

(2015) 04 JH CK 0093

In the Jharkhand High Court

Case No : Criminal Revision No. 493 of 2012

Shashi Bhushan Prasad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-04-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 313, 397, 401
Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 307, 406, 498-A

Citation : (2015) 3 AJR 616 : (2015) 2 Crimes 360 : (2016) 1 DMC 561 :
(2015) 2 JLJR 535

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : K.P. Deo, for the Appellant

Final Decision : Allowed

Judgement

Ravi Nath Verma, J.—The present Revision Application under Sections 397 and 401 of the Code of Criminal Procedure (hereinafter referred to as "the Code") has been preferred by the petitioner against the order dated 05.06.2012 passed by Shri Partho Sarthi Ghosh, learned Judicial Magistrate, Dhanbad in C.P. Case No. 1467 of 2010 whereby and whereunder the petition filed by the petitioner under Section 205 of the Code with a prayer to dispense with his personal appearance and also to allow him to be represented through his lawyer during trial, has been rejected. It appears that a complaint case was filed by the present opposite party No. 2 before the learned Chief Judicial Magistrate, Dhanbad against the petitioner and his family members and other relatives for alleged offence under Sections 498-A, 406, 307 I.P.C. and also under Sections 3/4 of the Dowry Prohibition Act on the allegation that the marriage of the complainant was solemnized with the petitioner in the year 2004 and after marriage, she went to the house of her sister-in-law at Patna and thereafter, she went to Gurgaon (Haryana) to live with her husband. At the time of marriage, though articles and cash amount were given in dowry but even then she was subjected to torture for

demand of dowry and a car at the hands of her husband, mother-in-law and father-in-law. In the year 2007, again the dowry demand was made from her father but due to non-fulfillment of their demand, her in-laws left her at her father's house. The ornaments and other belongings of the complainant are still lying with the petitioner and other accused persons. In the year 2010, again demand of dowry was made and threatening was given that if the demands are not fulfilled, they will perform second marriage of her husband with another girl.

2. It appears from the record that after enquiry, the learned Magistrate took cognizance of offence only against the petitioner under Section 498-A I.P.C. and directed to issue summon against him vide order dated 07.01.2011. After receiving the summon, petitioner filed an application under Section 205 of the Code before the court concerned stating therein that petitioner is a Tour Guide and resides at Gurgaon (Haryana) in connection with his job and from time-to-time, he has to tour outside the Gurgaon also with the delegates and he also resides at Delhi. As such, his personal appearance before the Court on each and every date may be dispensed with and if it is found necessary under the order of the Court, he would appear physically and for other routine matter, he may be permitted to be represented through his counsel. After giving proper opportunity to the other side and hearing both the parties, the court below rejected the prayer holding that after issuance of summons for appearance, the petitioner instead of putting his appearance, filed a petition under Section 205 of the Code and further held that the nature of the job of the petitioner requires an extensive traveling around different places and keeping in view of those facts, his prayer was rejected as his appearance is not secured, guaranteed and bound by sureties and bonds.

3. Mr. Deo, learned counsel appearing for the petitioner, submitted that it is well within the discretion of the Magistrate to grant exemption or dispense with the personal attendance of the accused as held by the Hon'ble Supreme Court in the case of M/s. Bhaskar Industries Ltd. Vs. M/s. Bhiwani Denim and Apparels Ltd. and Others, (2001) 6 AD 612 : AIR 2001 SC 3625 : (2001) CriLJ 4250 : (2001) 4 Crimes 199 : (2001) 7 JT 127 : (2001) 5 SCALE 503 : (2001) 7 SCC 401 : (2001) AIRSCW 3413 : (2001) 6 Supreme 339 , but while exercising the discretion, the Court has also to consider the inconvenience likely to be caused to the accused due to his appearance in the Court. Learned counsel further relying upon a case of Ram Harsh Das Vs. State of Bihar 1998 (1) All P.L.R. 498 (D.B.), submitted that the Court should consider the question of dispensing with the personal appearance in a reasonable manner but will not exercise such power in cases of serious nature including the offences involving moral turpitude.

4. Contrary to the above submissions, learned counsel appearing for opposite party No. 2, relying upon a case Feroza Khatoon and anr. Vs. State of Jharkhand (2003) (2) J.L.R. 502, submitted that in a similar case under Section 498-A I.P.C., the prayer was rejected holding that Section 205 Cr.P.C. can be used for dispensing with the personal appearance of the accused only in cases of trivial in

nature or petty offences in which at the first instance, the Court issues summon for appearance of the accused and further submitted that the present case is not of trivial in nature and in place of appearing before the Court concerned, the petitioner preferred this revision before this Court.

5. In the case at hand, the cognizance has been taken under Section 498-A I.P.C. and only summon has been issued against the petitioner. The petitioner, who is a Tour Guide, requires extensive traveling around different places. The petitioner, however, has stated in his petition that whenever his personal appearance would be required by the court, he will appear in person and only in routine matters, his counsel be allowed to represent him.

6. It appears that the prosecution has nowhere denied the factum that the petitioner is not a tour guide and travels from place to place alongwith delegates. In the circumstance, I feel that there should not have been any difficulty for the court below to dispense with the physical appearance of the petitioner.

7. Accordingly, I direct the petitioner to file an undertaking before court below that he will be physically present in court at the time of framing of charge, at the time of recording his statement under Section 313 of the Code and on the date of Judgment and on other dates, the petitioner would be represented by his counsel. Since there is no dispute with regard to the identity of the parties but at any time during course of trial, if the court below feels that the presence of the petitioner is required then for the reasons to be recorded by it, the court may direct the petitioner to remain in attendance and the petitioner, in such case, will appear in court. If there is any violation at the hands of the petitioner, the court shall be at liberty to proceed in accordance with law. The Criminal Revision Application is, hereby, allowed with the aforesaid observations and direction and the order impugned passed by the court below is, hereby, set aside.