

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.284 of 2019

Arising Out of PS. Case No.-2186 Year-2018 Thana- MUZZFARPUR COMPLAINT CASE
District- Muzaffarpur

-
1. Anuradha Mehta @ Anuradha Mundkur wife of Balmiki Mundkur, Resident of 36/201 Heritage City, Mehruali Gurgaon Road, P.S- Sector-40 District- Gurgaon (Haryana).
 2. Balmiki Mundkur @ Balmik Mundkur S/O Bal Krishna Bal Chand Mundkur, Resident of 36/201 Heritage City, Mehruali Gurgaon Road, P.S- Sector 40, District- Gurgaon, (Haryana)

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mohammad Anjarul Hasan, son of Mohammad Badrul Hasan, resident of Jail Road, Chandwara, Police Station- Chandwara, District- Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mrs. Archan Singh, Adv Mr.Alok Kumar @ Alok Kr Shahi, Adv Ms. Sawrna Roy, Adv
For the Respondent/s	:	Mr.Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 18-12-2023

1. The instant revision is directed against an order, dated 3rd of January, 2019, passed by the learned Judicial Magistrate, 1st Class at Muzffarpur in Complaint Case No. 2186 of 2018 (Tr. No. 3435 of 2018).

2. By passing order, impugned, the learned Magistrate rejected an application filed by the accused/petitioners under Section 205 of the Cr.P.C praying for exemption of their personal appearance during inquiry and trial. The learned



Magistrate assigned the following reasons while rejecting the petition under

3. Section 205 of the Cr.P.C.:-

(i) The learned Magistrate took cognizance of offence under Sections 406, 420 and 468 of the IPC, the offences are serious in nature and non-bailable;

(ii) So far as petition under Section 205 Cr.P.C is concerned, physical appearance of the accused in a Criminal Trial is the general rule and exemption from personal attendance is an exception.

4. On the above mentioned two grounds, the petition under Section 205 of the Cr.P.C was considered and rejected by the learned Magistrate.

5. Assailing the said order, it is submitted by the learned Advocate for the petitioners that by executing a power of attorney, the petitioners executed a power of attorney in favour of one Md. Saiyad Zahid Hussain, in respect of the properties of the petitioners. The aforesaid Md. Saiyad Zahid Hussian took certain money from the complainant as a part consideration of sale of the subject property with a promise to execute a registered deed of sale



in favour of the complainant on receipt of the entire consideration money.

6. On 26th of December, 2013, earnest money was accepted. However, the petitioners cancelled the said power of attorney on 16th of December, 2013. For execution of an agreement for sale illegally the petitioners lodged complaint before the Muzaffarpur Town PS being FIR Case No. 592 of 2014 against the said Md. Saiyad Zahid Hussain & Ors. under Sections 406, 420, 466, 468, 471 and 120B of the IPC.

7. The instant complaint case was lodged against the petitioners subsequently by the intending purchaser of the property in question against the petitioners.

8. It is contended on behalf of the petitioners that the petitioners are permanent residents of Delhi and it is not possible for the petitioners to attend the Court at Muzaffarpur regularly on the dates of trial. Therefore, the petitioners filed the aforesaid application under Section 205 of the Cr.P.C, but the learned Magistrate rejected the application on certain grounds which are not acceptable under the law.

9. In support of the contention, the learned Advocate



for the petitioners has placed reliance on a decision of this Court in *Manish Gai (in both) vs. State of Bihar (in both)* reported in *2007 (1) PLJR 822*. The learned Advocate for the petitioners has specifically relied on paragraphs 8, 9 and 10 of the aforementioned decision. The relevant paragraphs are quoted below:-

“8. It has now been settled by series of decisions of this Court and the Apex Court that where specially a person residing out of the place where the trial is being conducted, by virtue of his business or otherwise is busy cannot continuously appear every fifteen days or every month he should be exempted from appearance before the trial Court till such time his personal appearance is necessary.

9. I may clarify that there Is no impediment for the trial Court to continue in absence of an accused person because if he has been exempted on his own application under Section 205, Cr. P.C. then evidence recorded in presence of his lawyer but in his absence cannot be challenged as wrongly recorded. That evidence would bind the accused notwithstanding it having been recorded in his absence (see Shantanu Das v.



State. 2000 (3) PLJR 134).

10. In my view what the Courts have to see is whether absence of the petitioner would delay the trial in any manner or prejudice the trial in any manner and not otherwise.”

10. Section 205 of the Cr.P.C runs thus:-

“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.”

11. The Hon’ble Supreme Court in the case of *Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd., & Ors.*, reported in (2001) 7 SCC 401, has observed that if the progress of trial can be achieved even in the



absence of the accused, the Court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the Court during trial.

12. It is submitted by the learned Advocate for the petitioners that the residence of the accused persons/petitioners is situated about more than 1,200 Kms. away from Muzaffarpur. They are permanent residence of Delhi. Therefore, they made an application under Section 205 of the Cr.P.C praying for exemption of their personal appearance. The Trial Court failed to consider the scope and purport of Sub-Section (1) of Section 205 of the Cr.P.C and it is now settled that an accused can even make his appearance before the Trial Court through his learned Advocate and personal appearance of the accused is not necessary unless compelled as contemplated under Sub-Section (2) of Section 205 of the Cr.P.C.

13. The decision of the Hon'ble Supreme Court passed in *Rameshwar Yadav & Ors vs. State of Bihar & Ors.* reported in *(2018) 4 SCC 608* is absolutely on the similar point. In the said decision, the accused/petitioners prayed for



exemption of their personal attendance in a case instituted against them under Section 498(A) of the IPC. It was contended by the accused/husband/petitioners that he was working at Hyderabad. The accused/husband, namely, Arnesh Kumar and his wife being the mother of the husband of the *de facto* complainant are permanent residence of Pune. It, therefore, caused tremendous hardship for them due to the distance to be travelled by them to attend the Court at Bihar during trial of the case. The Hon'ble Supreme Court granted exemption against personal attendance observing *inter alia* that taking into consideration the entire facts and circumstances and the grounds by the appellants in their application under Section 205 of the Cr.P.C as well as in the application under Section 482 of the Cr.P.C filed before the High Court, the Hon'ble Supreme Court was of the view that sufficient grounds were made out for granting exemption from the personal appearance of the appellants in the trial.

14. The learned Magistrate did not even consider that the accused persons are residing in a far off place wherefrom it would call immense hardship for them to appear before the Trial Court.



15. Thus relying on the above-mentioned judgment of the Hon'ble Supreme Court, this Court is of the view that the Magistrate committed an error in not advertng on the grounds taken for praying for exemption and rejected the application on the reasons which were unfounded. The learned Magistrate under Section 205, Sub-Section (2) of the Cr.P.C is empowered at any stage to direct personal appearance of the accused. Hence, as and when personal appearance of the accused is required, the Magistrate is empowered to issue necessary orders if he so desires.

16. In view of the above discussion, the application under Section 205 of the Cr.P.C is allowed.

17. The impugned order is quashed and set aside.

18. The application under Section 205 of the Cr.P.C is allowed subject to the condition that on the basis of the order to be passed under Sub-Section (2) of Section 205 Cr.P.C, the accused persons shall appear before the Trial Court on the dates of consideration of charge, and examination of the accused persons under Section 313 of the Cr.P.C as well as on the date of delivery of judgment. It is further directed that the accused persons while enjoining the privilege under



Section 205 (1) of the Cr.P.C shall not subsequently challenge the issue of the identification of the accused persons during trial.

19. The instant revision is accordingly disposed of.

(Bibek Chaudhuri, J)

uttam/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

