

(Via Video Conference)

C.R.R. 870 of 2020

In the matter of: Nabin Jaiswal

...
Petitioner

Mr. Bibhasaditya Chakraborty

... for the petitioner

Mr. Shibaji Kr. Das

Mr. Pradyut Kundu

... for the opposite party

The petitioner is aggrieved by the order dated 19.12.2019 passed by the learned Judicial Magistrate, 4th Court, Barrackpore in connection with the complaint case No. C/83 of 2019.

The grievance of the petitioner relates to the refusal of the learned Magistrate from dispensing with his personal appearance in court in respect of the day-to-day proceedings.

The learned Advocate appearing for the opposite party no. 2 opposes the prayer and draws the attention of this Court to the application under Section 205 of the Code of Criminal Procedure which was preferred before the learned Magistrate for exempting the accused/petitioner from his personal appearance under Section 205 Cr.P.C. and submits that no reasons have been assigned which would compel conscience of the learned Magistrate to allow such prayer. To that effect, the learned Advocate relies upon the case of ***Ravi Bafna & Anr. vs. State of West Bengal & Anr.*** reported in ***2006(6) Calcutta High Court Notes – 881***. The learned Advocate submits that in paragraph 11 of the said judgment it has been categorically held that in a warrant proceeding case there is no scope to invoke the provisions of Section 205 of the Code of

Criminal Procedure. The learned Advocate further relies upon the judgment of **V.S. Puri vs. M/s. Sukna Tea & Industries** reported in **1998 Calcutta Criminal Law Reporter 393** wherein it has been held that the accused must be first directed to appear before the Magistrate at the earliest and thereafter his prayer under Section 205 of the Cr.P.C. can be considered.

Having regard to the submissions advanced by both the parties, I am of the opinion that with change of time and need of the hour, the views of the Courts also changes. In **Sheoraj Singh Ahlawat & Ors. vs. State of U.P.** reported in **2013(11) SCC 476** wherein it has been held by the Hon'ble Supreme Court that the provisions of Section 205 of the Code of Criminal Procedure can be applied even in a sessions triable case. That being the change in circumstances, I am of the opinion that the earlier judgments relied upon by the petitioner are based on the facts of the cases which were presented before the Hon'ble Court at that stage. However, I find force in the submissions of the learned Advocate appearing for the opposite party that the contentions and the affidavit or undertaking required in an application under Section 205 of the Code of Criminal Procedure was not preferred in a proper manner by the petitioner before the learned Magistrate.

In view of the aforesaid, the petitioner is granted liberty to prefer an application under Section 205 of the Code of Criminal Procedure before the learned court specifying the reasons along with an affidavit which would allow the learned Magistrate to consider such an application in its proper perspective. Such an application may be filed by the petitioner, if so advised, on the next date so fixed by the learned Magistrate. On such an application

being filed, the learned court would consider the prayer of the petitioner afresh without insisting on the personal appearance of the petitioner before disposing of the application under Section 205 of the Code of Criminal Procedure.

With the aforesaid observations, CRR 870 of 2020 is disposed of.

Learned trial court is directed to act on the server copy of this order.

(Tirthankar Ghosh, J.)