

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.44987 of 2015

Arising Out of PS. Case No.-484 Year-2015 Thana- NALANDA COMPLAINT CASE District-
Nalanda

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Manoj Kumar Son of Sri Sachchidanand Sinha, at present posted as Branch
Manager, Madhya Bihar Gramin Bank, Branch Office, Keshri Nagar, P.S.- Shastri
Nagar, Patna

... .. Petitioner/s

Versus

1. State Of Bihar
2. Nawal Kishore Sharma son of Late Ram Bachan Sharma, resident of- Kila
Garhpar, Biharsharif, P.S.- Biharsharif, District - Nalanda, at present posted as
Office Scale- II, Under Suspension, at Madhya Bihar Gramin Bank, Regional
Office, Bhabhua

... .. Opposite Party/s

=====

with

CRIMINAL MISCELLANEOUS No. 44861 of 2015

Arising Out of PS. Case No.484 Year-2015 Thana- NALANDA COMPLAINT CASE District-
Nalanda

=====

A.k. Bhatia @ Anil Kumar Bhatia @ A.k. Bhatiya Son of late S.C. Bhatia, at present
posted as Chairman, Madhya Bihar Gramin Bank, Head Office, Meena Plaza, South
of Museum, P.S.- Kotwali, Patna-1

. Petitioner/s

Versus

1. State Of Bihar
2. Nawal Kishore Sharma Son of late Ram Bachan Sharma, resident of -
Kila Garhpar, Biharsharif, District- Nalanda, at present posted as Officer Scale- II
Under Suspension, at Madhya Bihar Gramin Bank, Regional Office, Bhabhua

. Opposite Party/s

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Code of Criminal Procedure---section 205---Scope and Ambit---petition to quash order whereby 205 petition filed by Petitioners was rejected---*Findings*: though, the power conferred upon the Magistrate under section 205 of the Cr.P.C. is completely discretionary but the same must be exercised in proper and judicious manner and not arbitrarily--- presence of the accused in the court is not for making his attendance just for the sake of seeing him in court, it is to enable the court to proceed with the trial and if the progress of the trial can be achieved even in the absence of the accused the court can certainly taking into account the magnitude of the sufferings which a particular accused person may have to bear in order to make himself present in the court--- petitioner no-1 was the Chairman of the Madhya Bihar Gramin Bank having supervisory and controlling power over 675 branches of the bank and the petitioner no-2 was the Branch Manager posted at Keshri Nagar branch of the said bank and further, both the petitioners undertook in their petition that they would be represented by their respective counsels during the course of trial and the proceeding would not be hampered by them and they would follow all the necessary directions of the trial court--- as per the provision of sub section (2) of section 205 of the Cr.P.C., the Magistrate has ample power to direct an accused whose personal attendance has been dispensed with under sub section (1) of section 205 of the Cr.P.C. to appear in person if his personal attendance is required or he has misused the relief granted to him--- both the petitioners were holding key positions in the concerned bank during the relevant time and both have fair and clean antecedent--- order impugned does not appear to be just and proper and, accordingly, set aside--- petition allowed. **(Para-9, 10)**

(2001) 7 SCC 401

.....**Referred To.**

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District- Nalanda

Manoj Kumar Son of Sri Sachchidanand Sinha, at present posted as Branch Manager, Madhya Bihar Gramin Bank, Branch Office, Keshri Nagar, P.S.- Shastri Nagar, Patna

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Versus

- 1. State Of Bihar
- 2. Nawal Kishore Sharma son of Late Ram Bachan Sharma, resident of- Kila Garhpar, Biharsharif, P.S.- Biharsharif, District - Nalanda, at present posted as Office Scale- II, Under Suspension, at Madhya Bihar Gramin Bank, Regional Office, Bhabhua

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Versus

- 1. State Of Bihar
- 2. Nawal Kishore Sharma Son of late Ram Bachan Sharma, resident of - Kila Garhpar, Biharsharif, District- Nalanda, at present posted as Officer Scale- II Under Suspension, at Madhya Bihar Gramin Bank, Regional Office, Bhabhua.

... .. Opposite Party/s

Appearance :
(In CRIMINAL MISCELLANEOUS No. 44987 of 2015)
For the Petitioner/s : Mr. Suresh Prasad Singh, No.1, Adv.
Mrs. Kumari Rashmi, Adv.
For the State : Mr. Binod Kumar No.3, APP
For the O.P. No.2 : Mrs. Vaishnavi Singh, Adv. (in both cases)
(In CRIMINAL MISCELLANEOUS No. 44861 of 2015)
For the Petitioner/s : Mr. Mr. Suresh Prasad Singh, No.1, Adv.
Mrs. Kumari Rashmi, Adv.
For the State : Mr. Binod Kumar No.3, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH



ORAL ORDER

7 06-02-2025 As both the petitions have been filed against the same order dated 08.09.2015 passed in the Complaint Case No. 484 (C) of 2015 hence, they are being decided together by a common order.

2. Heard Mr. Suresh Prasad Singh, learned counsel for the petitioners, Mrs. Vaishnavi Singh, learned counsel for the O.P. No.2 and Mr. Binod Kumar No.3, learned APP for the State.

3. The petitioners, A.k. Bhatia @ Anil Kumar Bhatia @ A.k. Bhatiya and Manoj Kumar, who are accused in Complaint Case No. 484 (C) of 2015, jointly filed a petition under section 205 of the Code of Criminal Procedure (in short Cr.P.C.) with a prayer to dispense with them from their personal appearance and their prayer was rejected by the learned Magistrate vide order dated 08.09.2015 which has been challenged before this court in both the petitions.

4. Learned counsel for the petitioners submits that the petitioner A.k. Bhatia @ Anil Kumar Bhatia @ A.k. Bhatiya was the Chairman of the Madhya Bihar Gramin Bank when he filed a petition under section 205 of the Cr.P.C. and 675 branches of the said bank were under his supervision and he had to discharge supervisory, administrative and controlling function



upon all the said branches and it is very difficult for him to attend all the proceedings which would be done against him in the light of the cognizance of the alleged offences having been taken by the learned Magistrate in Complaint Case No. 484 (C) of 2015 on each and every date, so, considering his official position as well as trouble in appearing in person before the trial court, he filed a petition under section 205 of the Cr.P.C. which was rejected by the learned Magistrate without assigning any proper reason and it has been mentioned in the order impugned that no special reason was shown by the petitioner while sufficient special reasons were mentioned in his petition. It is further submitted that the petitioner, Manoj Kumar was Branch Manager of the Keshri Nagar branch of the said bank and he had to discharge his official work at the concerned branch and on account of nature of his official work, he was also having difficulty to attend the proceeding of the trial before the learned Magistrate in connection with the said complaint case on each and every date and the special reasons were also pointed out by him in the petition which was filed by him with co-accused, A.k. Bhatia @ Anil Kumar Bhatia @ A.k. Bhatiya, jointly.

5. It is further submitted by the petitioners' counsel that for allowing a prayer made under section 205 of the Cr.P.C.,



the mandatory requirement is issuance of summons, though, in this matter, other processes such as, bailable warrant or arrest warrant etc. were issued but within a short span of time all the processes were exhausted by the learned Magistrate, however, initially summons were issued regarding which there is no dispute and it has not been mentioned by the learned Magistrate that both the petitioners intentionally avoided their appearance at the initial stage of their case when summons were issued. It is further submitted that as per the provision of sub section (2) of section 205 of the Cr.P.C., the Magistrate has power to direct an accused to appear in person whenever he thinks that his personal attendance is necessary or he finds that the exemption of personal attendance granted to the accused, has been misused by him. In support of these submissions the learned counsel has placed reliance upon an order of this court passed in the case of *Rajesh Kumar Chaudhary @ Rajesh Chaudhary* (Cr. Misc. No. 15828 of 2010) and the relevant paragraphs upon which reliance has been placed are being reproduced as under:-

“7. Times without number the aforesaid controversy is being arisen before the learned lower court in a criminal proceeding regarding applicability of Section 205 of the Cr.P.C. in its true sense. Certainly, apart from Section 205 Cr.P.C., certain other provisions are also visualizing in Cr.P.C. by which physical presence



of accused is dispensed with such as 317 and other provisions governing the conduction of trial as well as invoking Revisional Jurisdiction. Presence of all these relevant sections did suggest that physical presence of accused on each and every date is not a sine-qua-non for conduction of proceeding and such should be dispensed with whenever the circumstances so necessitate. The scope of 205 of the Cr.P.C. has been taken into consideration repeatedly by the Hon'ble Apex Court as well as by this court and have seen it as a privilege like anodyne to interest of the accused having protected for harassment and inconvenience. However, at this stage, the gravity of the offence is also to be taken note of".

"9. After going through Section 205 of the Cr.P.C., it is evident that it has been bifurcated in two parts. The first part empowers the court to dispense with physical attendance of an accused whenever a prayer is made at the stage of issuing summon after recording reason. While second part bestows power upon the Magistrate to direct physical presence of accused if it so desires".

"10. As stated above, the first connotes word summon. Summon, warrant, attachment are steps to be followed by the Court for the purpose of securing presence. The scope of Section 205 of the Cr. P. C when warrant of arrest has been issued against the accused



*was taken into consideration in **Ram Harsh Das v. State of Bihar & Ors.** reported in 1998(1) PLJR 502 wherein at paragraph-48, it has been observed thus:-*

“ I am of the considered view that once the Magistrate has issued warrant at the first instance in a warrant case, the power under Section 205 of the Code cannot be exercised. However, I may state that even in such cases, this Court may dispense with the personal appearance in exercise of power under Section 482 of the Code if a proper case is made out for the ends of justice”.

6. On the contrary, learned counsel appearing for the O.P . No.2 has vehemently opposed both the petitions and submitted that there is possibility of misuse of the privilege, if the same is granted to the petitioners under section 205 of the Cr.P.C. and considering this aspect, the learned Magistrate has rightly rejected the prayer.

7. Though learned APP appearing for the State has also opposed both the petitions but fairly submitted that provision under sub section (2) of Section 205 of the Cr.P.C. clearly says that at any stage during the enquiry or trial, the Magistrate who has exercised his power under sub section (1) of section 205 of the Cr. P.C. can direct the personal attendance of



the accused if the same is necessary and the said provision may be exercised by the learned Magistrate.

8. Heard both the sides and perused the order impugned.

9. Though, the power conferred upon the Magistrate under section 205 of the Cr.P.C. is completely discretionary but the same must be exercised in proper and judicious manner and not arbitrarily. At first sight I would like to refer the judgement of the Hon'ble Apex Court in the case of **Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. & Ors** reported in **(2001) 7 SCC 401** in which the scope of section 205 of the Cr.P.C was interpreted by the Hon'ble court and it was observed that presence of the accused in the court is not for making his attendance just for the sake of seeing him in court, it is enable the court to proceed with the trial and if the progress of the trial can be achieved even in the absence of the accused the court can certainly taking into account the magnitude of the sufferings which a particular accused person may have to bear in order to make himself present in the court in that particular case and in appropriate cases, the Magistrate can allow the accused to make even the first appearance through a counsel. When the relief granted to an accused under section 205 (1) is misused or



otherwise his personal attendance is required at any stage of the trial then the power conferred upon the Magistrate under section 205(2) has also been interpreted by the Hon'ble Apex Court in the said judgement which is being reproduced as under:-

“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. Thus 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. 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”.

10. The instant matter is based on the complaint filed by the O.P. No.2 who had been suspended by the Disciplinary Authority of the bank before filing of the complaint to which both the petitioners related at the relevant time and holding important positions. It is mentioned in the impugned order that no special reason has been shown by the petitioners but this fact is not correct as it was mentioned in the application filed under section 205 of the Cr.P.C. that petitioner, A.k. Bhatia @ Anil Kumar Bhatia @ A.k. Bhatiya was the Chairman of the Madhya Bihar Gramin Bank having supervisory and controlling power over 675 branches of the bank and the petitioner Manoj Kumar was the Branch Manager posted at Keshri Nagar branch of the said bank and further, both the petitioners undertook in their petition that they would be represented by their respective counsels during the course of trial and the proceeding would not be hampered by them and they would follow all the necessary



directions of the trial court and further undertook that whenever their personal attendance would be required by the trial court, they would appear in person. Here, it is relevant to mention that as per the provision of sub section (2) of section 205 of the Cr.P.C., the Magistrate has ample power to direct an accused whose personal attendance has been dispensed with under sub section (1) of section 205 of the Cr.P.C. to appear in person if his personal attendance is required or he has misused the relief granted to him under sub section (1) of section 205 of the Cr.P.C. and both the petitioners were holding key positions in the concerned bank during the relevant time, though the petitioner A.K. Bhatia @ Anil Kumar Bhatia @ A. K. Bhatiya has now superannuated from service, however in the present time he has been assigned with an important job in Telangana State and the petitioner, Manoj Kumar is still in service, as stated by their counsel and both have fair and clean antecedent, further, they have taken the defence that the complainant (O.P. No.2) filed his complaint with revengeful attitude on account of departmental proceeding initiated against him by the bank, so, in such a situation, the order impugned rejecting the prayer of both the petitioners does not appear to be just and proper and the same shows that the learned Magistrate has passed the order



arbitrarily without considering the merit of the prayer of the petitioners. Accordingly, this court finds force in both the petitions and the order impugned is hereby set aside and both the petitioners are dispensed with, from their personal attendance before the concerned trial court in Complaint Case No. 484(C) of 2015. The petitioners shall appear in person when their personal attendance is required by the trial court and further, the trial court will have the power which is available to the trial court under sub section (2) of section 205 of the Cr.P.C and the same can be exercised at any stage if sufficient circumstance exists. Accordingly, both the petitions stand allowed.

(Shailendra Singh, J)

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