

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.15544 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

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1. Tapas Kumar Mondal S/O Late Golak Bihari Mondal Earlier Posted As General Manager, Area Operations, Bihar & Jharkhand, M/S Hindustan Coca-Cola Beverages Private Limited, E-1, Industrial Area , Patliputra, Patna-800013, At Present Posted As Managing Director , International Beverages Private Limited , Dhaka , Bangladesh Residing At Dhaka & Kolkata
 2. Shantanu Kumar Tripathy @ S.K.Tripathy S/O Bishwanath Tripathy Earlier Posted As Distribution Manager, Bihar & Jharkhand, M/S Hindustan Coca-Cola Beverages Private Limited , E-1, Industrial Area, Patliputra , Patna-800013, At Present Posted As Zonal-Distribution Manager, M/S Hindustan, Coca-Cola Beerages Private Limited , Eastern Zone Which Includes , Bihar , North Bengal & North East States
 3. Sachin Gugnani @ Sachin Kumar S/O Late G.L.Gugnani Earlier Posted As Sales Manager, Bihar, M/S Hindustan Coca-Cola Beverages Private Limited , E-1, Industrial Area, Patliputra, Patna-800013, At Present Posted As National Key Account Manager (Railway) In M/S Hindustan Coca-Cola Beverages Private Limited, 3rd Floor, Orchid Centre, Sector-53 Dlf Golf Course Road, Gurgaon, Haryana
 4. Vijay Swaika @ Vijay Kumar S/O J.P.Swaika Earlier Posted As Manger Working Capital (Finance), Bihar & Jharkhand, M/S Hindustan Coca-Cola Beverages Private Limited , E-1, Industrial Area , Patliputra , Patna-800013, At Present Posted As Finance Manager In M/S Hindustan Coca-Cola Beverages Private Limited , 3rd Floor, Orchid Centre , Sector 53 Dlf Golf Course Road, Gurgaon, Haryana

.... Petitioner/s

Versus

1. The State Of Bihar
2. Gauri Shankar Jha S/O Devkant Jha R/O A-132, A.G.Colony, Main Road, P.S.- Shastri Nagar, Distt-Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sandeep Kumar, Advocate
Mr. Kumar Manish, Advocate
For the Opposite Party/s : Mr. Shyam Kumar Singh, APP
For the Opposite Party No.2: Mr. Aditya Nath Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 10-10-2017

This application under Section 482 of the Code of



Criminal Procedure has been preferred for quashing the order dated 20.10.2011 (Annexure-2) passed in Complaint Case No. 1806(c) of 2008, whereby the learned Judicial Magistrate, 1st Class, Patna, has refused the prayer of the petitioners under Section 205 Cr.P.C. for dispensation of the personal appearance on each and every date on the ground that allegation under Section 420 of the Indian Penal Code is very serious.

2. Submission of the learned counsel for the petitioner is that the complaint case arose out of business dispute between the parties. The allegation is general and omnibus against the company and its office bearers, who are petitioners herein, regarding non-refund of the damaged Coda-Cola supplied by the company of the petitioner to the Opposite Party No.2. His further contention is that the ground for rejection of the prayer of the petitioner is not sustainable in view of the specific provisions of Section 205 Cr.P.C., which reads as follows:

“205. (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.”

3. The contention of the petitioner is that the seriousness of the offence is no ground, mentioned in the aforesaid provision, for refusal of the prayer. Moreover, similar question was considered by a coordinate Bench of this Court in **Manish Gai V. State of Bihar** reported in **2007(1) PLJR page 822** and prayer under Section 205 Cr.P.C. was allowed with following observation:

“.....Power to refuse permission under Section 205 Cr.P.C. should not be used as a substitute for ultimate punishment which could be awarded. Personal appearance in course of trial is for a purpose and not only for “fun of it”. If no purpose is to be served by personal appearance day after day then it should be dispensed with. The Magistrate still retains power to order for personal appearance whenever necessary.”

4. Learned counsel for the complainant does not dispute the legal position in this regard. However, drew attention of the Court that the petitioners had moved this Court for quashment of the criminal proceeding in Cr. Misc. No. 39498 of 2012, which was disposed of on 23.04.2015 with liberty to the parties to settle their dispute before the learned Court-below or through the Lok Adalat. Submission is that it has not been done as yet due to non-cooperation of the petitioner.

5. Considering the proposition decided in **Manish Gai’s**



case aforesaid, in my view, the learned Court-below has failed to exercise its jurisdiction, which was vested in it under Section 205 Cr.P.C., on flimsy grounds. The said provision is applicable in all cases triable by a judicial Magistrate. Hence, it cannot be said that the offence under Section 420 of the Indian Penal Code, which arises out of a contractual dispute, is so serious that accused should be compelled to be harassed by attending the Court on each and every date without any chance of progress of the case.

6. Therefore, the impugned order is hereby set aside and this application stands allowed. The learned Court-below is directed to dispose of other pending petition of the parties expeditiously and proceed according to law. The Court-below shall have liberty to ask for personal appearance of the petitioners as and when required for the progress of the trial.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.10.2017
Transmission Date	13.10.2017

