

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.995 of 2018

Arising Out of PS. Case No.-16 Year-2017 Thana- C.B.I CASE District- Patna

Indu Gupta W/o Arun Kumar R/o Barapathar Chowk, P.S. - Dehri on Sone,
District Rohtas, at present residing at Flat No. 404, Shyam Apartment, Tilka
Manjhi, P.S. - Tilka Manjhi, Town and District - Bhagalpur.

... .. Petitioner/s

Versus

The Union Of India Through The Director C. B. I.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Adv.
	:	Mr. Rohit Raj, Adv
For the Respondent/s	:	Mr. Bipin Kumar Sinha SC, CBI

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 01-04-2019

Heard the parties.

2. This criminal revision has been filed for setting aside the order dated 02.07.2018 passed by Additional Session Judge-3rd cum special Judge, CBI -II, Patna in Special Case No. 8/2017 (R.C. Case No. 16A/2017) by which application filed by petitioner under Section 205 Cr.P.C. was rejected.

3. Criminal Case was registered at Kotwali Police Station, Bhagalpur on the basis of written complaint by Arun Kumar District Welfare Officer, Bhagalpur against Branch Manager of Bank of Baroda, Bhagalpur and office bearers of Srijan which was subsequently handed over to C.B.I. pursuant to notification issued by the State Government and thereafter



FIR was registered by the C.B.I.

4. Allegation is that Arun Kumar, District Welfare Officer, Bhagalpur and Late Mahesh Mandal, Clerk and Nazir entered into criminal conspiracy with Late Manorama Devi, Secretary Srijan Mahila Vikash Sahyog Samiti Limited and officials of Bank of Baroda, Bhagalpur and with others for fraudulent misappropriation of Rs. 6 crores from account of District Welfare Officer, Bhagalpur by using forged documents.

5. The cheque issued in favour of District Welfare Officer, Bhagalpur was fraudulently credited in the account of Srijan Mahila Vikash Sahyog Samiti Limited by active connivance of Arun Kumar who received monetary benefits through his wife Mrs. Indu Gupta (petitioner) who received an amount of Rs. 1.96 crores from personal account of Mrs. Manorama Devi and Srijan Mahila Vikash Sahyog Samiti Limited in her bank account of Bank of Baroda, Bhagalpur and also in her bank account at Bandhan Bank and her bank account at ICICI bank, Danapur, Patna and further after death of Manorama Devi, Rajni Priya, Secretary of Srijan Mahila Vikash Sahyog Samiti Limited transferred amount worth Rs. 1.64 crores to Mrs. Indu Gupta (petitioner) and there is further charge that Arun Kumar deposited two cheques in the account of his



wife (petitioner). During investigation it has also come that Smt. Indu Gupta (petitioner) returned an amount of Rs. 75 lacs to Srijan Mahila Vikash Sahyog Samiti Limited from her own account.

6. After investigation C.B.I. found a prima facie case to be made out against Smt. Indu Gupta (petitioner) and others under Sections 409, 420, 468, 471 of I.P.C. and 13(2) r/w 13(1) (C) and 13(1)(d) of Prevention of Corruption Act and submitted charge sheet against the petitioner as well as other accused in the court of Special Judge, C.B.I., Patna.

7. It has been submitted on behalf of C.B.I. that notices were sent to accused/petitioner at Bhagalpur and Patna residence but she was not traceable. Charge sheet has been filed against the petitioner and 7 other persons for the offences committed under sections 120B, 409, 467, 468, 471 I.P.C. and 13(2) r/w 13(1)(d) of Prevention of Corruption Act which come under the category of Economic Offences. Petitioner is direct beneficiary of the fraudulent misappropriation of Rs. 3.6 crores which has been deposited in her account from the account of Srijan Mahila Vikash Sahyog Samiti Limited. Every effort was made to trace her for examination but she never turned up and after charge sheet summons of court also could not be served



upon her. She deliberately avoided and never joined investigation. Petitioner is absconding and never appeared before the trial court.

8. It has been submitted on behalf of counsel for the petitioner that Petitioner had filed an application under Section 205 of Cr.P.C. when she got information about court taking cognizance against her and summons were issued for her appearance. It has been submitted that petitioner is house wife and Pardanashim lady and resides in Bhagalpur and her appearance on each date before the trial court will be troublesome and as such she may be granted personal exemption from appearing in the court.

9. It was argued before the Special Court, C.B.I. that petitioner is house wife and his husband was posted as District Welfare Officer, Bhagalpur who is also an accused and at present is in jail as such it was prayed to dispense the personal appearance of petitioner and permit her to appear through her lawyer under Section 205 of Cr.P.C. However, Special Court of C.B.I. has found that petitioner is accused in a serious offence of being involved in misappropriation of government fund and there is sufficient material against the accused/petitioner of receiving 1.96 crores from the personal account of Mrs.



Manorama Devi, Secretary of Srijan Mahila Vikash Sahyog Samiti Limited in her account at Bank of Baroda, Bhagalpur. It has been further submitted that nonailable warrant was also issued against petitioner and paper publication has been also made by the C.B.I.

10. Division Bench of this Court in the case of Ram Harsh Das Vs State of Bihar and Ors. since reported in 1998 (1) PLJR 502 has held as follows:-

38. However, the question of controversy in this case is as to whether in warrant cases, where warrant has been issued, the power under Section 205 of the Code can be exercised by the Magistrate or not. From the perusal of the object and the reasons for incorporating Section 205 of the Code, it appears that it was never intended that this provision is to be used to dispense with the appearance of the accused facing prosecution in serious cases, major offences or offences involving moral turpitude and an offence punishable with a sentence of long imprisonment.

49. The power referred to in Section 205(1) of the Code is discretionary. Even in cases, where the provision is applicable, the Magistrate has to consider the question of dispensing with the personal appearance in reasonable manner. No hard and fast rule can be Laid down for deciding the question of grant or refusal of the prayer for dispensing with the personal appearance. In petty cases, the Court should be liberal in granting exemption from personal appearance, but will not exercise such power in the cases of serious nature including the offence



involving moral turpitude. The Court has to consider the nature of the allegations, conduct of the accused and the inconvenience likely to be caused to the accused due to his appearance in the Court and after relevant consideration at the time of deciding the question of dispensing with the personal appearance. No categorisation of cases where the power is to be exercised under Section 205 of the Code can be made but generally, Pardanashin women, old and sick persons, factory workers and labourers, busy business people or public functionaries are to be given the benefit of the said provision unless, as stated above, they are facing prosecution in serious offences like murder, rape, misappropriation of money, harassment to women etc.

11. After hearing the parties and perusing the order as impugned, this Court finds that although petitioner is not named in FIR but during investigation her active involvement and participation was found in misappropriation and defalcation of Government money and crores of public money has been fraudulently transferred in her personal account and even after notice given by the C.B.I. she did not appear before the Investigating Officer to cooperate in investigation. She did not appear before the Special Court, C.B.I. in spite of summon being issued to her and thereafter non bailable warrant was also issued and subsequently she has been declared absconder and even publication has been made in newspaper that persons giving any information with respect to her whereabouts will be



rewarded, as such this Court does not find that petitioner deserves any benefit under Section 205 of Cr.P.C.

12. This Court does not find any error in the order passed by Special Court, C.B.I., Patna rejecting the petition filed by petitioner under Section 205 of Cr.P.C., accordingly present criminal revision petition is dismissed.

(S. Kumar, J)

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AFR/NAFR	NAFR
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