

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 333 of 2016**Reserved on 19.07.2016Delivered on 02.09.2016

1. Anil Gupta S/o Shri Mahavir Gupta, aged about 47 years, R/o 4th Floor, Prabhu Kutir, J V P D Scheme, Road No. 5, Juhu, Mumbai-400049.
2. Smt. Sangita Gupta W/o Shri Anil Gupta, aged about 44 years, R/o 4th Floor, Prabhu Kutir, J V P D Scheme, Road No. 5, Juhu, Mumbai - 400049.
3. Smt. Hemlata Gupta W/o Shri Praveen Gupta, aged about 51 years, R/o House No. 26, Road No. 25, Punjabi Bagh, New Delhi.
4. Smt. Renu Garg W/o Shri Naresh Kumar Garg, aged about 49 years, R/o House No. 220, Sharda Niketan Pitampura, New Delhi.
5. Smt. Madhu Gupta W/o Shri Nilesh Kumar Gupta, aged about 44 years, R/o C.C. Colony, Opposite Rana Pratap Bagh, New Delhi.

---- Applicants**Versus**

1. Smt. Sonu Gupta W/o Shri Deepak Gupta, R/o Flat No. 303, Building No. 25, N.R.I. Colony, Seawards Estate, Nerul, Navi Mumbai - 400706.
2. Deepak Gupta S/o Shri Mahavir Gupta, R/o Krishna Kunj, Civil Lines, Raipur, Chhattisgarh.
3. Smt. Premlata Gupta W/o Shri Mahavir Gupta, R/o Krishna Kunj, Civil Lines, Raipur, Chhattisgarh.
4. Shri Mahavir Gupta S/o Late Shri M.R. Gupta, R/o Krishna Kunj, Civil Lines, Raipur, Chhattisgarh.
5. Shri Ramniwas, the then Director General of Police, Raipur Chhattisgarh.
6. Smt. Sandhya Dwivedi, the then Police Station Incharge, Mahila Thana, Raipur, Chhattisgarh.

---- Respondents

For Applicants : Mr. Kishore Bhaduri and Shri Ankit Singhal, Advocates
 For Respondent no.1 : Mr. Prafull N. Bharat, Advocate

Hon'ble Shri Justice P. Sam Koshy**CAV ORDER**

The present revision petition has been preferred against the order dated 10.03.2016 passed by the Special Judge (CBI), Raipur in Criminal Revision No. 505 of 2015. Vide the said impugned order, the Special Judge has partly set aside the order of the JMFC, Raipur dated 17.11.2015 passed in Criminal Complaint Case No. 1213 of 2011.

2. The facts in brief are that the respondent no.1/complainant was married to respondent no.2 Deepak Gupta somewhere in the year 1997. Applicant no.1 is the elder brother of respondent no.2 Deepak Gupta. Applicant no.2 is the wife of applicant no.1 and applicants 3 to 5 are the married sisters of respondent no.2 (husband).

3. After sometime of the marriage, the relations of respondent no.1 wife with her husband respondent no.2 as well as the applicants got strained and in the course of time, it is said that respondent no.2 husband filed a divorce petition under Section 13 of the Hindu Marriage Act, 1956 before the family Court Bandra, Mumbai which is still pending for adjudication.

4. In the year 2011, respondent no.1 wife filed a complaint case before the JMFC, Raipur registered as Criminal Complaint Case No. 1213 of 2011 against the present applicants and the other accused persons for the offence under Section 464, 468 & 471 of IPC. It is said that the trial Court initially issued summons against the accused persons and in due course of time, most of the accused in that complaint case had obtained either anticipatory bail or regular bail. Subsequently, the present applicants also moved an application under Section 205 of CrPC seeking for permanent exemption from personal appearance. The JMFC, Raipur vide its order dated 17.11.2015 allowed the said application under Section 205 CrPC and exempted the personal appearance of the applicants as well as the two other accused persons i.e. respondents 3 & 4 before the Court below. The said order dated 17.11.2015 was put to challenge by way of revision before the Special Judge

(CBI) Raipur registered as Criminal Revision No.505/2015 by the respondent no.1 wife.

5. The ground while filing the revision by the respondent no.1 wife before the Revisional Court was that the trial Court had not considered any of the objections raised by her while opposing the application under Section 205 CrPC filed by the applicants. It was the contention of the respondent no.1 wife that the trial Court had passed the order on the said application without any justified reason. The further contention was that while considering the application under Section 205 CrPC the Court below had not taken into consideration the gravity of the offence nor had it properly appreciated the provisions of Section 205 keeping in mind the nature of offence alleged to have been committed by the accused. It was also the contention of the complainant wife that in spite of an order passed by the Supreme Court of India in the complaint case, the applicants had been avoiding appearance or surrender on some pretext or the other and ultimately warrant of arrest had to be issued. This conduct of the applicants was also as such which did not call for allowing of the application under Section 205 of CrPC.

6. The Revisional Court after considering the entire facts of the case finally vide the impugned order dated 10.03.2016 partly allowed the revision petition to the extent of granting permanent exemption from personal appearance to respondents 3 & 4 i.e. mother-in-law and father-in-law of the respondent no.1 wife respectively. However, the order of the JMFC granting permanent exemption to the present applicants was set aside/quashed.

7. The present revision petition has been preferred by the applicants challenging the said order dated 10.03.2016 passed by the Revisional Court.

8. Assailing the impugned order dated 10.03.2016 counsel for the applicants submitted that the impugned order is per se illegal for the reason that the Revisional Court in fact did not have the power and jurisdiction to

entertain the said revision petition and it ought to have rejected the same holding it to be not maintainable. According to the counsel for the applicants, the Revisional Court while exercising the power under Section 397 CrPC would examine the record of any proceeding of any inferior Court within its jurisdiction to satisfy whether the order, sentence or a finding given in a particular case is correct and legal or not. According to the counsel for the applicants, Sub section 2 of Section 397 CrPC clearly envisages a provision which holds that the power of revision conferred by sub section 1 of Section 397 shall not be exercised in relation to any interlocutory order passed in any appeal, enquiry, trial or other proceedings. According to the applicants, firstly the application under Section 205 CrPC itself is an interlocutory application and therefore an order passed on the said application automatically amounts to be an interlocutory order and by virtue of Sub Section 2 of Section 397 the revision would not have been maintainable because of the specific bar under sub section 2. Thus, the very inception of the Revision before the Revisional Court is bad in law and it ought not to have been entertained. Thus, the impugned order dated 10.03.2016 is beyond jurisdiction and is in violation to sub section 2 of Section 397 CrPC and therefore deserves to be set aside/quashed. According to the applicants, the Revisional Court has exceeded its jurisdiction while entertaining the revision itself by setting aside the order passed on an interlocutory application by the JMFC. In support of his submissions, counsel for the applicants relied upon the decisions of the Supreme Court in the case of *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. and others*¹ and in the case of *S. V. Muzumdar and Others v. Gujarat State Fertilizer Co. Ltd. and another*².

9. In the light of the above stated legal position counsel for the applicants sought for quashment of the impugned order dated 10.03.2016 and further

1 (2001) 7 SCC 401

2 (2005) 4 SCC 173

prayed for restoration of the order dated 17.11.2015 passed by the JMFC, Raipur.

10. Per contra, counsel appearing for the respondent no.1 wife opposing the prayer of the applicants submitted that the order of the JMFC dated 17.11.2015 was in fact not proper, legal and justified as the same had been wrongly considered by the Magistrate while passing of the order granting permanent personal exemption to the applicants. According to the counsel for respondent no.1, the application under Section 205 CrPC is not an interlocutory order and therefore the revision petition before the Revisional Court was in fact maintainable and there cannot be said to be any illegality or infirmity committed by the Revisional Court while passing of the impugned order dated 10.03.2016. It was submitted that the trial Court in fact had not properly appreciated the fact as to whether in the given case where the applicants are charged with the offence under Sections 464, 468 and 471 of IPC, the application under Section 205 would have been maintainable. It was contended that even otherwise it was the bounded duty of the trial Court to first verify the facts of the case and consider the fact that by grant of exemption from personal appearance to the accused persons whether the trial would be adversely affected or it would hamper speedy disposal of the trial and then should have passed an order. Likewise, the trial Court should have also considered the fact that the requirement of the Section was to see the reason to do so and in the instant case, there was no strong cogent reason for entertaining the application under Section 205 CrPC of the accused. It was also the contention of the respondent no.1 that the trial Court ought to have appreciated the conduct of the accused persons prior to the moving of the application under Section 205 CrPC. According to the counsel for respondent no.1, it is a case where the applicants in fact have never appeared before the trial Court even for a single day barring the date on which

they had furnished the bail bond that too after the warrant could be made effective with great difficulty. Thereafter the applicants have not appeared even for a single day and on each occasion they have been moving application after application for exemption of appearance before the Court below. Counsel for respondent no.1 submitted that the sole ground for obtaining exemption from personal appearance was the education of the small children of the applicants but this is a false averment and contention on the part of the applicants as none of the applicants have small school going kids. The children of all the applicants are major and therefore the said ground raised by the applicants seeking exemption from personal appearance is per se with an intention to mislead the Court and to gain sympathy. It was also alleged that the case itself which has been registered against the applicants was not the one which could be said to be a summons trial and that the provisions of Section 205 would normally be attracted in a case of summons trial. Lastly, it was contended that the trial Court while considering the application under Section 205 CrPC has in a very casual and mechanical manner passed a blank order which he could not have passed without proper application of mind for the reason that the basic requirement under Section 205 of CrPC is that the Magistrate has to see the reasons to dispense with the personal attendance that means when an application under Section 205 is moved, the Magistrate would apply his mind and take into consideration the reasons assigned in the application and then reach to a subjective satisfaction of there being sufficient satisfactory reasons for dispensing with the personal attendance. This having not done, in support of his contention counsel for the respondent no.1 referred to the decision of the Jharkhand High Court on identical set of facts reported in 2004 CRLJ 1457 (Smt. Namita Das v. State of Jharkahnd). Hence, counsel for the respondent no.1/complainant prays for dismissal of the present revision petition.

11. Having considered the rival submissions made on either side and upon going through the provisions of law, it would be relevant at this juncture to reproduce the provisions of law in dispute in the present case i.e. Section 205 of CrPC which for ready reference is being reproduced hereunder:

“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.”

12. A plain reading of the above referred provisions would clearly reflect that the said provisions of law which fall under Chapter 16 of CrPC are discretionary powers conferred upon the Magistrate or the trial Court in respect of the personal appearance or the attendance of the accused. Sub section 1 of Section 205 CrPC confers power upon the Magistrate that if in a given case, according to the Magistrate, the presence of the accused person is not necessary on each date of hearing, the Magistrate or the trial Court may dispense with the personal attendance of the accused and permit him to represent through his counsel. Sub section 2 of Section 205 CrPC further makes it more clear that if at all if the Magistrate or the trial Court has granted an exemption of personal appearance of the accused on the date of hearing permitting him to represent through his lawyer but in the course of the trial, at any stage of proceeding, if necessary, the Magistrate can order for the attendance of any or all the accused persons. Both these provisions thus are discretionary powers which have been conferred upon the Magistrate. The said provisions of law have been aptly discussed and the broad principles have been laid down by the Supreme Court in the case of S. V. Muzumdar (Supra) wherein Paragraph-13 in a proceeding under Section 138 of Negotiable Instrument Act it has been held as under:

“13.If the appellants file applications in terms of Section 205 of the Code for dispensing with their personal attendance, the trial court will do to take note of the same and dispense with the personal attendance by stipulating conditions in terms of Section 205 (2) of the Code. It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance.”

13. So far as the issue raised by the applicants that the Revisional Court did not have the power to hear the case as the order of the trial Court was an interlocutory order and Subsection 2 of Section 397 CrPC clearly bars exercising revisional jurisdiction to any interlocutory order is concerned, the High Court of Chhattisgarh in the case of V. K. Punshi Vs. State of M.P. (now C.G.) & Others³ taking into consideration the decision of the Supreme Court in the case of Bhaskar Industries Limited (Supra) which has also been relied upon by the counsel for the applicants in this case has held that:

“An order passed by the trial Court on an application under Section 205 CrPC is not an interlocutory order.”

14. Thus, keeping in view the judicial discipline and judicial propriety, this Court would be bound by the decision of this Court by holding that an order passed in an application under Section 205 CrPC was not an interlocutory order.

15. However, taking into consideration the principles laid down by this Court in the case of V. K. Punshi (supra), this Court is also fully in respectful agreement with law laid down in the said case wherein in paragraphs 18, 19 & 20 it has been held as under:

“18.As per our Criminal Justice System the concern of the criminal court should primarily be the expeditious administration of criminal justice. For that purpose the

³ 2004 (2) C.G.L.J. 55

proceedings of the court in a case should register progress. Presence of the accused in the court is not for making his attendance just for the sake of seeking him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case. Therefore, the main concern of the criminal court is to see that the trial must progress expeditiously and without any hindrance and if in the absence of the accused the trial can be proceeded with, the Magistrate should in the ordinary course dispense with the personal attendance of the accused. Even that can be exempted on the first date of hearing and during the further course of hearing and even at the stage of recording the statement of the accused under Section 313 of the Cr.P.C. and the statement can be recorded through an advocate. One precaution which the learned Magistrate is required to take that before granting permanent exemption, he should obtain an undertaking from the accused that the plea of the guilt can be recorded through his advocate. The statement under Section 313 of the Cr.P.C. can be recorded through his advocate and witnesses can be examined in his absence and they will be cross-examined by his advocate and he will not raise any objection regarding his identity and further that for his absence during the above stages of the hearing, he will not raise any objection regarding the prejudice caused to him on account of this absence during the trial.

19. The offences which are triable as summons case are not serious in nature. However, in serious offences, the Court can insist upon, the attendance of the accused and discretion has been given to the court under Sections 205 and 317 of the Cr.P.C. to exempt the personal attendance of the accused. The discretion which has been given to the court must be exercised judiciously and it should not be exercised in an arbitrary or unreasonable manner just for making the attendance of the accused for the sake of seeing him in the Court. When the accused himself ready to given an undertaking that he will not raise the question of prejudice to him then in a summons case ordinarily personal exemption of the accused looking to his hardship and his engagement as narrated above by the Hon'ble Apex Court that the court while deciding the personal exemption application must take into consideration these factors. As everyone knows in our judicial system an adjournment in criminal proceeding is granted liberally and by personal appearance the harassment, wastage of time and money in attending the Courts is more rigorous punishment than the punishment awarded in the offence itself and that is why at the time of the final judgment in a criminal case the Courts are generally taking into consideration the fact of harassment, financial loss and other relevant factors faced by the accused during the trial.

20. The ultimate object of the criminal court is to decide the criminal case expeditiously as early as possible and if the absence of the accused does not create any hindrance in the

proceeding and in progress of the case like petty cases and summons cases then ordinarily the court should dispense with the personal attendance. The various provisions contained in the Criminal Procedure Code are in order to ensure that a fair and reasonable opportunity should be given to the accused to defend his case as also to the prosecution to prove their case and no-one should have any grudge that he has not been given proper opportunity. These safeguards are necessary in a criminal case that neither the right of prosecution nor the right of accused should be prejudiced on account of any order of the Court and the principle behind securing personal presence of the accused during the course of hearing is that the case should proceed in his presence. If the witnesses are examined in his presence then he is able to assist his advocate to cross-examine those witnesses. Moreover, if the plea of the accused is recorded at the beginning of the trial then he is the best person to explain about the offence alleged against him. Moreover, at the time of examination of the accused under Section 313 of the Cr.P.C. any circumstance appearing against the accused put to him then he is the best person to explain those circumstance and similarly at the time of the final hearing also during the course of arguments he is the best person to assist his advocate to argue his case. But when the accused himself volunteers that all these steps can be taken in his absence and he will not raise any objection regarding the prejudice caused to him during the trial then the Court should normally exempt the personal attendance of the accused to achieve the ultimate object of expeditious disposal.”

16. Once when the trial Court in its discretion has granted exemption from personal attendance, in the opinion of this Court, unless a strong case is made out in respect of any development by virtue of which the trial has been directly hampered in any manner which is detrimental to the interest of the complainant, there was no occasion for the Revisional Court to have taken a different view only on the ground that in the opinion of the Revisional Court no strong case for permanent exemption was made out by the applicants before the trial Court. But the question is that once when the trial Court has passed an order exercising its discretion, to what extent can the Revisional Court go to disturb the discretionary power exercised and which in the opinion of this court could have been done only in the event of there having been any perversity in exercise of power or whether there have occurred any occasion of the trial itself being hampered after the alleged accused persons had got

bail from the trial Court. Once when the accused persons have been granted bail, it has to be presumed that the Court granting bail was satisfied that the releasing of the accused persons would not affect the conducting of trial or would not hamper the trial adversely.

17. It is also pertinent to mention that even if the application under Section 205 CrPC seeking permanent exemption was not filed, the accused persons had all the powers of moving an application under Section 317 CrPC seeking for exemption of appearance on each date of hearing which in the present case was done and which has been continuously allowed/accepted by the trial Court while progressing with the trial. If the application under Section 317 CrPC of the accused persons has been accepted by the trial Court regularly, in the opinion of this Court, the trial Court has not done something which is gravely without jurisdiction or which would otherwise be detrimental in conducting the trial.

18. The Supreme Court in the case of Manoj Narain Agrawal Vs. Shashi Agrawal and others⁴ while dealing with a case where the High Court had given certain directions to the trial Court to keep in mind while considering the application under Section 205 CrPC has held that “the High Court should not have, for all intent and purport, issued a direction for grant of exemption from personal appearance. Such a matter undoubtedly shall be left for the consideration before the Magistrate. The Magistrate is expected to exercise his jurisdiction in a fair and judicious manner.” This observation of the Supreme Court obviously indicates while considering an application under Section 205 CrPC, it is exclusively within the domain of the Magistrate and it is his discretion in the facts and circumstances of the case whether to accept an application under Section 205 CrPC or to reject the same.

19. Like wise as has been held in the case of S. V. Muzumdar (supra) again

4 (2009) 6 SCC 385

in one of its cases i.e. *Gajanand v. Asiya Begam* it was held by the Supreme Court that if at any point of time an attempt was being made by the accused persons to prolonged the proceedings by taking an advantage with the said order obtained under Section 205 CrPC, it would be open for the trial Court to pass an appropriate order seeking the presence of the accused persons.

20. Keeping in view the said principles as has been laid down by the Supreme Court and also reiterating the principles laid down in the case of *V. K. Punshi* wherein the risk and caution have also been reflected in Paragraph-20, in the opinion of this Court, the order passed by the Revisional Court on 10.03.2016 was totally uncalled for. Once when the trial Court had exercised its jurisdiction, there was no necessity for interfering with the same without there being a strong case made out except the fact that it took time for the trial to serve summons/warrants on the accused persons.

21. Another aspect which should not loose sight is that the complainant and the alleged accused persons are the wife and her in-laws and it is a dispute predominantly between wife and the in-laws of the wife. Another factor which may be relevant to be kept in mind is that the Court below had allowed the application under Section 205 CrPC on 17.11.2015 and by now almost 10 months have passed. Therefore, in the opinion of this Court also as has been discussed in the case of *V. K. Punshi* (supra) asking the accused persons for attending the Court on every date of hearing particularly even for those hearings where their presence may not be of much importance and where the proceedings can also proceed in their absence through a duly constituted attorney, the granting of permanent exemption by the trial Court vide its order dated 17.11.2015 cannot be faulted at. It cannot be said that there was any illegality or infirmity so committed by the trial Court in allowing the application under Section 205 of CrPC.

22. for the foregoing reasons, this court is of the opinion that the impugned

order dated 10.03.2016 passed in criminal revision No. 505/15 by the Special Judge (CBI), Raipur is not sustainable and the same deserves to be and is accordingly set aside.

23. The present Criminal Revision stands allowed.

**Sd/-
P. Sam Koshy
Judge**

