

Hari Narain Nigam Vs Sheetal Prasad and Others

Court: Allahabad High Court

Date of Decision: April 20, 1992

Acts Referred: Criminal Procedure Code, 1973 (CrPC) &" Section 251
Penal Code, 1860 (IPC) &" Section 500

Citation: (1992) 34 ACR 259

Hon'ble Judges: B.P. Singh, J

Bench: Single Bench

Advocate: A.D. Prabhakar and S.K. Suri, for the Appellant; S.A. Gilani, for the Respondent

Judgement

B.P. Singh, J.

This is an application for revision against the order dated 21st October, 1991 passed by the XII Addl. Chief Judicial

Magistrate, Meerut, in Criminal Sheetal Prasad v. Hari Narain Nigam Case No. 2015 of 1991.

2. Sheetal Prasad has filed a private criminal complaint against Hari Narain Nigam (Editor of the newspaper Hindustan Times). u/s 500 of the

Indian Penal Code. The said complaint (Criminal Complaint Case No. 4372 of 1988) was pending in the court of XII Additional Chief Judicial

Magistrate, Meerut. The accused had put in appearance and on 25-3-1991 the application of the accused for being exempted from personal

appearance was allowed and personal presence was dispensed with. It was ordered that the accused be represented through his pleader Mr. Puri.

3. Thereafter, the case proceeded and an application was again moved on behalf of the accused u/s 251 of the Code of Criminal Procedure

(hereinafter referred to as the Code) praying that his personal presence may be dispensed with and the substance of the charge or charges may be

explained to his counsel. This application of the accused was rejected on 21-10-1991. It is against this order that Hari Narain Nigam has come in

revision.

4. Shri S. A. Gilani has put in appearance for the complainant and has also filed a counter affidavit.

5. I have heard the learned Counsel for the Applicant, learned Counsel for the complainant and the learned A.G.A..

6. The main contention of the Applicant's counsel is that because of his job exigencies, the Applicant was not in a position to attend the hearing in

courts on all the dates which are fixed. It was also contended that the Applicant is also busy in day-to-day affairs of the publication of the

Hindustan Times, which is a national daily newspaper. On the other hand, the contention of the learned Counsel for the complainant is that the

order in question was an interlocutory order and no revision lay against the same.

7. It may be noted at the very outset that every order passed in a criminal case cannot be termed as interlocutory order in case it is not a final

order. There are orders which can be termed as intermediate orders because they are neither interlocutory nor final. In case an order finally

disposes of the plea of the accused which was available to him under the law, the order is an intermediate order and cannot be termed as

interlocutory order.

8. In the present case, the Applicant's personal presence was dispensed with and he was permitted to be represented by his counsel Shri Puri

during the course of the trial.

9. u/s 205 of the Code, the Magistrate is empowered to dispense with the personal attendance of an accused and in proper cases the Magistrate

can permit the accused to appear by his pleader. Of course, the Magistrate has also power in case he thinks it necessary to direct the personal

attendance of the accused.

10. Admittedly, the criminal case in question is being tried as a summons-case. Section 251 of the Code lays down that when in a summons- case

the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused shall be stated to him, and he shall be

asked whether he pleads guilty or has any defence to make, but it shall not be necessary to frame a formal charge. The question arises whether the

personal presence of the accused is necessary when the particulars of the offence in a case, which is being tried as a summons-case, are to be

stated "to the accused personally or this can be done through his counsel.

11. Section 252 of the Code provides that if the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used

by the accused and may in his discretion convict him thereon.

12. A bare reading of Sections 251 and 252 of the Code shows that it is not at all necessary for an accused to remain present personally in court

where the personal attendance of the accused has been dispensed with and he has been permitted to be represented by his pleader u/s 205 of the

Code. It has nowhere been provided that Section 251 is an exception to Section 205 of the Code once the court has exercised its power u/s 205

of the Code, its benefit should continue to be extended at the stage of Sections 251 and 252 of the Code. Of course, the Magistrate for reasons to

be recorded can direct the personal attendance of the accused, but there must be special reasons which may require the personal attendance of the

accused whose personal attendance has been dispensed with by the Magistrate u/s 205 of the Code. There may be cases where the counsel of

the accused is not in a position to advance a proper plea on behalf of his client and in those cases the Magistrate will be fully justified in directing

the personal attendance of the accused, but where the counsel is in a position to reply whether he pleads guilty or has any defence to make, there is

no justification for the Magistrate to insist on the personal attendance of the accused when u/s 205 a benefit has been given to the accused. In case

the allegations made against the accused are not of a serious nature, the Magistrate generally exercises the power u/s 205 of the Code liberally.

13. Thus, I am of the view that in a summons-case, the accused can be represented by his counsel when the Magistrate has to state the particulars

of the offence and the accused is required to answer if he pleads guilty or has any defence to make u/s 251 of the Code. In the present case, it is

not shown that the learned Counsel for the Applicant was not in a position to answer the court on the plea of guilty.

14. In this view of the matter, the application for revision is allowed. The order dated 21st October, 1991 is hereby set aside. The learned

Magistrate is directed to proceed u/s 251 of the Code and the accused may be represented by his counsel on the date which may be fixed for this

purpose by the learned Magistrate.