

**Jayant Dang and anr. Vs. the State of Bihar and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/135421](http://sooperkanoon.com/135421)

**Court :** Patna

**Decided On :** Jul-26-2004

**Judge :** Navin Sinha, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 205

**Appeal No. :** Cr. Misc. Nos. 29832 and 34712 of 2000

**Appellant :** Jayant Dang and anr.

**Respondent :** The State of Bihar and anr.

**Advocate for Def. :** A.B. Mathur and Ashok Kumar Mishra, Adv.

**Advocate for Pet/Ap. :** B.P. Pandey, Adv.

**Judgement :**

**Navin Sinha, J.**

1. This order shall dispose of Cr. Misc. No. 29832/2000 preferred by one Jayant Dang and Cr. Misc. No. 34712/2000 preferred by one Prabhat Ranjan. Cognizance having been taken against both the petitioners in Complaint Case No. 1558(C) of 1998, both the petitioners preferred application under Section 205, Cr PC for dispensing with their personal appearance. By an order dated 22.8.2000 passed by the Judicial Magistrate, Patna the prayer for grant of relief under Section 205, Cr PC has been declined. Thus the petitioners who are impleaded as

accused No. 2 and accused No. 6 respectively in the complaint petition have approached this Court.

2. The allegations as made out in Complaint Case No. 1558(C) of 1998 for the purposes of the present application may be stated succinctly. Suffice it to say that the opposite party as complainant instituted the present complaint based upon what was originally a commercial interaction by him with regard to taking of a loan from M/s Escorts Finance Limited, a company registered under the Indian Companies Act, situated at New Delhi. Both the present petitioners here are the officers of the said company. The petitioner in the first case is said to be the Managing Director and the petitioner in the second case is said to be one of the officers of the company. The complainant alleged that he had applied for a loan/finance to the company, M/s Escorts Finance Ltd. through its franchisee A.P. Fin. Leasing (India) Limited situate at Maurya Complex, Patria for purchase of a car. The latter was the authorised franchisee of the aforesaid company impleaded as accused No. 1 in the complaint. The opposite party No. 2 in pursuance of having applied for such loan gave certain post-dated cheques. The opposite party No. 2 never received the loan amount and requested return of the postdated cheques alongwith other papers signed by him for grant of loan. The opposite party No. 2 then obtained a loan from other sources and purchased a car. The car was allegedly seized by the musclemen at the behest of the petitioners and others and released only after the opposite party No. 2 was forced to sign certain cheques. The payments of these cheques was then stopped by the opposite party. The complainant thus alleged that he was wrongly being harassed for the loan that he had never taken and money had been realized from him illegally by fabrication of documents of loan etc. On the basis of allegations cognizance was taken under Sections 348, 384, 409, 420, 467 and 120B, IPC.

3. The lower Court records had been summoned earlier by an order dated 3.7.2003 of this Court. The parties thus made their submissions on the basis of the lower Court record in which the narration of dates and events hereinafter was not disputed by the Counsel appearing for the parties. Summons were issued on 2.9.99 to both the petitioners. No service report with regard to the summons was available on record till 14.12.1999. On 6.1.2000 accused No. 6, the petitioner in

Cr. Misc. No. 34712/2000 entered appearance and filed an application under Section 205, Cr PC. No service report with regard to summons sent to the petitioners were still available. At this stage the Court below proceeded to issue bailable warrant of arrest against the accused No. 2, the petitioner in Cr. Misc. No. 29832/2000. Having been made aware of the bailable warrant issued against him the said petitioner entered appearance on 7.3.2000 and filed an application for dispensing with his personal appearance under Section 205, Cr PC.

4. Learned Senior Counsel Shri B.P. Pandey, appearing on behalf of both the petitioners submitted that the petitioners were employees of a Finance Company situate at New Delhi. The allegations against them in the complaint were omnibus in nature and there were no individualistic allegations against them in respect of which cognizance had been taken. It was submitted that the complaint merely recited that the petitioners were directly responsible and have participated in the commission of the offence. Notwithstanding the allegations, it was submitted that the parameters for grant of relief under Section 205, Cr PC more or less stand defined both by this Court and the Apex Court. Notwithstanding the enunciation of law and considering the averments in the complaint, there was no justification to decline grant of relief to the petitioners. The impugned order rejecting the same also does not reflect any application of mind to the principles under which the application was required to be considered. Summing up it was pleaded that in so far as accused No. 6, was concerned he had entered appearance at the stage of summons. In so far as accused No. 2 was concerned there being no service report with regard to the summons issued to him, issuance of bailable warrant was contrary to law and therefore the said accused was entitled to the benefits of his application under Section 205, Cr PC preferred by him on 7.3.2000.

5. Learned Counsel appearing on behalf of the opposite party contended that since accused No. 6 had entered appearance on 6.1.2000, both the accused were at New Delhi, therefore accused No. 2 cannot contend that he was not aware of the proceedings. Referring to Section 63 of the Criminal Procedure Code, learned Counsel submitted that the moment summons were served upon the local office of the Company both the petitioners would be deemed to have knowledge of the case, and cannot be allowed to contend to the contrary. There was thus proper

service of summons. It was thus submitted that bailable warrant having been issued against the accused No. 2 the privilege of Section 205, Cr PC was not available to him any more, learned Counsel concluded his submissions by stating that the allegations were serious in nature and that the petitioners did not deserve privilege of Section 205, Cr PC.

6. Having considered the rival submissions of the Counsel for the parties this Court holds that it is not in dispute from the records that accused No. 6 in fact entered appearance at the stage of summons. In so far as accused No. 2 is concerned, there was no service report with regard to summons when warrants came to be issued against him on 11.1.2000. Chapter VI of the Code of Criminal Procedure details the procedure of issuance of and service of summons. The stage of warrant as contained in Part B of Chapter VI arises only thereafter. In the absence of any order recording the satisfaction of the Court below with regard to the service of summons according to law, the bailable warrants issued against the petitioner (accused No. 2) cannot be sustained. In the circumstances, this Court holds that the issuance of warrant against accused No. 2 was not justified at this stage. Reliance may be had upon the judgment of this Court reported in 2000(3) PLJR 251. Warrants thus having been issued contrary to law the proceedings would be deemed to be at the stage of summons and the accused No. 2 having entered appearance at this stage cannot thus be denied the benefit of consideration for grant of relief under Section 205, Cr PC. This Court therefore holds that the proceedings in so far as accused No. 2 be concerned, rests at the stage of summons.

7. The primary consideration for grant of relief under Section 205, Cr PC, keeping in mind interest of opposite party No. 2, would be whether his interest would be prejudiced in any manner if the relief prayed for was granted. Learned Counsel for the opposite party No. 2 in reply to the query of the Court submitted that he had been subjected to unnecessary harassment by the petitioners and others and therefore they did not deserve benefits of Section 205, Cr PC.

8. This Court in the facts and circumstances of the case considers it apt to agree with the judgment relied upon by the Counsel for the petitioners reported in

1998(1) PLJR 503. A Division Bench of this Court while dealing with the issue of grant of relief under Section 205, Cr PC held that even in cases where warrants have been issued in the first instance the Court may dispense with the personal appearance in exercise of powers under Section 482 of the Code, if a proper case is made out for the ends of justice. The Division Bench further went on to hold that the exercise of power under Section 205, is discretionary and to be considered in a reasonable manner. No hard and fast rule could be laid down. The Court should be liberal in granting exemption in personal appearance except where serious issues or allegations of moral turpitude are involved. The nature of the allegation, conduct of the accused, inconvenience likely to be caused to the accused due to his appearance on every day in the Court the comparative advantage to the prosecution, are all relevant considerations for deciding the question of dispensing with the personal appearance. Though no categorization of cases for grant of relief under Section 205, Cr PC could be made but generally '....busy business people... should be given the benefit of the said provision unless they are facing prosecution under serious offences like murder, rape, misappropriation of money, harassment to women etc.' The fact that the petitioners are business people and reside at Delhi, while the trial is to be conducted at Patna are issues which have not been considered in the impugned order. More recently the Supreme Court in (2001) 7 SCC 401 while considering the issue of dispensing with personal attendance in a prosecution arising under the Negotiable Instruments Act, held that in appropriate cases the Magistrate can allow an accused to make even first appearance through the counsel. The law would enjoin that personal appearance of an accused could be dispensed with at any stage in a proceeding at the summon stage and that if insistence of his personal appearance would itself inflict enormous suffering or tribulation on him and the comparative advantage would be less. The discretion would need to be exercised where due to far distance at which the accused reside or carries on business, or for other good reason were dispensing from personal appearance would be in the interest of justice. These are all aspects which have to be considered for grant of relief under Section 205, Cr PC. This position in the law has been reiterated by a Bench of this Court in a judgment reported in 2002(3) PLJR 583, placing reliance upon the law as enunciated by the Apex Court in the judgment aforesaid. This is the position reiterated in 2002 (3) PLJR 628 by another

Bench of this Court.

9. In the background of the law as aforesaid with regard to the consideration of an application under Section 205, Cr PC this Court is inclined to hold that the impugned order dated 22.8.2000 is cryptic in nature. It does not reflect any consideration of the issues germane for grant of relief under Section 205, Cr PC. It is apparent that in the background that the impugned order does not take into consideration the issue relevant in law for consideration of an application under Section 205, Cr PC prejudice has been occasioned to the petitioners. In the circumstances of the case, this application therefore has to be allowed.

10. Cr. Misc. No. 19832/2000 and Cr. Misc No. 34712/2000, are therefore allowed. In so far as Cr. Misc. No. 29832/2000 is concerned, this Court, has held hereinabove, that the case stands at the summon stage in so far as the said petitioner is concerned.

11. The impugned order dated 22.8.2000 is therefore set aside. The matter is remanded to the Court below to consider the application under Section 205, Cr PC preferred on behalf of the petitioners afresh in accordance with law. The Court below shall hear the parties afresh after fixing the date for hearing and then proceed to pass appropriate orders in accordance with law.

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