:**

|                          |   |                                                   |
|--------------------------|---|---------------------------------------------------|
| For the Petitioner/s     | : | Mr. Sanjay Prasad, Adv.                           |
| For O.P. No.2            | : | Mr. Ranjeet Kumar, Adv.<br>Mr. Kundan Kumar, Adv. |
| For the Opposite Party/s | : | Mr. Navin Kr.Panday, APP                          |

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**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**  
**ORAL ORDER**

4      14-07-2015                      Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor. Although there happens to be appearance of opposite party no.2 party, however, none turns up to represent. On previous occasion also as is evident from order dated 03.07.2015 there was absence on his score and on account thereof, matter has been heard.

Shorn of unnecessary details, on the written report of petitioner Gaya Kotwali P.S. Case No.54 of 2012 was registered under Sections 341, 323, 342, 376, 511,34 of the IPC against Nikesh Kumar as well as Rupesh Kumar. However, after concluding investigation charge sheet has been submitted under Section 354 IPC whereunder cognizance has also been taken.



Before framing of charge, as has been submitted on behalf of petitioner, a prayer under Section 205 Cr.P.C. was made on behalf of accused Nikesh Kumar to allow him to be represented through Advocate after dispensing his personal attendance and the same was rejected by the learned lower court directing all the accused to appear on 20.01.2015 for framing of charge. Against the aforesaid order, Cr. Revision No.14 of 2015 was filed on behalf of Nikesh Kumar and the same has been allowed vide order dated 30.01.2015, the subject matter of instant petition.

Before adjudicating upon the issue I would like to quote operative para of the order impugned.

“Therefore, the revision application is allowed and the order dated 12.01.2015 to the extent relating to the rejection of the petition under Section 205 Cr.P.C. is set aside and the learned court below is directed to give exemption to the petitioner under Section 205 Cr.P.C. after taking undertaking that in future he would be punctual in making pairvi through his agent or pairvikar”.

In order to appreciate the aforesaid operative portion of the order passed by the learned Sessions Judge it looks necessary to incorporate Section 205 Cr.P.C.

**“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”

Pleader has been defined under section 2(q) of the

Act as:-

2(q) ‘Pleader’ when used with reference to any proceeding in any court, means a person authorized by or under any law for the time being in force, to practice in such court, and includes any other person appointed with the permission of the court to act in such proceeding.

Thus from plain reading of Section, it is apparent that application of Section 205 Cr.P.C. is found at the nascent stage of the proceeding, whereunder accused has been summoned to face trial. Furthermore, accused is expected to be represented through pleader who is competent enough to practice before the court which also includes an individual but with the permission of the court.

The learned re-visional court, as is evident from operative portion of the order impugned as quoted above, by

passed the aforesaid requirement of law, that means to say, asking for permission to be represented through an individual has completely been wanted.

In *TGN Kumar v. State of Kerala and others*,  
reported in (2011) 2 SCC 772

“8. 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 v. Gujarat State Fertilizer Co. Ltd.* (2005) 4 SCC 173, SCC p. 177, para 13.) 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 insofar as the progress of the trial is concerned and none else.

9. In *Bhaskar Industries Ltd.* (2001) 7 SCC 401 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 NI Act: (SCC p. 408, para 19)

“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.”

10. We respectfully concur with the above guidelines and while reaffirming 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.”

From perusal of the order impugned, it is apparent that learned re-visional court has completely ignored the mandate of law consequent thereupon, the same is sent aside. Petition is allowed.

**(Aditya Kumar Trivedi, J.)**

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