

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37059 of 2019

Arising Out of PS. Case No.-62 Year-2009 Thana- KOTWALI District- Patna

Thakur Rabindra Kumar S/o Late Thakur Jagdish Chandra Resident of Vastu
Ganga Colony, Gola Road, P.S.- Danapur, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Arun Kumar Srivastava S/o Paras Nath Prasad The then Executive Engineer,
Central Electric Supply Ara, Patna, At present Residing at Flat No. 104,
Mantra- Bharati Apartment, Rukanpura, P.O.- B.V. College, P.S.- Rupaspur,
District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Baxi S.R.P. Sinha, Sr. Advocate Mr. Anish Chandra, Advocate Mr. Rupesh Kumar, Advocate
For the Opposite Party/s	:	Mr. Ahmad Ali, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 16-09-2019

Heard learned counsel for the parties.

2. Petitioner is accused in connection with Kotwali

P.S. Case No.62 of 2009 wherein cognizance has been taken for

offences under Sections 323 and 504 of the Indian Penal Code.

Both the offences are triable as “summons case”.

3. The petitioner filed a petition before the learned

Court-below praying therein for dispensation with personal



attendance in the case under Section 205 Cr.P.C. The prayer was on the ground that the petitioner is an old and ill person. After retirement he was practicing in the Patna High Court as lawyer and as such it would be inconvenient to appear before the Court-below on each and every date fixed in the case which may have adverse affect in the cases listed on board before the High Court, in the event of non-appearance.

4. The learned Court-below refused the prayer on the ground that the petitioner is already on bail and for explanation of accusation under Section 251 Cr.P.C. the physical appearance of the petitioner would be essential.

5. The petitioner challenged the aforesaid order before the learned Sessions Judge, Patna, in Cr. Revision No.147 of 2019 and the learned Sessions Judge by order dated 26.04.2019 dismissed the revision application finding no illegality with the order of the learned Judicial Magistrate.

6. The provisions of Section 205 Cr.P.C. is being reproduced below:-



“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. A bare perusal of the aforesaid provision makes it clear that discretion is vested with the Magistrate to dispense with the personal attendance of the accused and to permit him to appear by his pleader. However, the Magistrate is empowered, at any stage of the proceeding, to direct personal appearance of the accused, if necessary. This Court has time without number considered the scope and application of Section 205 Cr.P.C. and held that the provisions of Section 205 Cr.P.C. are for some



purpose and not for fun. The Magistrate has to borne in mind that while dealing with an application in terms of Section 205 Cr.P.C., the consideration would be whether any useful purpose would be served by requiring the personal attendance of the accused. Moreover, the power is always there with the Magistrate to ask the accused, whose personal attendance has been dispensed with under Section Section 205 Cr.P.C., to remain physically present at any stage of the trial if the trial cannot proceed in absence of the accused. Reference may be made to the case of **Manish Gai Vs. The State of Bihar** reported in **2007(1) PLJR 822**, **Ram Harsh Das Vs. the State of Bihar** reported in **1998(1) PLJR 502** and **Ajay Kumar Sharma Vs. The State of Bihar** reported in **2005(2) PLJR 505** as well as judgment of the Hon'ble Supreme Court in **S.V. Majumdar Vs. Gujrat State Fertilizer Corporation** reported in **2005(4) SCC 173**.

8. Now the question to be examined is whether personal appearance of the petitioner was necessary to explain



the accusation. The relevant provisions of Chapter XX of the Code of Criminal Procedure dealing with trial of summons cases by Magistrates are being reproduced below:-

“251. Substance of accusation

to be stated.- *When in a summons case the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge.*

253. Conviction on plea of

guilty in absence of accused in petty cases.-

(1) Where a summons has been issued under Section 206 and the accused desires to plead guilty to the charge without appearing before the Magistrate, he shall transmit to the Magistrate, by post or by messenger, a letter containing his plea and also the amount of fine specified in the summons.

(2) The Magistrate may, in his



discretion, convict the accused in his absence, on his plea of guilty and sentence him to pay the fine specified in the summons, and the amount transmitted by the accused shall be adjusted towards that fine, or where a pleader authorized by the accused in this behalf pleads guilty on behalf of the accused, the Magistrate shall record the plea as nearly as possible in the words used by the pleader and may, in his discretion, convict the accused on such plea and sentence him as aforesaid.”

9. A glance on the aforesaid provisions makes it abundantly clearly that guilt can be pleaded by the pleader also on behalf of the accused and on pleading of guilt the Magistrate in his discretion can convict the accused in his absence. If the pleader can plead guilt at the stage of statement on substance of accusation by the Court, there is no reason to say that substance of accusation cannot be explained to the pleader appearing on behalf of the accused. In the case in hand, the petitioner has



already appeared through pleader. Hence, there is no hurdle in the progress of trial in absence of the physical presence of the petitioner as held by the learned Magistrate as well as the revisional Court. Reference may be made to the case of **S.C. Jain Vs. The State of Bihar** reported in **1984(2) PLJR 169**.

10. Accordingly, in my view, both the Courts-below appears to have failed to exercise its jurisdiction. Hence, the impugned orders passed by the learned Magistrate as well as the revisional Court stand quashed and this application is allowed. The learned Magistrate is directed to pass necessary order, and proceed with the case, according to law.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.09.2019
Transmission Date	18.09.2019

