

(2006) 11 PAT CK 0049

In the Patna High Court

Case No : Criminal Revision No. 478 of 2006

Joyakesh Podder @ Jai Prakash Podder and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205

Citation : (2007) 1 PLJR 324

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—This revision application is directed against order dated 17.5.2006 passed by Shri S.P. Mishra, Judicial Magistrate, 1st Class, Patna in Complaint Case No. 2059(C) of 2004 which is pending trial before him. By the said order, the learned Magistrate has rejected the prayer of the three petitioners for exemption from personal appearance which was made in terms of Section 205 of CrPC. A complaint was lodged, inter alia, alleging that the petitioners, who are of senior employees of Reliance Infocomm Limited, a service provider of mobile telephones, had given several mobile connections in name of different persons of the complainant's locality showing their addresses to be that of the complainant. Those persons are anti-social elements with whom the complainant had previous disputes. It is admitted in the complaint petition itself that each time, the complainant brought this wrong mailing address to the notice of Reliance Infocomm. Those connections were disconnected. It is submitted that in the order taking cognizance, it has wrongly been noticed that the connections were in the name of complainant which the complainant had not taken. It is further submitted that, admittedly, the complainant was not billed or put to any loss over the unauthorized or wrongful issuance of mobile telephone connection. Under the aforesaid circumstances, the petitioners who are of senior employees of Reliance, Infocomm Limited, two of whom are posted outside Patna and had

no hand in issuing the connection as the same is handled by separate set of dealers appointed by the Company. They sought exemption from personal appearance in terms of Section 205 of CrPC.

2. In their application, they have undertaken to appear when their personal presence is required by the Court. They have also undertaken that they would not take any objection as to their identity as to evidence being recorded in their absence.

3. In view of these undertakings and in view of the provisions of Section 205 of CrPC which is meant to avoid unnecessary harassment to accused persons till they are actually required by the Court for any specific purpose, I think it was appropriate for the Magistrate to have granted personal exemption. It must be kept in mind that repeated personal appearance of accused serve no cause of justice unless they are required. The accused are not likely to abscond. In case the Court finds that their presence is required or by virtue of being exempted u/s 205 of CrPC, they are unnecessarily trying to prolong the proceedings, the Magistrate has ample power to direct their personal presence to ensure that the proceedings are carried out quickly and smoothly and no advantage is taken by the exempted accused persons by virtue of their exemption u/s 205 of CrPC.

4. In the present case, the trial Court has merely said that this is a technical matter and at times Court requires a technical explanation which the lawyers are unable to give. I fail to appreciate as to how on every date, some technical objection would arise which the lawyer could not answer would proper. In a trial after charges are framed, it is prosecution that has to bring witnesses to establish its case. If there are any technical aspects, it is for the prosecution to explain the same. It is their witnesses those are to be examined. On such pleas, the privilege of Section 205 of CrPC cannot be withheld. In that view of the matter, the impugned order is set aside and this revision application is allowed permitting the petitioners the exemption u/s 205 of CrPC. The Magistrate will, however, be at liberty to direct the personal appearance of the petitioner if on any particular date, their personal appearance is essential for the purposes of trial. While doing so, the Magistrate will keep in mind the undertakings given by the petitioners and noted above.