

CRR 3166 of 2022

Satadru Ojha @ Piku
Vs.
The State of West Bengal & Anr.

Mr. Ayan Bhattacharjee
Mr. Md. Zohaib Rauf ...for the petitioner

Mr. Ranabir Roy Chowdhury
Mr. Sandip Chakraborty ...for the State

Opposite party No.2 is not represented. Since exercise of power under section 205Cr.P.C. is a matter entirely between the magistrate and accused and since no prejudice is likely to be caused to opposite party No.2, if the matter is heard and disposed of in her absence, the petition is taken up for hearing in presence of state.

The present application under Section 482 of the Code of Criminal Procedure has been preferred against the order dated 6th August, 2022 passed by the learned Additional District Judge, fast track court, 1st court, Calcutta. By the impugned order, the learned court below affirmed the order dated 24.4.2020 passed by the learned Metropolitan Magistrate, 20th Court, Calcutta in connection with GR case no. 1153 of 2018, whereby Trial Court rejected petitioner's prayer for dispensation of personal appearance.

The petitioner contended that the opposite party no. 2 herein lodged a written complaint alleging the commission of offence punishable under Section 354/114 of the Indian Penal Code against four accused persons including the petitioner herein alleging that the FIR named accused persons being aided and

abated with each other outraged modesty of the opposite party no. 2, by causing harassment at the work place. He further submits that after completion of investigation, charge sheet has been submitted under Section 509 of the Indian Penal Code.

The petitioner thereafter on 19th December, 2019 filed an application before the Magistrate under Section 205 of the Code praying for dispensation of his personal appearance on the ground stated in the petition. Learned Trial Magistrate was pleased to reject the aforesaid prayer of the petitioner and directed officer-in-charge of Haridevpur police station to execute the warrant of arrest

Being aggrieved and dissatisfied with said order of rejection of his Application under section 205 Cr.P.C the petitioner herein, preferred revisional application before the learned Sessions Judge. During continuance of stay granted by Revisional Court the petitioner was arrested. However he was granted bail on 30th January 2021. After hearing the parties learned Sessions Judge was pleased to affirm the order of the learned Trial Magistrate.

The petitioner contended that at present, he is posted in the state of Goa and it is very difficult for him to attend personally on each and every date of hearing before the court below and that is why, he prayed for exemption of personal appearance before the court. The petitioner submits that he never evaded any process of law or he does not have any intention to evade any process of law. It is only on compelling circumstances beyond his control the petitioner could not make himself available on the date.

However, learned court below also failed to appreciate that the physical presence of the petitioner is not required on every

date, as in his application, he has categorically stated the he would not dispute his identity at any stage of the proceeding.

In support of his contention, he relied upon paragraph 47 of the judgment in the case of **Sharif Ahmed & Anr. Vs. State of Uttar Pradesh & Anr.** reported in **2024 6 SCR 86**.

Learned counsel for the State submits that such prayer made by the petitioner can be allowed subject to the condition that he will appear before the court below physically as and when he will be asked by the court to appear physically and that he will not dispute his identity before the trial court at any stage of the proceeding.

I have considered submissions made by the parties. Though petitioner/accused was booked under various sections but after completion of investigation charge sheet submitted against him only under section 509 of IPC.

Both the courts below insisted for personal appearance of petitioner mainly on the ground of nature of allegation against accused. It would not be out of context to mention that the discretionary power under section 205 of Cr.P.C. should not be used as a substitute for ultimate punishment, which could be awarded at the end of trial.

Though no hard and fast rule can be laid down for deciding the question of grant or refusal of prayer for dispensing personal attendance of an accused during trial, but while dealing with such application, court has to consider whether any useful purpose will 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.

In the impugned orders, nothing has been recorded that unless the personal attendance of accused is secured, the trial of the case gets delayed. Moreover accused is agreeable to give undertaking that he will not dispute his identity at any stage of proceeding and he will appear physically before the court, on the date when he will be asked to appear physically.

In such circumstance, I find that the courts below were not justified in rejecting petitioners application under section 205 Cr.P.C. On the ground that charge sheet has been submitted against accused person under section 509 of IPC and the nature of offence.

Having considered the facts of the case and that the petitioner is presently residing far away from the court, CRR 3166 of 2022 is hereby allowed.

The impugned order dated 6th August, 2022 passed by the learned Additional District Judge in criminal revision no. 73 of 2020 and the order of Trial Court dated 24.04.2020 are hereby set aside. The personal appearance of the petitioner before the Trial Court is hereby dispensed with on condition that the petitioner will file an undertaking before Trial Court within three weeks hence that he will appear before the court below physically as and when he will be asked by the court to appear physically and also on condition that he will not dispute his identity before the trial court at any stage of the proceeding.

However, if at any stage of the proceeding, the petitioner fails to comply any of the conditions mentioned above, the court below will be at liberty to take appropriate step to secure the attendance of the petitioner before the court below. Moreover in case of failure

in filing undertaking by the petitioner as above, the order impugned will survive.

Urgent Photostat certified copy of the order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)