

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2863 of 2014

**Sri Pramod Kumar Agarwalla & Anr.
-Vs-
The State of West Bengal & Anr.**

For the Petitioners	: Mr. Abhra Mukherjee Mr. Swakshar Kumar Mondal
For the Opposite Party No. 2	: Mr. Mukteswar Maity
For the State	: Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 10.10.2023, 11.10.2023
Judgment on	: 10.01.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioners against the judgment and order dated 26th June, 2014 passed by Learned Additional Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Revision No. 71 of 2013, thereby dismissing the same and affirming the order dated 01.08.2013 passed by Learned Judicial Magistrate, 1st Court, Sealdah in C – Case No. 830 of 2011 whereby an application under Section 205 of the Code of Criminal Procedure filed by the petitioners was dismissed.

2. Petitioners were implicated as accuseds in a case instituted on a police report by the opposite party no. 2, before the Learned Additional Chief Judicial Magistrate, Sealdah for alleged commission of offence under Sections 498A/406/120B of the Indian Penal Code. The said case was registered as C – Case No. 830 of 2011. The Learned Additional Chief Judicial Magistrate, Sealdah after taking the cognizance of the offence transferred the case to the Learned Judicial Magistrate, 1st Court, Sealdah for disposal where the case was re-numbered as T.R. 534 of 2011.
3. The Learned Additional Chief Judicial Magistrate, Sealdah after enquiry was pleased to issue summons under Sections 498A/406/120B of the Indian Penal Code against the petitioners.
4. Pursuant to the aforesaid summons the petitioners duly appeared before the Learned Judicial Magistrate, 1st Court, Sealdah and obtained an order of bail on 24.04.2012.
5. Petitioners thereafter filed an application under Section 205 of the Code of Criminal Procedure on 29.01.2013 before the Learned Judicial Magistrate, 1st Court, Sealdah for exemption from personal appearance before the Learned Court mainly on the ground that (i) they were permanently residing at Assam and it was difficult for them to appear physically before the Learned Court on the dates so fixed. (ii) that the mother of the petitioner no. 1 is an octogenarian lady, suffering from various ailments and the mother of

the petitioner no. 2 also is an aged lady and almost bed ridden and (iii) the petitioner no. 2 is also suffering from different ailments.

6. The opposite party no. 2, herein, filed a written objection against the aforesaid petition under Section 205 of the Code of Criminal Procedure filed by the petitioners.
7. By an order dated 01.08.2013 Learned Judicial Magistrate, 1st Court, Sealdah was pleased to reject the aforesaid application under Section 205 of the Code of Criminal Procedure filed by the petitioner.
8. Being aggrieved by the aforesaid order dated 01.08.2013, petitioners moved an application before the Learned Additional Sessions Judge, 1st Court, Sealdah which was registered as Criminal Revision No. 71 of 2013.
9. By the judgment and order dated June 26, 2014 Learned Additional Sessions Judge, 1st Court, Sealdah was pleased to dismiss the aforesaid revisional application and affirmed the order dated 01.08.2013 passed by Learned Judicial Magistrate, 1st Court, Sealdah.
10. Petitioners contend that both the Trial Courts have failed to appreciate that personal appearances of the accused should be dispensed with under Section 205 of the Code of Criminal Procedure, where the accused are residing at a very long distance from the Court.
11. Petitioners submit that both the Learned Courts below erred in law as well as in facts by holding that the long distance is not a ground for availing the privilege under Section 205 of the Code of Criminal Procedure thereby a

manifest illegality has been committed and the orders are liable to be set aside.

12. Learned Advocate for the petitioners submitted that –

- i. Upon the facts and circumstances of the case and upon materials on record, Learned Trial Courts should not to have rejected the petitioners' prayer for exemption of their personal appearance on each date fixed under Section 205 of the Code of Criminal Procedure and thereby a serious miscarriage of justice has been.
- ii. Grounds upon which the dispensation of the personal appearance sought for were cogent and convincing in as much as the Learned Trial Courts should have appreciated that it would cause great inconvenience to the aged petitioners.
- iii. Both the Learned Trial Courts have erred in law as well as in facts by holding that long distance is not a ground for availing the privileges under Section 205 of the Code of Criminal Procedure thereby a manifest illegality has been committed and the orders are suffering from perversity and in as much as the ends of justice has been grossly defeated and as such to secure ends of justice and to prevent the abuse of process of Court order impugned is liable to be set aside.
- iv. In a complaint case where summons were issued for the appearance of the accused and where the accused duly appeared and was granted bail and where the identification of the accused were not under challenge,

ends of justice demand that day to day appearance before the Learned Court to be dispensed with.

13. Section 205 of the Code of Criminal Procedure states as follows:

“205. Magistrate may dispense with the personal attendance of an accused:

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.

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.”

14. In ***Puneet Dalmia Vs. Central Bureau of Investigation, Hyderabad***¹, the Hon’ble Supreme Court observed as follows:

“6. In Paragraphs 14, 17, 18 and 19, this Court has observed and held as under:

“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

¹ (2020) 12 SCC 695

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.

...

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.

18. A question could legitimately be asked — what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not cooperate in proceeding with the case? We may point out that the legislature has taken care of such eventualities. Section 205(2) says that the Magistrate

can in his discretion direct the personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the Magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.

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.”

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 the case of Bhaskar Industries Ltd. (supra) 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.”

15. In **S. V. Muzumdar and Others Vs. Gujarat State Fertilizer Co. Ltd. and Anr.**², the Hon’ble Supreme Court observed as follows:

“17. Taking into account the fact that the cases have been pending for nearly a decade, we direct that the matter be taken up on 8th of August, 2005 by the trial Court. If the appellants file applications in terms of Section 205 of the Code for dispensing with their personal attendance, the trial Court will do to take note of the same and dispense with the personal attendance by stipulating conditions in terms of Section 205(2) of the Code. 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. The trial Court would do well to complete the trial by the end of November, 2005. The parties shall co-operate in that regard. We make it clear that we have not expressed any opinion on the merits of the case.”

² (2005) 4 SCC 173

16. The Learned Judicial Magistrate in his order dated 1.8.2013 opined as follows:

“Offences under Sections 498A, 120B of the I.P.C. are serious in nature. After their first appearance and after obtaining bail, both the accused persons had been evading appearance before the court which brought the proceedings of the case to a standstill and then the W.A. was issued against them and finally they surrendered before court. The learned Judicial Magistrate stated that their conduct had not been good so far and neither have been regular. At the time of filing of the petition under Section 205 of the Cr.P.C., the petitioners had stated that they were suffering from hypertension and at the time of hearing accused Sandip Modi submitted a bunch of medical documents. Upon perusal of the same, the learned Judicial Magistrate stated that he did not find anything serious except cough, cold, fever which is a seasonal illness and bronchial asthma. He stated that bronchial asthma does not render one totally incapacitated or restrict their movements and did not agree that the accused could not appear before the court once in three/four months owing to bronchial asthma. He observed that the accused no. 1 had other siblings who could take care of his mother during his absence. Furthermore, their absence would not be prolonged or indefinite and an absence that would be not more than two days would not cause so much hardship to their mother. Long distance is neither a ground for availing the privilege under the section. Both the accused persons looked healthy and young enough to travel such a distance in

three/four months. Moreover, in cases of emergency, the learned Judicial Magistrate stated that the accused persons could always have recourse to the provisions under Section 317 of the Cr.P.C.”

17. The 1st Court of Additional Sessions Judge, Sealdah simpliciter affirmed the order passed by the learned Magistrate without any reasons. Each and every case has to be adjudged on its facts to determine the seriousness, gravity and severity of the offence. An allegation under Section 498 A/406/120B of the Indian Penal Code cannot be generalized to be serious in nature. The petitioners had appeared before the court and obtained an order of bail and sufficiently got themselves identified being represented by a lawyer. During trial, if the identification of the accused persons are not challenged to be deceptive, the Court can compel personal appearance on each and every date of the petitioners. In the instant case, the physical ailments of the mother of the petitioner no. 1 and 2 as well as the long distance are justified grounds to get an order of exemption from personal appearance on each and every date.
18. In view of the essence of the provisions of Section 205 of the Cr.P.C. and the decisions cited above, the petitioners are exempted from personal appearance under Section 205 of the Cr.P.C.
19. However, the learned advocate on record and the conducting advocate should represent the petitioners on each and every date fixed by the trial court for proper adjudication of the complaint case as aforesaid.

20. Since the instant complaint case related to the year 2013, the Learned Trial Court should not grant unnecessary adjournments apart from valid and convincing reasons if at all sought for.
21. The Learned Trial Court can resort to strict legal provisions in case there is a delay on the part of the petitioners to subvert the proceedings before the Trial Court. The Learned Trial Court is to dispose of the instant complaint case as expeditiously as possible, preferably within one year from the date of communication of this order.
22. The instant revisional application is thereby allowed.
23. The order dated 26th June, 2014 passed by Learned Additional Sessions Judge, 1st Court, Sealdah, South 24 Parganas in Criminal Revision No. 71 of 2013 and the order dated 01.08.2013 passed by Learned Judicial Magistrate, 1st Court, Sealdah in C – Case No. 830 of 2011 are set aside.
24. Accordingly, the instant criminal revisional application being CRR 2863 of 2014 stands disposed of.
25. There is no order as to cost.
26. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.
27. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)