

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23024 of 2016

Arising Out of PS. Case No.-29254 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Shailesh Kumar Singh Son of Shri Mukti Narayan Singh, presently posted as Sub Editor of Hindi Hindustan Newspaper, Buddha Marg, P.O. G.P.O., P.S.- Kotwali, District and Town- Patna, Bihar-800001.
 2. Dr. Tirvijay Singh Son of Shri Jagdish Singh, presently posted as Senior Resident Editor of Hindi Hindustan Newspaper, Buddha Marg, P.O G.P.O., P.S.-Kotwali, District and Town-Patna, Bihar- 800001.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Raju Kumar @ Raj Kumar Son of Shri Dwarika Sharan Singh, Resident of Nirala Nagar, P.S.- Digha, District and Town- Patna, Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rana Vikram Singh, Mr. Dayanand Singh, Mr. Dhananjay Kashyap, Advocates. Mr. Anand Ojha, Amicus Curiae
For the State	:	Mr. Bhanu Pratap Singh, APP
For OP No. 2	:	Mr. Vivek Kumar Singh, Advocate.

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

10 09-01-2024 The present petition has been preferred under Section 482 Cr. PC impugning order dated 25.04.2016 passed by Smt. Seema Kumari, Ld. Judicial Magistrate 1st Class, Patna in Complaint Case No. 29254 (C) of 2014 whereby she has rejected the application of the petitioners filed under Section 205 Cr. PC for exemption from personal appearance.

2. The factual matrix as emerging from the record is that a criminal complaint bearing Complaint Case No. 29254 (C) of 2014 has been filed by the complainant (OP. No. 2 herein) against the petitioners for proceeding against them for

offence punishable under Sections 499, 500, 501 and 502 IPC alleging that one Renu Kumari working as maid in the house of the complainant (OP. No. 2 herein) had gone to watch 'Ravan Wadh' in Gandhi Maidan, Patna on 03.10.2014 and died in the stampede. The complainant performed her last rites without taking a single paisa from the Government. However, on 07.10.2024 when the petitioner was reading Hindustan Newspaper, he came across a news which read that Raju Kumar @ Rajkumar had taken away the compensation money of his maid. The Complainant got greatly hurt and his reputation was damaged. The accused persons who are petitioners herein published the news without making any effort to know the truth, due to which, the reputation of the complainant, Raju Kumar @ Rajkumar was let down in the eye of society.

3. It further transpires that after examining three enquiry witnesses, it was found by the Ld. Magistrate that prima facie case is made out under Section 500 IPC against the accused persons who are petitioners herein and accordingly, she took cognizance of the offence punishable under Section 500 IPC and issued summons to the petitioners and thereafter on account of failure of the petitioners to appear, bailable warrant has also been issued against them. Thereafter, the petitioners

have filed their application under Section 205 Cr. PC for exemption from their personal appearance. However, their applications have been rejected by Ld. Magistrate holding that the accused persons are neither old nor ill nor *pardanashin* ladies and they have not appeared before this court even once hampering the court proceeding.

4. Heard Ld. Counsel for the petitioners, Ld. APP for the State and Ld. Counsel for O.P. No. 2, who is complainant in the court below.

5. Ld. Counsel for the petitioners Shri Rana Vikram Singh submits that the alleged offence against the petitioners is petty in nature and it comes under summons case and it is a fit case to exercise descretionary power by this Court under section 205 Cr.P.C. in favour of the petitioners. He further submits that initially summons was issued against the petitioner and later on Bailable Warrant has been issued though the summons was not served upon the petitioners before the issuance of the Bailable Warrant. He further submits that even otherwise, the issuance of warrant is not a legal bar to the exercise of power under Section 205 Cr.P.C. if the accused is not taken into custody in execution of the warrant. He relies on **Sumit Bose @ Sumit Ranjan Vs. State of Bihar [2002 (3) PLJR 208]**. He further submits that

the accused/petitioners are employees of M/s Hindustan Media Venture Ltd, a Company engaged in the business of printing, publication and distribution of the “Hindustan” Newspaper, Patna Edition. Petitioner No.1 holds very crucial responsibility in the newspaper organization and has to coordinate with his colleagues in the newspaper establishment and other people for the purpose of collection, selection and publication of news every day and having very busy schedule throughout the day and his absence from duty will affect the publication of newspaper adversely. Petitioner No. 2 is a senior Resident Editor of Hindustan, Hindi Daily, Patna and has to supervise and guide all the editorial Members. Hence, his continuous presence is deeply required for smooth publication of news of public importance. He has also been given responsibility to guide and coordinate with the editors of Hindustan Hindi Daily, Bhagalpur and Muzaffarpur edition and for the purpose of rendering his duties, he is required to travel throughout the State of Bihar and also to outside the State. He also submits that appearing on each and every date by the petitioners would cause serious prejudice to the petitioners in view of the duties they are discharging in the publication company.

6. He further submits that even offence punishable

under Section 500 IPC is not made out in view of the relevant facts and circumstances of the case. The article published in the Daily was nothing but a sincere effort to report day to day happening in the society that can affect the conscience of the people and it was published on the basis of information provided by the PMCH, Gandhi Maidan Police Station and on the basis of an application made by one Babita Kumari who claimed herself to be a sister-in-law of the deceased Renu Kumari. As such, they acted bona fide to discharge their public duty as journalists and published the said article after due and adequate verification of the facts. The said news article was published in good faith and as part of fair journalism.

7. He further submits that in their applications before Ld. Magistrate, the petitioners had undertaken that they would have no objection to evidence being recorded in their absence. They had also given undertaking that they would not dispute their identity at any stage. They further gave undertaking before Ld. Magistrate through their applications that they would be present before Ld. Magistrate as and when directed by her. However, their applications for exemption from personal appearance was rejected, despite settled principle of law that their applications were maintainable even after issuance of

summons or bailable warrant and initial appearance or taking bail is not sine qua non for getting exemption from their personal appearance.

8. However, Ld. APP for the State and Ld. Counsel for OP No. 2 Shri Vivek Kumar Singh defend the impugned order submitting that without first appearance and getting bail, the applications of the petitioners before Ld. Magistrate for exemption from personal appearance are not maintainable. They have to appear before Ld. Magistrate and take bail and thereafter, the applications of the petitioners may be considered by Ld. Magistrate. They also submit that even otherwise, the application of the Petitioners have been rightly rejected by Ld. Magistrate.

9. Mr. Anand Ojha, Ld. *Amicus Curiae* submits that as per Section 205 Cr.P.C., if summons is issued by the court against the Accused persons for appearance, application on behalf of the accused under Section 205 Cr.P.C. for exemption from personal appearance is maintainable and the power of the court to exempt from personal appearance is discretionary and such power could be exercised in favour of the Accused in view of hardship which could otherwise be caused. However conditions could be imposed upon the accused petitioners to

ensure that trial is not hampered.

10. Before I proceed to consider the rival submission of the parties, it is imperative to refer to the statutory provisions and relevant case laws to see the ambit and scope of jurisdiction under Section 205 of Cr.P.C. Section 205 of Cr.P.C. which reads as under :

“ 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 bare reading of the provisions indicates that it is discretionary power of the Magistrate to dispense with the personal attendance of the accused. However, the provisions do not specify the circumstances in which the discretion may or may not be exercised in favour of the accused. At the first reading, it appears that the Magistrate may dispense with the personal attendance of the accused only when he issues summons to the accused and if he sees the reasons to do so. It also appears from the provisions that even when the Magistrate has dispensed with the personal

appearance of the accused, he may, in his discretion at any stage of the inquiry or trial, direct the personal attendance of the accused and if necessary, enforce such attendance as provided under Cr. PC.

12. Hon'ble Supreme Court and High Courts have discussed the ambit and scope of Section 205 Cr. PC on many occasions.

13. Hon'ble Supreme Court had occasion to examine the ambit and scope of Section 205 Cr. PC in **Bhaskar Industries Ltd. Vs. Bhiwani Denim & Apparels Ltd. And Ors [2001 (7) SCC 401]** in a summons case, involving offence punishable under Section 138 of Negotiable Instruments Act, where the accused was seeking exemption from personal appearance. In paragraph no. 19 of the judgment, **Hon'ble Supreme Court** held as follows :

“ 19. The position, therefore, boils down to this: it is within the powers of a Magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the Magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations on him, and the comparative advantage would be less. Such discretion need be exercised only in rare instances where due to the far distance at which the accused resides or carries on business or on account of any physical or other good reasons the Magistrate feels that dispensing with the personal attendance of the accused would only be in the interests of justice. However, the Magistrate who grants such benefit to the accused must take the

precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a Magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the Magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.”

(Emphasis supplied)

14. Hon'ble Supreme Court has also held in para 17 of the **Bhaskar Industries Ltd. Case** (*supra*):

“17. Thus, in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.”

(Emphasis supplied)

15. Even Hon'ble three judge Bench of Supreme Court in **TGN Kumar Vs. State of Kerala and Ors [2011 (2) SCC 772]** in para 10 of the judgment, while concurring with the **Bhaskar Industries Case** (*supra*) has held as follows :

“ 10. We respectfully concur with the above guidelines and while reaffirming the same, we would add that the order of the Magistrate should be such which does not result in unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant. The court must ensure that the exemption from personal appearance granted to an accused is not abused to delay the trial.”

(Emphasis supplied)

16. Hon’ble Supreme Court in Puneet Dalmia

Vs. Central Bureau of Investigation [2020 (12) SCC 695],

while dealing with a warrant case involving offence punishable under Section 120-B r.w.Ss. 420 and 409 of the Indian Penal Code and offence Punishable under Prevention of Corruption Act, has held in paragraph no. 7 as follows :

“ 7. It is true that in the aforesaid two cases before this Court, the offences alleged were less serious offences than alleged in the present case. However, the principles for grant of exemption as observed by this Court in Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest. At this stage, it is required to be noted that nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial. At this stage, it is required to be noted that in case of other two co-accused in cases arising of the same FIR, the applications for exemption on the very same grounds have been allowed, one by the High Court and another by the learned trial court.”

17. In S.V. Mazumdar and Ors. Vs. Gujarat

State Fertilizer Co. Ltd and anr [2005 (4) SCC 173],

Hon'ble Supreme Court held in para 13 as follows :

“13..... It has to be borne in mind that while dealing with an application in terms of Section 205 of the Code, the court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on account of his absence. We make it clear that if at any stage the trial court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance.....”

(Emphasis supplied)

18. Even this Court had several occasions to consider the application of Section 205 of the Cr. P.C. In **Sheela Kumar and Ors. vs. State of Bihar (2009 Cri LJ 2675)**, this Court, while dealing with warrant case involving offence punishable under Section 420, 467, 468 etc. of the Indian Penal Code and offence punishable under Prohibition of Corruption Act, has held in para 31 of the judgment that the issue stands well settled that power under Section 205(1), Cr. PC. can be exercised even in warrant case if summons has been issued. It has never been the intention of the Legislature not to allow exemption under Section 205(1) Cr. PC., if summons has been issued in a warrant case. The Court referred to and relied upon **Ram Harsh Das Vs. State of Bihar [1998 (1) PLJR 502]**.

19. Hon'ble Division Bench of this Court in Ram

Hash Das (Supra) held in Para 41 of the judgment as follows:

“41. From a reading of Section 204, together with the object and reasons, it is clear that a summons has to be issued in all summons-cases and warrant in all warrant-cases, except where the Magistrate orders to issue summons as provided under Section 204(1)(b) of the Code. In other words, issuance of warrant in a warrant-case is a rule and issuance of summons is exception, which is to be made by the Magistrate if there is reason or ground to do so. Section 205 of the Code does not speak of summons and warrant-cases, rather it speaks that 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. Thus, from a bare reading of both the provisions, it is clear that the Magistrate can exercise a power under Section 205 of the Code even in warrant-cases also, provided he has issued summons under Section 205(1) of the Code instead of warrant. Legislature never intended that power to dispense with personal appearance cannot be exercised in a warrant case. However, a rider has been put that this power has to be exercised only when the Magistrate on being satisfied that the summons should be issued instead of a warrant, issues summons.”

(Emphasis supplied)

20. Hon'ble Division Bench of this Court in Ram

Harsh Das (Supra) held in Para 54 of the judgment as follows:

“54. 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, Purdardashin 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.”

(Emphasis supplied)

21. In para 34 of **Sheela Kumar Case** (supra), this Court has further referred to **Sumit Bose @ Sumit Ranjan** (supra) wherein it has been held that there is no legal bar in exercising the power under Section 205 of the Code if an accused is not taken into custody in execution of warrant of arrest, subsequent to the issuance, of summons.

(Emphasis supplied)

22. This Court in **Sheela Kumar Case** (Supra) also referred to **Jayant Dang and Ors. Vs. The State of Bihar and Ors. [2004 (4) PLJR 25]** wherein Hon'ble Single Bench concurred with the view of Hon'ble Division Bench in **Ram Harsh Das Case** (Supra):

23. In para 47 of the **Sheela Kumar Case** (supra), **this Court** summed up as follows:

“47.....The findings arrived at, after noticing various decisions and principles is summed up as follows:

(A) Where summon is issued at the first instance, whether it may be in summons case or warrant case, application under Section 205 of the Code can be allowed in categories as follows:

i) If accused resides or carries on business at a far off place.

ii) On account of physical reasons.

iii) If insistence of his personal presence would implicit enormous suffering or tribulation on him and comparative advantage of disallowing such petition would be less.

iv) Purdanashin women.

v) Old and sick person.

vi) Factory workers and labourers.

vii) Busy business people or public functionaries.

viii) Corporate employees.

(B) The aforesaid categories are illustrative and not exhaustive. The nature of allegation and conduct of accused-would also be relevant consideration. However, in cases of serious and major offences,' like rape, murder, dacoity. Arms Act etc : or offences involving moral turpitude and longer punishment, exemption under Section 205 of the Code ought not to be ordinarily granted-In case any time before arrest of a person pursuant to the execution of warrant, if summons is issued at first instance, application under Section 205 of the Code would be fully maintainable. Further more in case where summons are to be necessarily issued at the first instance, as it is desirable in summons case in view of Section 204(1)(a) and by mistake warrant has been issued, application under Section 205 of the Code cannot be disallowed on the ground that warrant has been issued at the first instance.

(C) High Court in exercise of power under Section 482, Cr. P.C. can even consider the plea of an accused for dispensing with his personal attendance as provided in Section 205(1), Cr. P.C., even in cases warrant has been issued at the first instance in place of summons. In summons cases the Court should be more liberal in granting exemption under Section 205 of the Code in comparison to warrant cases as the offence in the former cases are less severe and

involve lesser punishment (below two years) in comparison to warrant cases defined in Section 2(x) and covers offences for which punishment may range from 2 years up to death.....”

24. It emerges that in a case where summons has been issued to the accused persons, the accused may be exempted from his personal appearance. Moreover, the accused can be allowed to be represented through his counsel even at the stage of the first appearance as held by **Hon’ble Supreme Court** in **Bhaskar Industries Ltd. Case** (*supra*). In other words, the accused is not required to take bail first and then file the application for exemption from personal appearance. It also transpires from the aforesaid case laws that even issuance of warrant is not a legal bar to the exercise of discretionary power by the Court under Section 205 Cr.P.C., if the warrant is not already executed taking the accused in custody as emerges from the ruling of **Sumit Bose @ Sumit Ranjan Case** (*supra*). It also emerges that while exercising discretionary power under Section 205 Cr.P.C., the Court is required to look into the hardships or tribulations being caused to the accused if he is not given exemption from personal appearance under Section 205 Cr.P.C. However, the Court is also required to ensure that prejudice is not caused even to the complainant and the trial is not hampered. However, there is no hard and fast rule regarding exercise of power under Section 205 Cr.P.C.. Court can exercise his power in view of the totality of the facts and circumstances of the case. It also

transpires that not only old or ill person or purdanashin ladies are entitled to get benefit under Section 205 Cr.P.C. but even other persons like factory workers and labourers, busy business people of public functionaries or corporate employees or any persons who resides or carries on business at a far off places or there is any other reasonable cause to exercise discretionary power in favour of the accused.

25. Coming to the case at hand, I find that the offence alleged against the petitioners is petty in nature for which maximum punishment as provided by I.P.C. is imprisonment for 2 years. I further find that initially summons was issued against the petitioners, and later on bailable warrant has been issued though it was issued without service of summons upon them. It also transpires that the warrant issued against the petitioner has not been executed and petitioners are not in custody. I further found that petitioners are in newspaper publication and they are busy persons. In such situation, denial of privilege under Section 205 Cr.P.C. would be injustice, because even in the absence of the petitioners, no prejudice would be caused to the complainant, nor trial would get hampered, if the certain conditions are imposed upon the petitioners while allowing the applications of the petitioners filed under Section 205 Cr.P.C.

26. Hence, considering the aforesaid facts and circumstances, this Court finds that the applications of the petitioners had been wrongly rejected by Ld. Judicial Magistrate by the

impugned order dated 25.04.2016. Hence, setting aside the impugned order, the applications of the petitioners filed under Section 205 Cr.P.C. are allowed, subject to the following conditions:

(I) The petitioners will give undertaking to the effect that they will not dispute their identity at any stage of the trial.

(ii) They would not dispute their identity.

(iii) They would be represented on each and every date by their counsel.

(iv) They would not raise any objection to taking evidence in their absence.

(v) The trial Court would be at liberty to direct the petitioners to be present in person as and whenever required, like framing of charge, statement under Section 313 or pronouncement of judgment.

27. The petition is accordingly allowed.

28. The assistance provided by Ld. Counsel for the parties and Ld. *Amicus Curiae* is highly appreciated. Patna High Court Legal Services Committee is directed to pay honorarium to Ld. *Amicus Curiae* as per rules.

(Jitendra Kumar, J.)

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