

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.97 of 2018

Arising Out of PS. Case No.-548 Year-2015 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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Saket Kumar Singh S/o Devendra Prasad Singh, Permanent R/o Village-Shijhatt, P.S.- Dhoraiya, District- Banka, and also residing in the house of Surendra Pd Gupta, Mohalla- Jogsar, Gobar Lane, P.S.- Adampur, District- Bhagalpur. At present residing and working as Company Secretary in Religare Global Asset Management Company Pvt. Ltd, D-3, B.S. Wing, First Floor, Mohalla- Saket, P.S.- Saket, New Delhi-110017.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Rashmi Singh W/o Saket Kumar Singh, D/o Vijay Singh, R/o Mohalla- West Lohanipur, Parmeshwar Singh Lane, P.S.- Kadamkuan, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Singh, Advocate.
For the State	:	Mr. Umesh Lal Verma
For the O.P. No. 2	:	Mr. Shailendra Kumar Jha, Advocate.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date : 04-12-2018

As both parties have appeared, this case has been taken up for disposal at the initial stage itself.

2. Petitioner has preferred this revision application against the order dated 03.11.2017 passed by the learned S.D.J.M., Patna in Kotwali (Adampur) P.S.Case No. 548 of 2015, G.R.No. 3271 of 2015 whereby and whereunder learned S.D.J.M., has been pleased to reject the prayer of the petitioner for exemption from personal appearance in the day-to-day proceeding in terms of provisions enumerated in Section 205 of the Criminal Procedure Code (hereinafter referred to as the 'Code'), because petitioner is residing at New Delhi and is a



busy person, being Company Secretary and has to visit so many places, therefore, wants to remain present through lawyer to appear before the court when his appearance is necessary.

3. The case of the prosecution, in short, is that Opposite Party No. 2, being the wife of the petitioner, has submitted a written application before the Officer-in-Charge of Kotwali (Adampur) Police Station, on the basis of which, present case i.e., Kotwali (Adampur) P.S. Case No. 548 of 2015, has been instituted alleging that as per the order of Smt. Khushboo Srivastava, Judicial Magistrate, 1st Class, Patna, she came at Bhagalpur on 02.09.2015 by car from Patna at 10:00 P.M. with her husband, who is the petitioner, and on her arrival, the accused persons started abusing her with filthy language and assaulted her saying as to why she has come and asked her to withdraw the case. It is also alleged that they demanded money to purchase a flat and to withdraw the case and until she not bring money from her father, she has been subjected to torture and on that the present case has been lodged.

4. The police, after investigation, submitted charge sheet under Section 498A, 504 and 506/34 of the Indian Penal Code upon which the learned Chief Judicial Magistrate, Bhagalpur has taken cognizance.



5. It further appears from perusal of the petition that in the meantime, the O.P. No. 2 filed a miscellaneous petition before this Court for transferring of the case from Bhagalpur to Patna in Cr. Misc. No. 55679 of 2015, which was allowed vide order dated 22.04.2016 by this Court, as such this case has been transferred to the file of learned S.D.J.M., Patna.

6. It further appears that the petitioner has filed a petition dated 16.10.2017 to exempt his personal appearance from day-to-day proceeding in terms of Section 205 of the Code and to allow him to represent through his lawyer as he is a Company Secretary and has to move many places and it is difficult for him to appear day-to-day proceeding of the court and he undertakes to appear physically whenever his personal appearance is required. It further appears that a rejoinder to the same was filed by the O.P. No. 2. After hearing the parties, the learned S.D.J.M. vide impugned order dated 03.11.2017 dismissed the petition filed by the petitioner for exemption under Section 205 of the Code.

7. Being aggrieved by the impugned order, the present application has been filed on the ground that this Court, vide order dated 24.04.2016 passed in Cr. Misc. No. 55679 of 2015, while transferring the case from Bhagalpur to Patna, has



observed as follows:-

“The Court at Patna shall not insist on personal appearance of the accused persons, apart from the stage of charge, 313 Cr.P.C. and judgment and conclude the case positively within a period of four months on receipt of the records of the case.”

8. Learned counsel for the petitioner contended that the Hon’ble Apex Court in Cr. Appeal No. 1265 of 2017, has given the following direction:

“Personal appearance of all family members and particularly all outstation members may not be required and the trial court ought to grant exemption from personal appearance or permit appearance by video conferencing without adversely affecting progress of the trial.”

9. It is further contended that this Hon’ble Court in cases of *Jayant Dang v. State of Bihar* reported in **2004(4) PLJR 25** and *Manish Gai vs. State of Bihar* reported in **2007(1) PLJR 822**, has held that ‘even after issuance of warrant of arrest, dispensing with the personal appearance under Section 205 of the Cr.P.C. does not end’, but in spite of the aforesaid decisions of the Apex Court and the High Court, the prayer for exemption from his personal appearance has been rejected by the learned S.D.J.M. by the impugned order, which appears to be illegal and not sustainable in the eye of law.

10. Heard learned A.P.P. as well as learned counsel for the O.P. No. 2, who have defended the impugned order on the



ground that the prayer for anticipatory bail of the petitioner has already been rejected up this Hon'ble Court vide order dated 30.06.2016 and apart from that there was direction of this Court in Cr. Misc. No. 55679 of 2015 to conclude the trial within a period of four months, but petitioner did not choose to appear and due to non-appearance of the petitioner trial has not progressed, as such conduct of the petitioner is so that his personal appearance may not be exempted for the ends of justice.

11. Having heard both sides. From perusal of the record, it appears that prayer for anticipatory bail of the petitioner was rejected by this Court vide order dated 30.03.2016. Further while transferring the case to Patna, this Court, in Cr. Misc. No. 55679 of 2015, vide order dated 22.04.2016, has ordered for conclusion of trial within a period of four months and in spite of that, the petitioner did not choose to appear rather filed the present application on 19.08.2017 i.e., after almost a year.

12. It appears that this Court, in decisions cited by the learned counsel for the petitioner in the case of *Jayant Dang* supra), while dealing with the case under Negotiable Instrument Act, has held as follows:

8. This Court in the facts and circumstances of the case



considers it apt to agree with the judgment relied upon by the Counsel for the petitioners reported in 1998(1) PLJR 503. A Division Bench of this Court while dealing with the issue of grant of relief under Section 205 Cr PC held that even in cases where warrants have been issued in the first instance the Court may dispense with the personal appearance in exercise of powers under Section 482 of the Code, if a proper case is made out for the ends of justice. The Division Bench further went on to hold that the exercise of power under Section 205, is discretionary and to be considered in a reasonable manner. No hard and last rule could be laid down. The Court should be liberal in granting exemption in personal appearance except where serious issues or allegations of moral turpitude are involved. The nature of the allegation, conduct of the accused, inconvenience likely to be caused to the accused due to his appearance on every day in the Court the comparative advantage to the prosecution, are all relevant considerations for deciding the question of dispensing with the personal appearance. Though no categorization of cases for grant of relief under Section 205 Cr PC could be made but generally "....busy business people... should be given the benefit of the said provision unless they are facing prosecution under serious offences like murder, rape, misappropriation of money, harassment to women etc." The fact that the petitioners are business people and reside at Delhi, while the trial is to be conducted at Patna are issues which have not been considered in the impugned order. More recently the Supreme Court in (2001) 7 SCC 401 while considering the issue of dispensing with personal attendance in a prosecution arising under the Negotiable Instruments Act, held that in appropriate cases the Magistrate can allow an accused to make even first appearance through the counsel. The law would enjoin that personal appearance of an accused



could be dispensed with at any stage in a proceeding at the summon stage and that if insistence of his personal appearance would itself inflict enormous suffering or tribulation on him and the comparative advantage would be less. The discretion would need to be exercised where due to far distance at which the accused reside or carries on business, or for other good reason were dispensing from personal appearance would be in the interest of justice. These are all aspects which have to be considered for grant of relief under Section 205 Cr PC. This position in the law has been reiterated by a Bench of this Court in a judgment reported in 2002(3) PLJR 583, placing reliance upon the law as enunciated by the Apex Court in the judgment aforesaid. This is the position reiterated in 2002 (3) PLJR 628 by another Bench of this Court”.

and the case of *Manish Gai* (supra) is also with respect to the case under Negotiable Instrument Act. Whereas the Apex Court, in case of *TGN Kumar v. State of Kerala & Ors.* reported in (2011) 2 SCC772, has observed as follows:

“8. The Section confers a discretion on the court to exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary during the trial. It is manifest from a plain reading of the provision that while considering an application under Section 205 of the Code, the Magistrate has to bear in mind the nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. (See: S.V. Muzumdar & Ors. Vs. Gujarat



State Fertilizer Co. Ltd. & Anr.7). Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate, who is the master of the court in so far as the progress of the trial is concerned and none else.”

13. From the discussions made hereinabove, it clearly appears that this case has been filed in the year 2015, cognizance has been taken vide order dated 16.03.2016 and prayer for anticipatory bail of the petitioner was rejected vide order dated 30.03.2016, which appears from the impugned order and in the transfer petition, there is direction of this Court, by order dated 22.04.2016 in Cr. Misc. No. 55679 of 2015, to conclude the trial within a period of four months but in spite of the rejection of prayer of anticipatory bail, the petitioner has not appeared before the trial court and as such further proceeding has hampered and he has filed the application after more than a year of the direction of this Court to conclude the trial within four months. In such view of the matter, it appears that the conduct of the petitioner is to linger the trial. Furthermore, the offence does not relate to Negotiable Instrument Act rather it relates to moral turpitude and offence against woman under Section 498A of the Indian Penal Code. So far direction of Hon'ble Apex Court in Cr. Appeal No. 1265 of 2017 is concerned that is general in nature, whereas the facts of the



present case is different.

14. Moreover, it is discretion of the Magistrate to consider the prayer for exemption under Section 205 of the Code keeping in view the conduct of the accused as to whether it will hamper trial or not and the impugned order passed by the learned Magistrate shows that because petitioner has not appeared in order to hamper the trial and filed an application on 19.08.2017 i.e., after one year of rejection of anticipatory bail, thus, rejected the petition, as such I find no illegality to interfere with the impugned order.

15. However, petitioner, if so desires, appears before the learned Magistrate and prays for bail, if it is so, the same shall be considered by learned Magistrate in the light of the order passed by this Court in Cr. Misc. No. 55679 of 2015 and the other material available on record and shall be disposed on the same day.

16. With the above observation and direction, this application is disposed of.

(Vinod Kumar Sinha, J)

sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	

