

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48119 of 2013

Arising Out of Complaint.Case No. -31(C) Year- 2013 Thana -Barh District- PATNA

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1. Raj Kumar Gupta S/O Sri Babu Lal Gupta Resident Of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S.- Bara Bazar, Kolkata, District- Kolkata, West Bengal
 2. Harish Kumar Gupta S/O Late Shyam Sunder Gupta Resident Of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S.- Bara Bazar, Kolkata, District- Kolkata, West Bengal
 3. Vikash Kumar Gupta, son of PremChand Gupta, Resident Of 54/4 Om Bhawan, Strand Road, Posta Bazar, P.S.- Bara Bazar, Kolkata, District- Kolkata, West Bengal
 4. Vinod Kumar Poddar @ Vinod Kumar, son of Sri Kedar Mal Poddar, resident of P 200 Jagarnath Ghat, Cross Road, PS Bara Bazar, Kolkata, District Kolkata, West Bengal

.... Petitioners

Versus

1. The State Of Bihar
2. Surendra Prasad, son of Late Ramchandra Sah, Resident Of Salempur, Gola Road, Dalpatti, Barh, P.S.- Barh, District- Patna, Partner -Proprietor M/S. M.J. Enterprises, Dal Mills, Salempur, Gola Road, Dalpatti, Barh, P.S.- Barh, District- Patna.

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Sandeep Shahi
For the Opposite Party : Mr. Surendra Prasad Singh

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 14-11-2017

Heard learned Counsel for the petitioner as well as the learned Counsel for the State and the learned Counsel appearing on behalf of Opposite party No. 2.

2. The petitioners seek quashing of the order dated 7.9.2013 passed by the Judicial Magistrate, 1st Class, Barh in Complaint Case No. 31 (C) of 2013, whereby the application filed by the petitioners for personal exemption from appearance in the court under the provisions of



Section 205 of the Code of Criminal Procedure has been rejected.

3. Learned Counsel for the petitioners submits that the summons were issued to the petitioners on 23.2.2013 and after receiving the summons they immediately filed a petition under the provisions of Section 205 of the Code of Criminal Procedure that all the petitioners-accused are residents of Kolkata and petitioner No. 1 Raj Kumar Gupta is also suffering from cancer and as and when the court will require the presence of the petitioners they will appear before the Court.

4. The other side has opposed the petition.

5. After considering the rival submissions of the parties and on perusal of the record this is admitted position that the petitioners are residents of Kolkata, engaged in their business activities. Section 205 of the Code of Criminal Procedure states that after issuance of summons by the Magistrate for sufficient reason may dispense the personal attendance of the accused and permit them to appear through the Counsel, whereas the discretion lies with the Magistrate that at any stage of the proceeding in case of necessity can direct for personal attendance of the accused and may enforce attendance of the accused.

6. I have perused the impugned order. The reason assigned by the Magistrate for rejecting the application is not sustainable. The reason given in the impugned order is that the petitioners will not suffer any inconvenience in attending the court. This is contrary to the facts on record, as all the petitioners are residents of Kolkata. They may appear before the Court through their respective Counsel and whenever



necessary the Court may give direction for their personal attendance.

7. Accordingly, the impugned order dated 7.9.2013 passed by the Judicial Magistrate, 1st Class, Barh in Complaint Case No. 31 (C) of 2013, is hereby set aside and as observed earlier the personal attendance of the petitioners-accused persons is dispensed with in terms of the provisions of Section 205 of the Code of Criminal Procedure.

8. The application stands allowed.

(Arun Kumar, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	16.11.2017
Transmission Date	16.11.2017

