

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80392 of 2019

Arising Out of PS. Case No.-143 Year-2018 Thana- CHERIYA BARIYARPUR District-
Begusarai

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Kumari Manju Verma @ Manju Verma, Wife of Sri Chandra Shekhar Verma,
Resident of Village - Arjun Tol, P.O.- Shripur, P.S.- Cheriya Bariyarpur,
District - Begusarai, at present resides in Flat No. 303, Patliputra Rail Parisar,
Opposite- Digha Thana, P.S.- Digha, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Central Bureau of Investigation through Umesh Kumar, the Dy. S.P.,
C.B.I/ACB Dhanbad vii/Karmik Bhawan Dhanbad.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chittaranjan Sinha, Sr.Adv. Mr.Ravindra Kumar Shukla, Adv.
For the Opposite Party No.1:		Mr.Jharkhandi Upadhyay, APP
For the Opposite Party No.2:		Mr. Bipin Kumar Sinha, SC, CBI

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 16-12-2019 Heard learned senior counsel for the petitioner and

learned counsel for the State. Although, the Central Bureau of

Investigation is opposite party no.2 in this case, however, Mr.

Bipin Kumar Sinha, learned counsel for the opposite party no.2

submits that at this stage he has no role to play in this case as

the case has been registered by the State police.

The petitioner in this case is seeking to challenge the
order dated 09.08.2019 passed by learned Additional Sessions
Judge-III, Begusarai in S.C.M.A. Case No.21143 of 2018
arising out of Cheriya Bariyarpur P.S. Case No.143 of 2018. By



the impugned order, learned court below has refused to grant benefit of Section 205 Cr.P.C. to the petitioner.

Learned senior counsel for the petitioner submits that the petitioner has been made co-accused with her husband in connection with Cheria Bariyapur P.S. Case No.143 of 2018 dated 17.08.2018 registered under Sections 25(1-A), 26/35 of the Arms Act. The allegation is that in course of search of the residential premises of Sri Chandra Shekhar Verma, husband of this petitioner illegal ammunitions have been recovered from the residential premises.

Learned senior counsel submits that this petitioner was arrested in connection with said case and she has been released on bail vide order dated 12.03.2019 passed in Cr.Misc.No.14952 of 2019 by a learned coordinate Bench of this Court. Thereafter this petitioner filed an application under Section 205 Cr.P.C. to dispense with her personal appearance on each and every date fixed in the matter and allow her to be represented through her advocate on the date fixed. She gave and undertaking that whenever necessary she would be physically present on the date fixed for framing of charge, statement and the judgment. The prayer of the petitioner has been refused by the court below.



Learned senior counsel for the petitioner has drawn the attention of this Court towards the pleas taken by the petitioner in the court below in her application under Section 205 Cr.P.C. She has submitted that she is an old age lady, she had been Ex-Cabinet Minister in the Government of Bihar, presently she is a member of the Legislative Assembly and she is permanently living with her whole family for last ten years at Patna. In connection with her legislative work some time she has to remain at Patna to attend the session and has to participate in various discussions etc. at various level.

Learned senior counsel submits that from the statements made in the petition it may very well be appreciated that to attend the trial court on each and every date the petitioner will be required to take travel to Begusarai and such travel cannot be taken without much difficulty. Learned senior counsel submits that once the petitioner had given an undertaking in the court below that she would be present on the date of framing of charge, making of her statement under Section 313 Cr.P.C. and at the time of judgment, the learned court below was required to consider those submissions keeping in view the various judicial pronouncements on the subject, but the prayer of the petitioner has been rejected outrightly by recording that the accused is



evading her appearance for making the charge and is not cooperating with the court, therefore dispensing with her appearance right now is not possible and her application will be considered after framing of charge.

At this stage, learned senior counsel for the petitioner also submits that in fact the petitioner has challenged the order rejecting her application for discharge and the said application is presently pending in this Court vide Cr.Misc.No.80654 of 2019.

Learned senior counsel has further relied upon a judgment of this Court particularly the Hon'ble Division Bench judgment in the case of **Ram Harsh Das Vs. The State of Bihar & Ors.** reported in **1998(1) PLJR 502** to submit that it would be a fit case in which privilege of Section 205 Cr.P.C. be granted to the petitioner.

On the other hand, learned APP for the State has opposed this application. It is his submission that the petitioner is not cooperating in the matter of framing of charge and, therefore, the learned court below has rejected her application at this stage only keeping it open to consider the same after framing of charge.

Having heard learned senior counsel for the petitioner and learned APP for the State and upon careful perusal of the



impugned order, this Court is of the considered opinion that the court below could not have postponed the consideration of the application preferred by the petitioner by saying that the same will be considered after framing of charge. Once an application was preferred by the petitioner, the same was to be considered on its own merit and there is neither any law nor the judicial pronouncement which restricts the court below from considering the application under Section 205 Cr.P.C. before framing of charge. The petitioner had already undertaken to present herself at the time of framing of charge and that undertaking was sufficient to proceed with the matter after passing an order on the petition under Section 205 Cr.P.C.

This Court finds that only a vague assertion had been made in the impugned order that the petitioner is evading the making of charge, the court below has not indicated as to on how many dates and on which date the petitioner was required to be present but she did not appear particularly when it is the submission of learned senior counsel for the petitioner that the petitioner is seeking her remedy against the order of the court below rejecting her application for discharge. Such observation alone would not impress upon this Court in view of the stand taken on behalf of the petitioner which have been noted



hereinabove.

In paragraph 49 of the judgment in the case of **Ram Harsh Das** (supra), the Hon'ble Division Bench of this Court held as under:-

“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, *Purdanashin* 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.”

From perusal of the impugned order, this Court finds that the aforesaid considerations have not been given in the impugned order. This Court, therefore, sets aside the impugned



order, allow this application and remit the matter back to the court of learned Additional Sessions Judge-III, Begusarai who will consider it afresh keeping in view the submissions and judicial pronouncements on the subject.

Learned senior counsel for the petitioner has once again submitted before this Court that the petitioner would be willing to cooperate with the court below and as and when date will be fixed for framing of charge she will be present.

This application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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