

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1775 of 2016

Arising Out of PS.Case No. -344 Year- 2015 Thana -NALANDA COMPLAINT CASE District-
NALANDA (BIHARSHARIFF)

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Mohan Himat Singka Son of Late Ram Jeevan Himat Singka Director
Maurya Motors Ltd., Plot No. C - 1, Industrial Area Patliputra, P.S. -
Patliputra, District - Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. Deepak Tiwary Son of Late Vishwanath Tiwary Resident of Mohalla -
Garhpur, Town & Police Station - Biharsharif, District - Nalanda.

.... Opposite Party/s

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Appearance :

For the Petitioner : Mr. Jitendra Prasad Singh, Advocate.
Mr. Arvind Kumar Pandey, Advocate.

For the Opposite Party
No. 2 : Mr. Lalan Kumar, Advocate.

For the State : Mr. Gauri Shankar Gupta, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR
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ORAL ORDER

3 22-09-2016 Heard leaned counsel for the petitioner as well as learned
Additional P.P. along with learned counsel for the Opposite Party
No. 2.

2. A complaint was filed on behalf of opposite party no.
2, namely, Deepak Tiwary against the accused persons for
offences punishable under Sections 406, 420, 323, 504 and 120B
of Indian Penal Code wherein, after conducting an enquiry
cognizance was taken of offences punishable under Sections 406,
420 and 34 of Indian Penal Code and subsequent thereupon,
summon was issued. In due course, a petition has been filed on
behalf of the petitioner Mohan Himat Singka to allow him to be

represented under Section 205 of Cr.P.C. over which an objection has been raised on behalf of the complainant/opposite party no. 2 and after hearing both the parties, Shri Swarn Prabhat, learned Judicial Magistrate, 1st Class, Bihar Sharif (Nalanda) by the order impugned dated 03.12.2015 relate to Complaint Case No. 344(c) of 2015 rejected the prayer.

3. Certain provisions have been made available under the Criminal Procedure Code, visualizing hardship in consonance with the nature of the crime wherein accused has been given liberty to have his presence before the court through the learned counsel and Section 205 of Cr.P.C. happens to be one of them. There happens to be series of judicial pronouncement right from High Court to Hon'ble Apex Court commanding the issue and further allowing the privilege in a case more particularly, summon is found issued against the accused in consonance with nature of the allegation in the background of an undertaking at the end of accused claiming their right over question of identity as well as disputing recording of evidence in their physical absence coupled with his physical appearance whenever required by the Court to be represented through counsel. However, such exercise should be carried out in case there happens to be prima facie material showing residence of accused at far distance indulged in active business or other kinds of job, any kind of infirmity as well as any good reason so shown.

Furthermore, the Court is also to see whether any useful purpose would be served by requiring personal attendance and in likewise manner, whether any kind of adverse impact will be perceived due to absence of accused, as has been held by the Hon'ble Apex Court in *S.V. Muzumdar and others Vs. Gujarat State Fertilizer Co. Ltd. and another, reported in (2005) 4 SCC 173*.

4. From the nature of the allegation it is evidence that opposite party no. 2/complainant once upon a time was under employment of the petitioner/accused and on account thereof it has been alleged that earth filling work was done by the opposite party no. 2 on a direction of the accused persons and for that, shorten amount was paid while remaining amount was not paid. It is alleged that on the date of occurrence, accused persons assaulted the complainant when demand was made on behalf of the complainant.

5. From perusal of the complaint petition itself, it is evidence that opposite party no. 2 had himself recognise status of the accused to be higher official under Maurya Motors Ltd., Patna, and on account thereof, his frequent visit will cost to dear to them. Furthermore, as submitted on behalf of the petitioner that he is ready to abide by the terms and conditions whatever is going to be inflicted by the learned the lower court and in the aforesaid background, it would be desirable that petitioner should be

allowed to avail privilege so provided under Section 205 of Cr.P.C. At the present moment the reason so assigned by the learned lower court while refusing the prayer has also been taken note of which, simply speaks that it could be granted in arbitrary manner.

6. That being so, the order impugned is set aside. The petition is allowed with a condition that the petitioner will furnish an undertaking before the learned lower court through his representing learned counsel that there would be physical presence on the date of framing of the charge, on the date of statement as well as on the date of judgment or on any other date, if so directed by the learned lower court in terms of Section 205(2) of the Cr.P.C. He will further under take that he will not question over his identity and in likewise manner, legality of evidence having recorded in his absence.

(Aditya Kumar Trivedi, J)

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