

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33429 of 2017

Arising Out of PS. Case No.-2341 Year-2011 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Ramesh Kumar Dua, Son of Late Mool Chand Dua, at present Managing Director of Relaxo Footwears Limited, Plot Aggarwal City Square, Manglam Place, Plot No. 10, Sector- 3, Rohini, P.S. South Rohini, New Delhi.
 2. Mukand Lal Dua, aged 68 years, Son of Late Mool Chand Dua, at present Wholetime Director of Relaxo Footwears Limited, Aggarwal City Square, Manglam Place, Plot No. 10, Sector-3, Rohini, P.S.- South Rohini, New Delhi.
 3. Gaurav Dua, aged 36 years, Son of Ramesh Kumar Dua, at present Executive Vice President- Sales of Relaxo Footwears Limited, Aggarwal City Square, Manglam Place Plot NO. 10, Sector- 3, Rohini, P.S.- South Rohini, New Delhi.
 4. Ritesh Dua, aged 39 Years, Son of Mukand Lal Dua, at present Executive Vice President- Finance of Relaxo Footwears Limited, Aggarwal city Square, Manglam Place, Plot no. 10, Sector- 3, Rohini, P.S.- South Rohini, New Delhi.
 5. P.Sen Gupta, aged 67 years, Son of D.K. Sen, at present Assistant Vice President Sales of Relaxo Footwears Limited, Aggarwal City Square, Manglam Place, Plot No. 10, Sector- 3, Rohini, P.S.- South Rohini, New Delhi.
 6. Sushil Batra, aged 53 years, Son of Ramnath Batra, at present Chief Financial Officer of Relaxo Footwears, Limited, Aggarwal City Square, Manglam Place, Plot No 10, Sector- 3, Rohini, P.S.- South Rohini, New Delhi.

... .. Petitioner/s

Versus

1. State Of Bihar
2. Satyendra Kumar Singh, Son of Late Rajeshwar Prasad Singh, Resident of West Lohanipur, P.S. Kadam Kuan, District- Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Kaushal Kumar Jha, Sr. Advocate Mrs. Soni Shrivastava, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, Advocate
For the O.P. No.2	:	Mr. Sanjay Kumar Ghosarvey, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 22-12-2022



Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the opposite party no.2.

2. This application has been filed by the petitioners for quashing the order dated 27.03.2017 passed by the learned Judicial Magistrate, Patna in connection with Complaint Case No. 2341 (c)/2011 registered for the offences under Section 201, 465, 467, 468, 471, 477A, 120B and 34 of the Indian Penal Code whereby and whereunder the learned trial court has rejected the application filed by the petitioners under Section 205 of the Code of Criminal Procedure for dispensing with their personal appearance/ attendance in the aforesaid complaint case.

3. The case of the prosecution as per the complaint petition is that the complainant had earlier filed a complaint case being Complaint Case No. 242 (c) of 2007 against the petitioners no. 1 to 5 wherein the cognizance was taken under Sections 420 and 406 of the Indian Penal Code. It is further alleged that an anticipatory bail application was filed by the petitioners no. 1 to 5 vide A.B.P. No. 7063 of 2007 along with certain annexures. It is further alleged that on the basis of certain forged documents, such as, Prospective Customer's Proforma and customer ledger report, the petitioners were able



to get anticipatory bail in December, 2007. It is further alleged that the petitioners had filed false and forged documents of non-existing firms only with the intention to secure bail. It is further alleged that the petitioner nos. 1 to 5 had also filed a quashing application, against the said Complaint Case No. 2242 (c) of 2007, being Cr. Misc. No. 48839 of 2007 before this Court wherein the affidavit was sworn by the present petitioner no. 6 and in the said application again the said forged documents were filed which were filed in the said A.B.P. No. 7063 of 2007. It is also alleged that such forged documents were also filed before the Apex Court as well in SLP (Crl) No. 9371/2008. The cognizance has been taken by the learned trial court on 15.03.2016. Thereafter, a petition dated 20.09.2016 has been filed on behalf of the petitioners before the learned trial court for dispensing with their personal appearance/ attendance in the aforesaid complaint case, which was rejected by the learned trial court vide order dated 27.03.2017. Feeling aggrieved and dissatisfied with the aforesaid order dated 27.03.2017 passed by the learned trial court, the petitioners have preferred the present application.

4. It has been submitted by the learned senior counsel appearing on behalf of the petitioners that the petitioners are innocent and have not committed any crime. Neither any



specific role has been assigned nor any specific allegation has been levelled against the petitioners in any of the complaints filed by the complainant. The learned senior counsel has further submitted that the petitioners are admittedly high ranking officials of the Relaxo Footwear Limited, a company of world repute in its integrity and commitment. The petitioners are staying in New Delhi and on account of their job responsibilities, they have to regularly travel at different places in India and abroad for official work. Learned senior counsel has further submitted that the work of the petitioners would be badly affected and hampered if their appearance is not dispensed with and they are required to attend the court on regular basis. Learned senior counsel has further submitted that no useful purpose would be served if the petitioners are asked to attend the daily court proceedings. The petitioners are, however, ready to abide by the conditions imposed u/s 205 of Cr.P.C. Learned senior counsel has also submitted that the present complaint arises out of the earlier complaint case which is per-se false and would come within the realm of civil dispute between the opposite party no.2 and the company as well as its officials. Moreover, for using forged and fabricated documents in the courts of law, the said courts are competent to take action against the culprits and for the same, complaint petition of the



complainant would not be maintainable.

5. The learned counsel for the State as well as learned counsel appearing on behalf of the opposite party no.2 have opposed the submission made on behalf of the petitioners. The learned counsel for the opposite party no.2 has submitted that summons were issued to the petitioners for their appearance in the complaint case and instead of appearing in the case, the petitioners filed a petition under Section 205 of the Code of Criminal Procedure praying therein to dispense with from their personal appearance which was rejected vide order dated 27.03.2017 and the instant petition has been filed only when the non-bailable warrants were issued against the petitioners. The petitioners got the stay order from this Court on 22.09.2017, thereafter, slept over the matter and never tried to get their case to be heard or disposed of by this Court. The learned counsel has further submitted that this petition may be disposed of directing the learned trial court to dispose of the case within the specified time.

6. I have given my thoughtful consideration to the different aspects of the matter including the rival submissions made on behalf of the parties.

For better appreciation of the case, it is relevant to take note of the relevant legal provision, namely, Section 205 Cr.P.C.



and Section 317 Cr.P.C., which are reproduced hereinafter:

“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.

317. Provision for inquiries and trial being held in the absence of accused in certain cases.

(1) At any stage of an inquiry or trial under this Code, if the Judge or Magistrate is satisfied, for reasons to be recorded, that the personal attendance of the accused before the Court is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in Court, the Judge or Magistrate may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance



of such accused.

(2) If the accused in any such case is not represented by a pleader, or if the Judge or Magistrate considers his personal attendance necessary, he may, if he thinks fit and for reasons to be recorded by him, either adjourn such inquiry or trial, or order that the case of such accused be taken up or tried separately.

From the conjoint reading of both the provisions, it is manifest that personal attendance of the accused can be dispensed with either under Section 205 Cr.P.C. or Section 317 Cr.P.C. While Section 205 Cr.P.C. gives discretion to the court to exempt a person from personal appearance right from the stage of commencement of proceeding, Section 317 Cr.P.C. covers the stage after inquiry or trial. Thus, effectively, an accused could seek exemption from personal appearance right from initial stage including the first appearance after satisfying the court with proper and cogent reasons. Further, power under Section 205 Cr.P.C. is available to the Magistrate, however, the power under Section 317 Cr.P.C. can be exercised by both, the Magistrate as well as Sessions Judge.

Further, Section 273 Cr.P.C. provides as a general rule that all evidence in the course of trial shall be taken in presence of accused persons and the Code of Criminal Procedure has



provided certain provisions, like, 205 Cr.P.C. and 317 Cr.P.C. conferring discretion on the court to exempt an accused from personal appearance. It is further well settled that exemption from personal appearance is not available to an accused as a matter of right and is subject to discretion of the court to be exercised judiciously.

The Supreme Court in the case of *Puneet Dalmia [(2020) 12 SCC 695]* has granted exemption to the accused as the accused was residing at Delhi and the place of trial court was at Hyderabad and the accused was required to travel from Delhi to Hyderabad spending much time in commuting. Further, due to posting of the case on every Friday, the accused was facing undue hardship in meeting his business commitment in addition to continuous financial loss and, therefore, the long distance of accused residing from the place of trial itself was held to be a valid and reasonable ground along with disruption of business if daily appearance was insisted as the accused therein was a busy businessman. It would be relevant to quote paragraphs 5, 6 and 7 of the said judgment wherein another decision of the Supreme Court rendered in the cases of *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401* and *Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608* were also considered.



“5. Heard the learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the appellant is required to appear before the learned trial court on every Friday and the appellant as such is appearing before the learned trial court on each and every Friday since 2013. Nothing is on record that at any point of time the appellant has tried to delay the trial. The appellant is represented through his counsel. The appellant is a permanent resident of Delhi. He is the Director on the Boards of several companies. The distance between Delhi and Hyderabad is approximately 1500 km. Therefore, the appellant sought for exemption from personal appearance before the learned trial court on each and every Friday and submitted the application under Section 205 CrPC and submitted that on all dates of adjournments, his counsel Shri Bharadwaj Reddy shall appear and no adjournment shall be asked for on his behalf. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] and Rameshwar Yadav [Rameshwar Yadav v. State of Bihar, (2018) 4 SCC 608 : (2018) 2 SCC (Cri) 585] , this Court had the occasion to consider the scope and ambit of the application under Section 205 CrPC. In Bhaskar Industries Ltd. [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 : 2001 SCC (Cri) 1254] , this Court has observed that if a



court is satisfied that in the interest of justice the personal attendance of an accused before it need not be insisted on, then the court has the power to dispense with the attendance of the accused. It is further observed by this Court in the aforesaid decision that if a court feels that insisting on the personal attendance of an accused in a peculiar case would be too harsh on account of a variety of reasons, the court can grant relief to such an accused in the matter of facing the prosecution proceedings. It is observed and held by this Court in the aforesaid decision that the normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused, such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court.

6. In paras 14, 17, 18 and 19, this Court has observed [Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd., (2001) 7 SCC 401 and held as under :

“14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the



court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused the court can certainly take into account the magnitude of the sufferings which a particular accused person may have to bear with in order to make himself present in the court in that particular case.

17. Thus, in appropriate cases the Magistrate can allow an accused to make even the first appearance through a counsel. The Magistrate is empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused (provided he is represented by a counsel in that case) even for proceeding with the further steps in the case. However, one precaution which the court should take in such a situation is that the said benefit need be granted only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court



and that he has no objection in taking evidence in his absence. This precaution is necessary for the further progress of the proceedings including examination of the witnesses.

18. A question could legitimately be asked — what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not cooperate in proceeding with the case? We may point out that the legislature has taken care of such eventualities. 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.

19. The position, therefore, boils down to this : 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. We may reiterate that 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.”

7. It is true that in the aforesaid two cases before this Court, the offences alleged were less serious offences than alleged in the present case. However, the principles for grant of exemption as observed by this Court in Bhaskar Industries Ltd. can be made applicable to the facts of the case on hand also and the appellant can be granted the exemption on certain conditions and on filing an undertaking by the appellant, by which the interest of justice can be protected and grant of exemption may not ultimately affect the conclusion of the trial at the earliest. At this stage, it is required to be noted that nothing is on record that, at any point of time, any effort has been made by the appellant to stall/delay the trial. At this stage, it is required to be noted that in case of other two co-accused in cases arising of the same FIR, the applications for exemption on the very same



grounds have been allowed, one by the High Court and another by the learned trial court”.

7. In this case, the petitioners are officials of a Private Limited Company holding responsible posts and it is also a fact that they have been stationed in New Delhi and it would be difficult for them to join the trial in person on each and every date fixed in this case before the learned trial court. Moreover, the learned trial court has not given any reason as to why the presence of the petitioners in person was necessary. The concern of the criminal court should primarily be towards the administration of criminal justice. The presence of the accused in the court is just not for marking his attendance or for the sake of his appearance in the court. Ensuring the presence of the accused in the court is to enable it to proceed with the trial. If the progress of the trial can be achieved even in the absence of the accused, the court can certainly take into account the hardship and the suffering which an accused person might have to bear with in order to make himself present in the court in that particular case. The Supreme Court in the case of ***Bhaskar Industries Ltd. Vs. Bhiwani Denim & Aparels Ltd. and others reported in (2001) 7 SCC 401*** has enunciated this principle that no doubt discretion to dispense with the personal appearance should be exercised in rare cases but still it would be allowed to



those accused who could not come to the court due to distance or due to any physical infirmity.

The Supreme Court granted exemption from personal appearance in case of **Bhaskar Industries Ltd. (supra)** in which offences was under Section 138 of the Negotiable Instruments Act whereas in the case of **Puneet Dalmia (supra)** it was under more serious offences. Even then the Supreme Court proceeded on the aforesaid principles and allowed exemption from personal appearance to the appellant before it.

8. From the records, it appears that due to stay of further proceedings against the petitioners in connection with Complaint Case No. 23413 of 2011 before the learned Judicial Magistrate, Patna, obviously, the trial has not proceeded. The petitioners came before this Court for limited purpose assailing rejection of their application for exemption from personal appearance by the learned trial court.

9. Considering the period of institution of the complaint case before the learned trial court and also the period of vacation of stay on the proceeding, it could have been reasonably expected that the said period would have been utilized for final disposal of the matter before the learned trial court notwithstanding the Covid-19 pandemic.

10. In view of the aforesaid discussion and



considering the facts and circumstances, the present petition deserves to be allowed and is accordingly allowed. The impugned order dated 27.03.2017 passed by the learned Judicial Magistrate, Patna in connection with complaint case no. 2341 (c) of 2011 rejecting the application submitted by the petitioners under Section 205 Cr.P.C. is hereby quashed and set aside and consequently the application submitted by the petitioners to dispense with their appearance before the learned trial court on all dates of adjournments and permitting their counsel to appear on their behalf is hereby allowed with the following conditions :

(i) That the petitioners shall give an undertaking to the learned trial court that they would not dispute their identity in the case and that the Advocate who is permitted to represent the petitioners, would appear before the learned trial court on their behalf on each and every date of hearing and that they shall not object recording of the evidence in their absence and that no adjournment shall be asked for on behalf of the petitioners and/or their Advocate.

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

(iii) If there is any failure on the part of the Advocate,



who is to represent the petitioners, either to appear before the learned trial court on each adjournment and/or any adjournment is sought on behalf of the petitioners and/or if the learned trial court is of the opinion that the petitioners and/or their advocate is trying to delay the trial, in that case, it would be open for the learned trial court to exercise its powers under Section 205(2) CrPC and direct the appearance of the petitioners on each and every date of adjournment.

11. The learned trial court is further directed to take steps for early conclusion of the trial, preferably within a year from the date of receipt/production of a copy of this judgment.

12. Pending application, if any, stands disposed of.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
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