

Gyanesh Kumar and Others Vs. State of U.P. and anr.

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Court : Allahabad

Decided On : Apr-01-2011

Judge : Shri Kant Tripathi, J.

Acts : Indian penal code (IPC) - Sections 498-A and 323; Dowry Prohibition Act ; Code of Criminal Procedure (CrPC) - Section 205, 407

Appeal No. : TRANSFER APPLICATION (CRIMINAL) No. - 144 of 2011

Appellant : Gyanesh Kumar and Others

Respondent : State of U.P. and anr.

Advocate for Def. : Govt. Advocate

Advocate for Pet/Ap. : Ganesh Dutt Sharma; Pankaj Sharma, Advs

Judgement :

1. This is a transfer application under section 407 of the Code of Criminal Procedure (in short "the Code") for transfer of Case Nos.197 of 2006 (State v Gyanesh Kumar & others), under sections 498-A and 323 IPC and of the Dowry Prohibition Act and 527 of 2007 (Smt. Santosh Kumari & others v Gyanesh Kumar) under section 125 of the Code of Criminal Procedure pending in the court of the learned Additional Civil Judge (Junior Division), Court No. 2, Etah to the court of Hathras or Aligarh.

2. Heard learned counsel for the applicants and the learned AGA for the State and perused the record.

3. The learned counsel for the applicants submitted that applicant are the residents of Nazafbgarh Delhi and are required to attend on each day in the court of the Judicial Magistrate/Additional Civil Judge, (Junior Division), Court No. 2, Etah. It is highly inconvenient for all the family members of the applicant to go to attend the court on every date, therefore, the case may be transferred to Hathras or Aligarh.

4. In such matters convenience of both the parties are to be considered, therefore, the transfer of the aforesaid cases from Etah to other district may cause inconvenience to respondent no. 2, therefore the transfer of the cases is not possible If the applicants have any difficulty in appearing personally before the court concerned, it is open to them to move appropriate application under section 205 of the Code for exemption from their personal attendances in the court.

4. The learned counsel for the applicants lastly submitted that some directions for considering the prayer of the applicants under section 205 of the Code may be issued to the learned trial court instead of transferring the aforesaid cases and this will serve the purpose behind the presentation of this transfer application.

5. Section 205 of the Code empowers a Magistrate to dispense with personal attendance of the accused in certain circumstances. Section 205 of the Code reads as follows:

205. 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.

In the case of *Bhaskar Industries Ltd v. Bhiwani Denim and Apparels Ltd.* [(2001) 7 SCC 401, the Apex Court has propounded the principles regarding the ambit

and scope of section 205 of the Code. Paragraph 19 of the judgement seems to be relevant, which is as follows:

19.....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 to 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.

The aforesaid principles have been followed with approval in the subsequent case of TGN Kumar v State of Kerala, (2011) 2 SCC 772. Paragraphs 8 & 10 of the judgement rendered in TGN Kumar (supra) case seem to be relevant, which are reproduced as follows: ...

8. The Section confers a discretion on the court to exempt an accused from personal appearance till such time his appearance is considered by the court to be not necessary during the trial. It is manifest from a plain reading of the provision that while considering an application under Section 205 of the Code, the Magistrate has to bear in mind the nature of the case as also the conduct of the person summoned. He shall examine whether any useful purpose would be served by requiring the personal attendance of the accused or whether the progress of the trial is likely to be hampered on account of his absence. (See: S.V. Muzumdar & Ors. v. Gujarat State Fertilizer Co. Ltd. & Anr.7) . Therefore, the satisfaction whether or not an accused deserves to be exempted from personal attendance has to be of the Magistrate, who is the master of the court in so far as the progress of the trial is concerned and none else.

.....

10. We respectfully concur with the above guidelines and while re-affirming 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...

6. Therefore, the Magistrate while considering an application under section 205 of the Code, has to see whether or not any useful purpose would be served by requiring the personal attendance of the accused in the court. He is further required to see whether or not the progress of the trial is likely to be hampered on account of absence of the accused. As held in the case of Bhaskar Industries (supra), the discretion under section 205 of the Code should be exercised in a judicious manner and the personal presence of the accused should be required only when the trial cannot proceed further without the presence of the accused. If the trial can be held conveniently in absence of the accused, it would be just and expedient to exercise the discretion in favour of the accused and dispense with his personal attendance in the court.

7. In view of the aforesaid, it will be open to the applicants to move an application under section 205 of the Code in Case No.197 of 2006 (State v Gyanesh Kumar & others), under sections 498-A and 323 IPC and of the Dowry Prohibition Act for dispensing with their personal attendance in the court. If any such application is moved, the same may be considered and disposed of in accordance with the observations made herein before.

8. However, I do not consider it proper to transfer the aforesaid case.

9. With the aforesaid observations, the transfer application is dismissed.

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