

4.3.2022
S.D.
03.

**C.R.R. 1394 of 2011
With
CRAN 1 of 2011 (Old CRAN 913 of 2011) (Not found)
CRAN 2 of 2012 (Old CRAN 1646 of 2012)**

In the matter of: Dr. Jatindranath Ganguly & Anr.
.....Petitioners.

Mr. Himanshu De, Sr. Adv.,
Mr. A.K. Samanta
Mr. D.P. Samanta
..For the petitioners.

Mr. Pravas Bhattacharya
Mr. Pratick Bose
...For the State.

Learned advocates for the petitioners are present.

Mr. Pravas Bhattacharya and Mr. Pratick Bose, learned advocates for the State are present in Court. The appointments of the State advocates may be regularized by the concerned authority.

None has appeared for opposite party no. 2, Sital Bera, upon whom notice had been served on earlier occasion.

The revisional application is taken up for consideration. The petitioners who are accused in G.R. Case No. 219 of 2005 pending before learned Judicial Magistrate, 3rd Court, Tamluk have filed this application under Sections 401 and 482 of the Cr.P.C. assailing the order dated 16.6.2010 passed by learned Judicial Magistrate, 3rd Court, Tamluk, Purba Medinipur, whereby learned Magistrate rejected the petition dated

27.11.2009 under Section 205 of the Cr.P.C. praying for dispensing their personal attendance in the case.

Perused the impugned order and the revisional application.

It is submitted by learned advocates for petitioners that petitioner no. 1 is aged about 93 years and the petitioner no. 2 is a lady now aged about 81 years. Due to their old age and ailments, it was not possible for them to appear before the Court on all dates fixed for hearing and trial. Accordingly, they had prayed for exemption from their regular appearance before the Court under Section 205 of the Criminal Procedure Code. It is submitted that learned Magistrate did not apply his mind and without considering the circumstances under which the petitioners made such application has arbitrarily rejected the application on the ground that they were being tried for offence involving moral turpitude, punishable with long imprisonment.

Learned advocates for the petitioners in support of his case relied upon a decision of this Hon'ble Court in the case of *M/s. G.K.W. Ltd. & Anr. Vs. The State of West Bengal & Anr.* reported in (2016) 4 C.Cr.LR (Cal) 577. In that case, learned Single Judge of this Court had observed that "bearing in mind the nature of the offence and facts that the petitioner no. 2 is a busy official, his personal appearance may be dispensed with and he may be permitted to represent through his learned Counsel under Section 205 of the CPC on condition that he shall furnish an affidavit that he shall not challenge his identity during trial or raise any prejudice with regard to the trial being conducted in presence

of his learned advocates and that he shall appear before the learned trial Court as and when called for by the said Court in the interest of justice". It is urged that the impugned order suffers from illegality and irrationality and the same may be set aside.

Heard learned advocates for the State. It is urged on behalf of the State that the matter is pending for over 10 years and the trial has not commenced. Learned advocates submitted that the revisional application may be disposed of on its merit and directions may be given to the learned Magistrate to dispose of the case as early as possible.

Perused the materials in record and the impugned order. Considered the submissions made by learned advocates for both the parties. Undisputedly, the offence involved in this case is under Section 420/406/467/468/506 of the IPC, which are grave in nature. It goes without saying that the petitioners are octogenarian and nonagenarian persons who have submitted themselves to the proceedings of the Court. The only question here is whether the petitioners of such advanced age should be asked to attend the Court on regular basis unless their presence becomes essential during charge and trial.

In my considered view, at the time when the application was considered by the Court, the petitioners were younger by 10 years. With passage of time the ground of their being of advanced age has aggrandized. The object of section 205 of Cr. P.C is to accommodation such circumstances. Through the fact situation in the decision cited on

behalf of the petitioners can be distinguished from the facts of this case, the principle, for dispensing of personal attendance is applicable herein.

Considering all these aspects, I am of the opinion that the learned Magistrate by refusing to grant the prayer dispensing their personal attendance under Section 205 of the Cr.P.C. has committed error of law. The impugned order is therefore set aside.

It is being hereby directed that the personal attendance of the petitioners shall be dispensed with on their filing affidavits before the Court that they shall be represented by their counsel on dates fixed for trial and furthermore, the petitioners shall appear before the Court as and when necessary and directed, that is at the time of framing charge in course of trial, their examination under Section 313 of the Cr. P.C. and at the time of pronouncing of judgment. The petitioners shall not thereby challenge their identity or delay the proceeding.

Accordingly, the revisional application is disposed of. All connected applications with regard to the revision are also disposed of and interim order stands vacated.

Let a copy of this order be sent to the learned Judicial Magistrate, 3rd Court, Tamluk, Purba Medinipur for his information with a direction to expedite the trial of the case and dispose of the same preferably within a period of six months from the receipt of this order.

Department shall send a copy of the order to the concerned court at once.

(Ananda Kumar Mukherjee, J.)

