

IN THE HIGH COURT OF JUDICATURE AT PATNA

Mahabir Prasad Periwal & Anr.

vs.

The State of Bihar & Ors.

CRIMINAL WRIT JURISDICTION CASE No.109 of 2020

03 August, 2023

(Hon’ble Mr. Justice Anil Kumar Sinha)

Issue for Consideration

Whether the learned Special Judge (Vigilance), Muzaffarpur, erred in rejecting the petitioners' application under Section 205 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeking exemption from personal appearance on every date of the trial in a case pending for over 37 years, considering their advanced age, ailments, and the undue hardship of traveling from Kolkata to Muzaffarpur. (Paras 1, 5)

Headnotes

The High Court held that inordinate and unexplained delay of 37 years in a criminal trial, where charges have not even been framed, is a significant factor warranting the grant of exemption from personal appearance to aged accused persons facing undue hardship. (Paras 2, 7, 8, 11).

The Court ruled that the discretion under Section 205 Cr.P.C. must be exercised to subserve the ends of justice, balancing the nature of the offence with factors like the age, health, and residence of the accused, and the lack of progress in the trial. (Paras 5, 9, 11)

It was clarified that an exemption from personal appearance can be granted subject to stringent conditions, including filing an undertaking not to dispute identity, authorizing the counsel to represent them on all dates, and appearing physically when specifically required by the court, such as for framing of charge. (Para 13)

Case Law Cited

Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 (Para 9); Puneet Dalmia vs. Central Bureau of Investigation, (2020) 12 SCC 695: (Para 10); S.V. Muzumdar vs. Gujarat State Fertilizer Co. Ltd., 2005 (4) SCC 173 & Ravi Singh vs. The State of Bihar, 1979 BBCJ 437: (Para 3)

List of Acts

Code of Criminal Procedure, 1973 (Cr.P.C.); Prevention of Corruption Act, 1947; Indian Penal Code, 1860 (IPC)

List of Keywords

Exemption from Personal Appearance (Section 205 Cr.P.C.), Inordinate Delay in Trial, Undue Hardship, Advanced Age, Vigilance Case, Anticipatory Bail, Framing of Charge, Discretion of Court.

<b>Case Arising From</b>
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Appeal against the Order dated 28.11.2019 passed by the learned Special Judge (Vigilance), Muzaffarpur in Special Case No. 92 of 2002 (Arising out of Vigilance (Patna) P.S. Case No. 13 of 1983).

<b>Appearances for Parties</b>
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For the Petitioner/s:- Mr. Ankit Katriar, Advocate.

For the Respondent/s:- Mr. Prabhat Kumar Verma, Advocate and Mr. Anil Singh, Advocate (for the Vigilance Bureau).

Headnotes Prepared by Reporter: - Ms. Akanksha Malviya, Advocate

<b>Judgment/Order of the Hon'ble Patna High Court</b>
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**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.109 of 2020**

Arising Out of PS. Case No.-13 Year-1983 Thana- C.B.I CASE District- Muzaffarpur

1. MAHABIR PRASAD PERIWAL Son of Late Nagarmal Periwai Resident of Village - New Road, Alipore, P.S.- Alipore, Kolkata - 700001, West Bengal.
2. lakshmi Narayan Bihani Son of Late Gauri Shankar Bihani Resident of Village - 55/01, Lake Road, Sarat Bose Road, P.S.- Posta, Kolkata - 700001, West Bengal.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL, VIGILANCE BUREAU, CIRCULAR ROAD, PATNA Bihar
2. The Director General of Police, Department of Home, Government of Bihar, Patna. Bihar
3. The Senior Superintendent of Police, Muzaffarpur. Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr.Ankit Katriar
For the Respondent/s	:	Mr.Prabhat Kumar Verma Mr. Anil Singh

**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**  
**ORAL ORDER**

- 6      03-08-2023                      1. The present writ application has been filed for setting aside the order dated 28.11.2019 passed by learned Special Judge (Vigilance) Muzaffarpur in Special Case No. 92 / 2002 arising out of Vigilance (Patna) PS Case No. 13 / 1983 whereby the learned Judge has been pleased to reject the application filed by the petitioners under Section 205 of the Cr.P.C. for dispensing with their personal attendance in the Court on each and every date.
2. The background fact of the case is that the



petitioners are accused in a Vigilance Case instituted in the year 1983 bearing Vigilance (Patna) Case No. 13 / 1983 inter alia alleging that one Kunwar Singh (since deceased), the then Superintending Engineer, Building Construction Circle, Muzaffarpur Bihar placed sixty-three (63) orders for supply of G.I. pipes and HDPE pipes during the period from 09.08.1982 to 05.01.1983 to various supply companies at the DGS&D contract rates. During physical inspection it was found that the quantity purchased by the said Superintending Engineer was much below specification and were likely to get damaged during storage. It was further found that the procedures and norms of the department were not followed while placing the purchase orders and the then Superintending Engineer in connivance with the suppliers caused a pecuniary loss to the Government exchequer and pecuniary advantage to the suppliers. The petitioners are suppliers of the G.I. pipes. The petitioners were granted anticipatory bail on 30.11.1988 in ABP No. 921 of 1988. Charge sheet bearing no. 03 / 1989 was filed before the Special Judge Vigilance (North Bihar) on 15.03.1989 and by order dated 22.06.1989 cognizance was taken against the accused persons of the offences under Sections 5(2), 5 (i)(d) & 13(2)(i) (d) of the Prevention of Corruption Act and Section 120



(B) of the Indian Penal Code. The case was transferred from Patna to Muzaffarpur and due to non appearance of the petitioners the bail bond of the petitioners was cancelled on 23/06/2014 however the petitioners were granted bail on 09-06-2017 / 16-06-2017 with condition that they would remain physically present on each and every date. Thereafter the petitioners were physically present on various dates between 2017-19. In 2019 the petitioners filed a petition under Section 205 of Cr.P.C. before the learned Special Judge inter alia stating therein that police papers were furnished to the petitioners on 03-04-2018 but even after lapse of 37 long years, charges have not been framed in the matter. The petitioners are very old persons aged bout 79 and 83 years and have to take arduous journey from Kolkata for attending the Court at Muzaffarpur on the date of hearing. The petitioners have filed and undertaken to remain physically present as and when directed by the Court.

3. Learned counsel for the petitioner submits that despite lapse of 37 years and petitioners having physically present on various dates charges have not yet been framed. Both the petitioners are 79 years and 83 years of age as of today and are residing in Kolkatta. One of them is suffering from ailment having Bilateral Postural Tremor with Vascular Parkinsonium



and they have to travel from Kolkata to Muzaffarpur on each and every date just to show their presence without any progress in the case. Learned counsel further submits that petitioners undertake to be physically present on any such particular date and / or at the time of framing of charge as directed by the Special Court. The petitioners shall not question their identity and the evidences adduced in presence of their lawyer during the course of the trial and shall be present physically at the time of pronouncement of the judgment if personal appearance of the petitioners is dispensed during the course of the trial. Learned counsel relies upon the judgments of the Hon'ble Supreme Court reported in 2020 (12) SCC 695 *Puneet Dalmia versus Central Bureau of Investigation*, 2005 (4) SCC 173 *S.V. Muzumdar and others versus Gujarat State Fertilizer Co. Ltd. & another* and 1979 BBCJ 437 *Ravi Singh and another vs. The State of Bihar*.

4. Learned counsel for the Vigilance submits that charges against the petitioners are serious in nature involving financial misappropriation of Government fund to the tune of several lakhs of rupees as such the Special Judge has rightly rejected the prayer of the petitioners for grant of exemption from physical appearance. Section 205 Cr.P.C. is a discretionary



provision and the Court while exercising discretion under Section 205 Cr.P.C. has to take into account the nature of controversy besides that the Court has to consider whether progress of the trial is likely to be hampered on account of their absence.

5. I have heard learned counsel for the parties and perused the impugned order. The prayer of the petitioners for exempting them from personal appearance on each and every date of the trial filed under Section 205 Cr.P.C. has been rejected by the learned trial court taking into account the nature of offence committed by the petitioners. It is an admitted position that Vigilance (Patna) Case No. 13 of 1983 was instituted on 27-08-1983 under Sections 120B, 409 of the IPC read with Section 5 (2) & 5(1)(d) & 13(2)(i)(d) of the Prevention of Corruption Act 1947 against the petitioners and nine other suppliers including one Kunwar Singh the then Superintending Engineer, Building Construction Circle, Muzaffarpur (since deceased). The charge sheet was filed in 1989 and cognizance of the offences was taken by the trial court on 22.06.1989.

6. A report was called for by this Court vide its order dated 06-02-2020 regarding non framing of charges from the Special Judge (Vigilance), Muzaffarpur while granting interim



order in favour of the petitioners dispensing them with the personal appearance till further order. In pursuance thereof report was submitted by Special Judge (Vigilance), Muzaffarpur stating therein that Vigilance Case No. 13 / 1983 was received on transfer from the Special Judge (Vigilance) Patna on 19-02-2002 without case diary and appearance of all the accused persons was completed on 06-03-2018.

7. In the counter affidavit filed by Vigilance on 29-07-2023 it has been stated that the case is pending for framing of charge since 22/06/1989 and the Special Judge (Vigilance) Muzaffarpur vide its order dated 28.11.2019 had directed the Office to summon the case diary from the court of Special Judge (Vigilance) Patna. The net result is that charges have not been framed for the last 34 years. Some of the accused persons have been given benefit of Section 317 Cr.P.C. and the petitioners have stated that after grant of bail in 2017 the petitioners have been appearing in the court physically on each and every date as such it cannot be said that charges have not been framed due to delaying tactics of the petitioners.

8. It is also not disputed that the petitioners are aged about 79 years and 83 years and have been suffering from various disease including the old age complications and they





have to travel from Kolkata to Muzaffarpur spending not less than two days in attending the court on each and every date. The petitioners would be facing undue hardship in attending the court on each and every date.

9. In my opinion the principle for grant of exemption as observed by the Supreme Court in the Bhaskar Industries Ltd. Versus Bhiwani Denim & Apparels Ltd. reported in (2001) 7 SCC 401 can be made applicable in the facts and circumstances of the case. The Hon'ble Supreme Court in the aforesaid Bhaskar Industries judgment (Supra) has observed that the main concern of the court is administration of criminal justice and for that purpose the court proceedings should register progress. However, discretion to dispense with the personal attendance should be exercised in rare cases due to distance or any physical disability or other good reason. In the interest of justice where counsel representing the accused does not appear or co-operate in the trial resort can be had to Section 205 (2) of the Cr.P.C.

10. In Puneet Dalmia versus Central Bureau of Investigation, Hyderabad (2020) 12 SCC 695 the Hon'ble Supreme Court has also summarized the principle regarding the dispensation with personal appearance of accused and has



observed that hardship to the accused and interest of justice can be ground for granting dispensation with personal appearance of the accused on certain conditions and on filing an undertaking by the accused in order to achieve the interest of justice and conclusion of the trial at the earliest.

11. In view of the aforesaid discussion on facts and case laws in my considered opinion the petitioners have made out a case of exemption from their personal appearance in the trial court in the interest of justice.

12. Accordingly the impugned order dated 28/11/2019 passed by Special Judge (Vigilance), Muzaffarpur in Special Case No. 92 / 2002 arising out of Vigilance ( Patna) PS Case No. 13 / 1983 is set aside.

13. In the result the prayer of the petitioners to dispense with their personal appearance before the trial court on all dates of adjournment and permitting their counsel to appear on their behalf is allowed subject to the following conditions:

(i) that the petitioners shall file an undertaking to the trial court that they would not dispute their identity in the case and that their advocate would appear before the trial court on their behalf on each and every date of hearing and that they shall not object recording of evidence



in their absence and that no adjournment shall be sought for on behalf of the petitioners and / or their advocates.

(ii) that the petitioners shall appear before trial court for the purpose of framing of charges and also on other hearing dates whenever trial court insists for their appearance.

(iii) that if the trial court is of the opinion that the petitioners and / or their advocates are trying to delay the trial, in that case, it would be open for the trial court to exercise its powers under Section 205 (2) Cr.P.C. and direct the appearance of the petitioners on each and every date fixed in the case.

14. With the observation and direction this application is allowed.

**(Anil Kumar Sinha, J)**

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