

03.10.2023
Sl.12
Ct. No.654
KB

**CRR 2946 of 2023
(Assigned)**

In Re: An application under Section 401 read with Section 482 of the Code of Criminal Procedure.

Gaurav Kumar Chopra
... petitioner
Versus
Union of India & Anr.
... opposite parties

Mr. Sanjay Banerjee
Mr. Satadru Lahiri
Mr. Dipendra Nath Chunder

.... For the petitioner.

Mrs. Smita Das De

.... For the respondents.

This revisional application is preferred against the order dated 16th May, 2023 passed by Learned Judicial Magistrate, 1st Court, Alipore, 24-Parganas (South) in connection with Complaint Case No. C 2196 of 2019 under Section 50 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 rejecting the petitioner's application for dispensing with his personal appearance under Section 205 of the Criminal Procedure Code (hereinafter referred to as the 'Code').

The fact in a nutshell is that the opposite party no.2 filed a complaint before the concerned Magistrate alleging, *inter alia*, that the petitioner along with his wife and mother are directors of two BVI (British Virgin Island) Company namely *Jelenta Investment Lts.* and *M/s. Zenit Metallic Alloys Ltd.* along with two other companies namely *Fortune Brand Asia Limited* and *Zenith Metals Limited* incorporated in

Hongkong. It is further alleged that the petitioner and others have substantial share holding in all those companies. During search and seizure by the income tax authorities it revealed that the companies have bank accounts in HSBS, Hongkong. However, neither of those bank accounts have been disclosed in the Assessment Year 2012-2013, 2013-2014 and 2014-2015. Since the petitioner along with others did not disclose the income in the income tax nor availed the compliance window under the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015, the petitioner along with others so named committed the alleged offence. The complaint was registered as C-2196 of 2019 and process was issued against the petitioner and others under Section 50 of Black Money (Undisclosed Foreign Income and Assets), Act, 2015. In the said proceedings, the petitioner filed an application under Section 205 of the Code with a prayer for dispensing with his personal appearance and be represented through his learned advocate on the ground that he is a businessman and is responsible for running his day to day business. Such prayer of the petitioner was rejected by the Learned Trial Court. Hence this revision.

Mr. Sanjay Banerjee, Learned Advocate for the petitioner submits that the entire case of the complainant is based on documentary evidence and as such the personal appearance of the petitioner before the Trial Court in the said proceedings is not at all required. In support of his contention he relies on the decision of this Court passed in ***Sunil Jhunjunwala versus State of West Bengal*** reported in **2005 (1) L.L.N. 612**. He further submits that in dispensing with the personal

appearance of an accused the only aspect which is to be looked into is whether the attendance of the accused is necessary for administration of criminal justice or not. Since in the facts and circumstances of the case the personal appearance of the petitioner is not required, he submits for passing necessary direction dispensing with the personal appearance of the accused before the trial Court under Section 205 of the Code.

In reply to the contentions raised on behalf of the petitioner, Ms. Smita Das De, learned advocate for opposite parties submits that the petitioner, being one of the Directors of the companies has failed to disclose his income from running the companies based in foreign land and that due to such undisclosed income the income tax authorities initiated the complaint case. The provision under Section 50 of Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 is a serious offence and as such exempting the petitioner's personal appearance would in the long run hamper the administration of justice. She further indicates that the petitioner has purposefully evaded to appear before the learned Trial Court. Moreover there is every possibility that the petitioner might leave the country and thus there is flight risk. In view of the aforesaid, she submits that the order of the learned Trial Court rejecting prayer of the petitioner under Section 205 of the Code should be affirmed in the interest of justice.

In order to appreciate the aforesaid rival contentions, it would be apposite to reproduce the relevant provision embodied under Section 205 of the Code as hereunder:-

“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.”

Under this Section, the Magistrate is competent to dispense with personal attendance of the accused. While exercising the discretion in this regard, the Magistrate may take into account the nature of controversy. Besides that the Magistrate has to consider whether in useful purpose would be served by the requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. If any attempt is made to prolong the proceeding, the Magistrate is competent to pass any order as it deems fit and proper [See **Gajanand Goyal and Ors. versus Asiya Begum** reported in **(2005) 12 SCC 331**].

In **Bhaskar Industries Ltd. versus Bhiwani Denim & Apparels Ltd. and Others** reported in **(2001) 7 SCC 401**, the Hon’ble Supreme Court has held as follows:-

“14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the 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 in that particular case.”

Bearing in mind the aforesaid proposition, let me revert back to facts of this case. The petitioner in his application for dispensing with his personal appearance under Section 205 of the Code has taken the ground that for day to day administration of his business, his personal appearance be dispensed with. Learned trial Court has observed that the petitioner has not filed any document of his business and the reason for dispensation of his personal appearance. It is not in dispute that the petitioner has business of which he is one of the Directors. Further the case of the complainant is based on documents. From the impugned order it is found that the learned Magistrate has not considered whether any useful purpose could be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. Since the nature of complaint precisely is based on documents, I am of the opinion that personal appearance of the petitioner may be dispensed with subject to certain conditions as follows:-

- i) That the accused petitioner shall submit a written undertaking before the learned Trial Court that he will not challenge his identity and the trial will proceed in his absence but in presence of his advocate-on-record.
- ii) The accused-petitioner shall also give written undertaking before the learned Trial Court that he will appear as and when required by the learned Court.

iii) The petitioner shall not leave the country without the prior permission of the learned trial Court.

I find substance in the submission of Mr. Banerjee, learned advocate for the petitioner relying on *Sunil Jhunjhunwala (supra)*.

In light of the aforesaid discussion, the revisional application is allowed. The impugned order dated 16th May, 2023 of learned trial court rejecting the prayer of the petitioner under Section 205 of the Code is set aside. The learned Judicial Magistrate, 1st Court, Alipore, 24-Parganas (South) is directed to allow the prayer of the petitioner under Section 205 of the Code for representation without first appearance before him subject to conditions as aforesaid. The warrant of arrest issued by the trial Court vide order dated 3rd August, 2023 is also set aside.

It is made clear that if any attempt is made to prolong the proceedings by taking advantage with the order dispensing with personal attendance, it shall be open to the Court to pass such order as is felt necessary.

With the above observations, this criminal revisional application being no. **CRR 2946 of 2023** stands disposed of.

All concerned parties shall act in terms of the copy of the order downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties on compliance of necessary formalities.

(Bivas Pattanayak, J.)