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Court : Patna

Decided On : Nov-23-2006

Judge : Navaniti Pd. Singh, J.

Appellant : Manish Gai

Respondent : State of Bihar

Disposition : Application allowed

Judgement :

Navaniti Pd. Singh, J.

1. Heard learned Counsel for the petitioner and learned A.P.P.
2. By these applications orders dated 29-5-2006 passed by Sub-Divisional Judicial Magistrate, Patna, in Case No. 11(M) of 2006 and Case No. 46(M) of 2006, refusing the privilege under Section 205, Cr. P.C., has been challenged.
3. The petitioner is the Managing Director of M/s. Ajay Feed Products, Katni, Private Limited Company incorporated under the provisions of Companies Act, 1986, He resides at Katni in the State of Madhya Pradesh from where he conducts the business on behalf of the company. Certain food items were found allegedly adulterated for which a prosecution was instituted for violation of the provisions of Prevention of Food Adulteration Act. The petitioner on coming to know of the

proceedings filed an application before the trial Court for exemption from appearing in person in terms of Section 205, Cr. P.C. The ground for filing such an application was that the petitioner is a busy businessman residing at Katnl in the State of Madhya Pradesh and it will cause him undue harassment to physically appear on each and every date in the trial Court, He undertook to appear as and when Court would order for his personal appearance, which was necessary for the trial Court, still the same was rejected by the impugned order on four grounds, i) warrant of arrest had already been issued against the petitioner; (ii) petitioner was not a Pardanashin lady; (iii) petitioner was not a busy person engaged in law and order and (iv) petitioner could as and when avail of Section 317, Cr, P.C.

4. I am afraid none of the grounds, as given above, is lawfully justifiable ground to refuse the prayer as contemplated under Section 205, Cr. P.C.

5. To say the least it appears that the learned SDJM has failed to exercise its jurisdiction which was vested in him under Section 205, Cr. P.C. This Court in the case of Ram Harsh Das v. State of Bihar since reported in 1998 (1) PLJR 502 has held that application of Section 205, Cr. P.C. does not end by issuance of warrant of arrest if at the first instance summons were issued. To my mind law has not changed since then. If summons are issued at the first instance and subsequently warrant of arrest is issued even in such a situation the benefit of Section 205, Cr. P.C. is available. The Magistrate was clearly wrong in his notion of law.

6. The second and third grounds are equally misconceived as no such alternative is found in Section 205, Cr. P.C. Law nowhere states that benefit of Section 205, Cr. P.C. can only be given to Pardanashin lady or people engaged in law and order. I failed to understand from where the Magistrate has borrowed these grounds which the legislature did not provide. Coming to the last ground that Section 317, Cr. P.C. would be available as and when necessary is equally misconceived. The provisions of Section 205, Cr. P.C and Section 317, Cr. P.C. are two different provisions. They have been engrafted by the legislature knowing full well the existence of each other provision. If what the Magistrate say is correct then Section 205, Cr. P.C. would be rendered otiose.

7. Section 205, Cr. P.C. gave a discretion to the Court to exempt a person from personal appearance till such time his personal appearance was necessary for the trial whereas Section 317, Cr. P.C. is a provision, where, on any particular day where accused is required to be present in person. He is unable to come or appear, he may seek leave and be absent and for this he is to move to the Court under Section 317, Cr. P.C. In operation both the sections are different and distinct.

8. The legislature contemplated speedy trial and as such in past rarely occasion had arisen for people to seek exemption from personal appearance. Now-a-days criminal trial are notoriously slow. It takes five (years) or decade for a trial to conclude, if Courts were to insist that on each and every date i.e. virtually every fifteen days an accused must appear from Katni in the State of Madhya Pradesh to Patna and attend his Court and that too for no purpose, except filing attendance it would only be travesty of Justice. To my mind, to undertake journey from Katni to Patna so frequently would be greater punishment than what he could have punished in the case. Power to refuse permission Under Section 205, Cr. P.C. should not be used as a substitute for ultimate punishment which could be awarded. Personal appearance in course of trial is for a purpose and not only for 'fun of it'. If no purpose is to be served by personal appearance day after day then it should be dispensed with. The Magistrate still retains power to order for personal appearance whenever necessary.

9. 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. 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.

11. I may also refer to recent judgment of this Court in the case of Jayant Dang v. State 2004 (4) PLJR 25 (HC), and Ajay Kumar Sharma v. State 2005 (2) PLJR 505 and also the recent judgment of the Supreme Court in the case of S. V. Muzumdar v. Gujarat State Fertilizer Co. since reported in : 2005 CriLJ2566 , wherein para 13 the Apex Court in the said decision has held thus:

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 the progress of the trial Court 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 completion of trial it shall be free to refuse the prayer for dispensing with personal attendance.

12. In that view of the matter the impugned order is set aside and the trial court is directed to pass order in terms of Section 205, Cr. P.C. and the observations made above in this order.

13. In the result, this application is allowed.

14. Let Registrar General of this Court circulate a copy of this order to the Registrar of the Civil Courts in the State for guidelines of judicial officers in future so that this question is accordingly dealt by Courts without this Court wasting its time again and again.

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