

(2011) 09 GAU CK 0055

Gauhati High Court

Case No: Criminal Revision Petition No. 366 of 2011

Bidhu Bhushan Dutta (Dr.)

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Sept. 26, 2011

Acts Referred:

- Criminal Procedure Code, 1973 - Section 205
- Criminal Procedure Code, 1973 (CrPC) - Section 205

Citation: (2012) 1 GLT 65

Hon'ble Judges: A.K.Goswami, J

Bench: Single Bench

Advocate: Advocate appeared for the Petitioner : Ms. M. Hazarika, Mr. M. Sarma, Ms. I. Gohain & Mr. P. Upadhyay., Advocate appeared for the Respondent: PP, Assam., Advocates appearing for Parties

Judgement

A.K. Goswami, J.

Heard Mrs. M. Hazarika, learned Sr. Counsel for the petitioner. Also heard Mr. B.S. Sinha, learned Addl. PP, Assam.

2. The present revision application is directed against an order dated 17.08.2011 passed by the learned Chief Judicial Magistrate, Kamrup, Guwahati in GR Case No. 622/11 whereby the application filed by the petitioner under Section 205 Cr.P.C. praying for exemption of his appearance was rejected. A perusal of the order dated 17.08.2011 would indicate that the petitioner had contended that identification of the petitioner for the conduct of trial is not at all required. It was also stated that he is a senior citizen, aged about 73 years, and is suffering from old age ailments and he will have to face considerable hardship in travelling to Guwahati from Shillong. The learned trial Court took a view that the present petitioner could not show sufficient reason for allowing his prayer for his representation under Section 205 Cr.P.C.

3. Mrs. Hazarika, learned Sr. counsel has drawn my attention to the order dated 13.06.2011 of the learned trial Court to submit that personal attendance in respect of three of the Directors of Vinay Cements Limited had been dispensed with by invoking the provisions of Section 205 Cr.P.C. Mrs. Hazarika has also submitted that the petitioner will not raise any question regarding identification. It has also been brought to my notice that the trial Court recorded a finding that the personal attendance of the said three persons would serve no useful purpose and there is no question of any identification of any particular accused. The said three persons are, however, from Kolkata and Gurgaon.

4. Mrs. Hazarika, learned Sr. counsel has also drawn my attention to the judgment of this Court in the case of Roitong Singpho Vs. Sajjan Kumar Agarwal (Goel), reported in 2009(1) GLT344, wherein this Court in paragraph 22 has held as follows:

"22. Whether an application under Section 205 Cr.P.C. praying for dispensation of the personal appearance and representation by the counsel is to be allowed or not depends on facts of each of the case. The Court, however, while dealing with such a prayer made under Section 205 Cr.P.C. has to consider as to whether any useful purpose would be served by requiring personal attendance of the accused or whether progress of the trial is likely to be hampered on account of absence of the accused person and also must keep in mind the gravity of the offence alleged. The Court while dealing with the application under Section 205 Cr.P.C., filed in a summons case, has also to consider as to whether the personal appearance may result in any enormous hardship to an accused and pass such order after taking an undertaking from such accused person that he/she would not dispute his/her identity as to the particular accused in the case, that a counsel on his/her behalf would be present in Court and he/she would have no objection in taking evidence in his/her absence. The main concern of the Court is administration of criminal justice and for that purpose the Court proceeding should register the progress. However, the Magistrate, who grants such benefit under Section 205 to an accused person must take precautions, as stated above. If progress of the trial can be achieved even in 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/herself present in the Court in that case. Such discretion, however, needs to 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 the accused person would suffer greatly if such prayer is not allowed. Such exercise of power has to be only in the interests of justice. The benefit under Section 205 Cr.P.C. can be given to the accused person even at a first appearance through counsel. (Bhaskar Industries Ltd. (supra) and S. V. Muzumdar (supra))."

5. The petitioner is also a Director of Vinay Cements Limited and is, otherwise, similarly situated with the three persons in respect of whom the learned trial Court

had exercised discretion by allowing their application under Section 205 Cr.P.C. The sole ground on which the application of the present petitioner came to be rejected was on the consideration that he is from the neighbouring State.

6. The above, no doubt, is a relevant consideration but even in such a case where the accused is not from a far flung place, certain consideration like age and physical condition of the accused also need to be taken into account.

7. Having agreed to the materials on record and considering the submission of Mr. Sinha, learned Addl. PP, Assam, that he does not seriously oppose the application, it is considered appropriate to set aside the order dated 17.08.2011 passed in GR Case No. 622/11 pending before the learned Chief Judicial Magistrate, Kamrup, Guwahati with a further direction that the petitioner be exempted from personal appearance in the aforesaid case and he be allowed to be represented by his counsel in the aforesaid case. Notwithstanding the aforesaid order, at the time of consideration of the charge, the presence of the petitioner will be required and his counsel will remain present at the time of recording of evidence and will not raise any question regarding personal identification.

8. With the aforesaid observations and directions, the revision petition stands disposed of.