

High Court Of Judicature At Patna

Criminal Revision No. 650 of 2006

Judgment Date:

08-12-2006

Md. Naim @ Md. Naimuddin

..Petitioner

The State Of Bihar And Ors.

..Respondent

Bench:

{ HON'BLE JUSTICE NAVANITI PD. SINGH, J. ; }

Citation:

2007 (2) PLJR 260 ;

Navaniti Pd. Singh, J.

1. Heard. Present application is directed against the Trial Court's order dated 16.6.2006 by which the petitioner's prayer for exemption from personal appearance in terms of Section 205 Cr.P.C., has been rejected on the sole ground, that the prosecution is for an offence under Section 498A which is a warrant case, and, as such, the privilege under Section 205 Cr.P.C. cannot be extended.

2. To my mind, such an order is not sanctioned in law and shows the inability of the learned Magistrate to read the provision correctly. Section 205 Cr.P.C. is preconditioned on summons being issued at the first instance. Here, it is not disputed and is apparent from the impugned order itself, that summons were issued at the first instance. Summons for appearance predicates appearance through Lawyer or in person, it does not provide that a person has to appear in person. Therefore, it is simple that if pursuant to summons issued, a person to whom summons are issued appears through Lawyer, then compliance is complete and his appearance is valid. In such a case, no Court can then reject the appearance and direct that the persons summoned, must appear in person as by appearance through the lawyer, he has already submitted to the jurisdiction of the Court. He can now be taken into custody only, if, pursuant to his appearance and the bond executed for continuing to appear he defaults and not otherwise.

3. Even, otherwise, if a person is entitled to make an application under Section 205 Cr.P.C., then

it is the duty of the Court to consider the same on the merits.

4. This Court has repeatedly held that personal appearance of accused on every date has not to be insisted upon unless for some reasons or the other, personal appearance is essential or his absence is like to delay the trial. Recently, this court in the case of Manish Ghai vs. The State of Bihar Corrected vide Order dt. 17.1.2007 in Criminal Revision Nos. 543 of 2006 and 545 of 2006 disposed of on 23.11.2006 has held with reference to the judgment of the Apex Court and earlier judgment of this Court that where trial cannot be concluded expeditiously, it would be a punishment to direct a person to appear on each and every date personally. It serves no purpose. The law does not make distinction between men and women. In the present case, the petitioner is a poor daily wage earner. This Court has also pointed out the difference between the application of Section 205 Cr.P.C. and 317 Cr.P.C. in the aforesaid judgment.

5. In that view of the matter, I set aside this order and direct the trial Court that in view of the judgment of this court and the observations made herein, the application for dispensation from personal appearance be considered again, and appropriate order passed. This application, is, accordingly disposed of.

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