

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.44187 of 2014

Arising out of P.S. Case No.2320 Year 2010 Thana -PATNA COMPLAINT CASE District- PATNA

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Dr. Dharam Prakash Son of Late Kuldip Narayan Ex-Professor & Head,
Department of Chemistry, Patna University, Patna At Present R/o Bhagawat Nagar,
P.S.- Agamkuan, District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. Pro. Deepak Kumar Sharma S/o Late Chandra Kumar Sharma Ex-Dean Faculty of Science, A/23, Professor's Colony, North Shastri Nagar (Near Lalbabu Market) Patna-800023.
3. Prof. Shambhu Nath Guha S/o Late Surendra Nath Gupta Ex-Principal Science College, Patna R/o C-204, Raj Kishori Complex, Kankarbagh Road Patna-800020.
4. Dr. Ras Bihari Prasad Singh S/o Late Jagannath Prasad Singh Ex- Proctor Patna University & Ex Head, Department of Geography, Patna University, Patna at Present V C Nalanda Open University, Patna
5. Dr. Randhir Kumar Singh S/o Sri Anant Prasad Singh Ex- General Secretary, PUTA, Department of Sociology, Patna College, Patna
6. Dr. Vibhash Kumar Yadav S/o Late Haribansh Roy Ex-Registrar, B.R.A. University, Muzaffarpur, Bihar at Present College Inspector, V.K.S. University, Ara

.... Opposite Parties

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Appearance :

For the Petitioner	:	Mr. Binod Murari Mishra, Advocate
For the State	:	Mr. R.S. Choudhary, APP
For the O.P. No.2 to 6	:	Mr. B.P. Pandey, Senior Advocate Mr. Harendra Kr. Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 30-11-2017

Heard learned counsel for the petitioner, learned
Additional Public Prosecutor for the State as well as learned counsel
appearing on behalf of opposite party nos.2 to 6.

2. The petitioner seeks quashing of the order dated
12.08.2014, passed in Complaint Case No.2320(C) of 2010 by
Judicial Magistrate, 1st Class, Patna whereby the opposite party nos.2,
4, 5 and 6 have been exempted from the personal appearance by the



said order passed under Section 205 Cr.P.C.

3. The petitioner is the complainant of Complaint Case No.2320(C) of 2010 whereas opposite party nos.2 to 6 are accused and it is alleged that they made some interpolation in the inventory report relating to articles found in the chamber of the Head of Department of Chemistry, Patna University prepared by the committee on the basis of the order of the Vice-Chancellor of the Patna University. According to the complainant this discrepancy was noticed while comparing the certified copy obtained from the University from the copy of original one received from the court below. The further allegation is that the inventory was prepared ante-dated. The court after taking cognizance, issued summons to the accused persons for appearance, subsequently without service of the summons report issued bailable warrant of arrest. The same was challenged by the accused persons before this Court vide Cr. Misc. No.37103 of 2012 and by order dated 29.07.2013 the order issuing bailable warrant of arrest was set aside as in absence of service report of summons bailable warrant was issued so accused persons were directed to appear before the court pursuant to the summon.

4. Learned counsel for the petitioner submits that since this Court earlier by order dated 29.07.2013, passed in Cr. Misc. No.37103 of 2012 had directed the accused persons to appear but



without appearance they filed a petition under Section 205 Cr.P.C., so it is an abuse of the process of the court and the impugned order is liable to be set aside.

5. Contrary to that the learned counsel appearing on behalf of opposite party nos.2 and 4 to 6 submits that pursuant to summons the petitioners appeared in the court by filing a petition under Section 205 Cr.P.C. to dispense with their personal attendance. The provision itself speaks when summon is issued the accused can approach the court seeking personal exemption under the provision. The opposite parties were member of the committee directed to prepare inventory by the Vice-Chancellor of the Patna University. They are senior professors of the Patna University engaged in teaching students so considering their day to day engagement the court below exempted their personal appearance unless it is required by the court during trial. Learned counsel has also placed reliance in the decision of *Manish Gai vs. State of Bihar*, reported in 2007 (1) *PLJR* 822.

6. The only objection of the petitioner is that the accused persons should have first surrendered before the court then to file petition under Section 205 Cr.P.C. Section 205 Cr.P.C. reads as such:-

“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.”

7. In view of the said provision, accused may file a petition under Section 205 Cr.P.C. pursuant to issuance of the summons for the appearance in the court for dispensing with the personal attendance. In the instant matter since the bailable warrant of arrest was issued against the opposite parties without service report of the summons, which means they had no knowledge about the court's order issuing summons for appearance, so they challenged the issuance of bailable warrant of arrest before this Court and the same was set aside, so the case was at the stage of the issuance of summons and the accused persons pursuant to issuance of summons filed a petition under Section 205 Cr.P.C. to dispense with their personal attendance before the court and to appear by their learned counsels. So the proper recourse was taken by the accused persons. However, the merit of the order is not under challenge. The accused persons except S.N. Guha, opposite party no.3, are in active service as Lecturers and Professors of the Patna University of various Departments engaged in day to day affairs of teaching students, so the court below in the



provision of Section 205 Cr.P.C. has rightly dispensed personal appearance of accused persons, therefore, for the aforesaid reason the Court does not find any abuse of the process of the court by passing the impugned order, so the quashing application stands dismissed.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.12.2017
Transmission Date	21.12.2017

