

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(Cr.) No. 302 of 2023**

Rahul Gandhi ..... Petitioner  
Versus  
1. The State of Jharkhand.  
2. Pradip Modi ..... Respondents

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**CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner : Mr. Kaushik Sarkhel, Advocate.  
: Mr. Deepankar, Advocate.  
: Mr. Abhishek Singh, Advocate.  
For the State : Mr. M.K. Roy, G.A.-I.  
For the Resp. No. 2 : Mr. Sarvendra Kumar, Advocate.  
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**04/ 16.08.2023** Heard Mr. Kaushik Sarkhel, learned counsel appearing for the petitioner, Mr. M.K. Roy, learned G.A.-I for the State and Mr. Sarvendra Kumar, learned counsel appearing for the respondent No. 2.

2. This petition has been filed for quashing of the order dated 03.05.2023, passed in Miscellaneous Criminal Application No. 963 of 2023, in connection with MP/MLA Case No. 17 of 2021 (arising out of Complaint Case No. 1993 of 2019), whereby, the petition filed by the petitioner under Section 205 Cr.P.C. to dispense with the personal attendance has been rejected by the learned Judicial Magistrate, 1<sup>st</sup> Class, Ranchi. Further prayer is also made to exempt the petitioner from personal attendance in connection with the said case.

3. Mr. Sarkhel, learned counsel appearing for the petitioner submits that the petitioner is a sitting Member of Parliament and one of the leader of the Indian National Congress Party. He submits that the petitioner was addressing the *Parivartan Ulgulan Rally* on 02.03.2019 and in the said Rally he has taken the surname of 'Modi', as per the complaint petition, stating therein that all the 'Modis' are thieves and in that background, the complaint case has been filed and the learned court has been pleased to take cognizance against him under Section 500 of the Indian Penal Code. He further submits that the order taking cognizance has been challenged in Cr.M.P. No. 152 of 2020 and on the first date of hearing, i.e. on 27.02.2020, after issuing the notice, the interim protection was provided in favour of the petitioner, however, when the final argument was made, the said Cr.M.P. was dismissed by the judgment dated 05.07.2022. He further submits that the petitioner has not moved before the Hon'ble Supreme Court, challenging the order of the High Court dated 05.07.2022. He further submits that the petitioner is having a very busy

schedule of his Party's work and a lot of responsibility of the party depends upon the shoulder of the petitioner. He also submits that the petitioner filed a petition under Section 205 Cr.P.C., which was decided by the learned court and the said petition has been rejected. He further submits that the learned court, while rejecting the petition has considered that the petitioner has appeared at another place, where the identical case is being faced by him, that's why the case has been rejected by the learned court. He further submits that the petitioner undertakes that he will not dispute his identity as an accused in the present case and his counsel will appear before the learned trial court on his behalf and further the petitioner undertakes that he would never raise any objection, if evidences are taken in his absence. He submits that all these things has been disclosed in paras-15 and 17 of the writ petition.

4. On the above background, learned counsel appearing for the petitioner submits that the order of the learned court may kindly be set aside with any condition and the case is trivial in nature and the petitioner is not at a flight risk and to buttress his arguments, he relied in the case of *Puneet Dalmia Versus Central Bureau of Investigation, Hyderabad*, reported in (2020) 12 SCC 695. Relying on this judgment, he submits that even in the case being investigated by the CBI, the Hon'ble Supreme Court has allowed the petition, filed under Section 205 Cr.P.C. He submits that further the case of the petitioner is covered in view of the judgment of Hon'ble Supreme Court in the case of *Bhaskar Industries Ltd. Versus Bhiwani Denim & Apparels Ltd. & Ors.*, reported in (2001) 7 SCC 401. On this ground, he submits that the order of the learned court may kindly be set aside.

5. On the other hand, Mr. M.K. Roy, learned G.A.-I appearing for the respondent-State submits that Section 205 Cr.P.C. is the discretion of the learned court and the learned court has passed the order.

6. Mr. Sarvendra Kumar, learned counsel appearing for the respondent No. 2 submits that the petitioner has not appeared before the learned court as yet and frivolously he has filed the petition and the learned court has rightly rejected the petition, filed under Section 205 Cr.P.C. He submits that the petitioner has already been convicted by one of the court in the State of Gurajat and in view of that the learned court has rightly dismissed the said petition. He further submits that Section 205 Cr.P.C. petition can be allowed in exceptional circumstance, however, the petitioner has filed the said petition after three years in view of that

Section 205 Cr.P.C. petition has been rightly rejected. He further submits that the rejoinder to that petition was also filed before the learned court stating all these facts and considering that aspect of the matter, the learned court has rightly rejected the petition. He further submits that once the petitioner will appear, he is having the remedy under Section 317 Cr.P.C.

7. In view of the above, learned counsel appearing for the respondent No. 2 submits that the learned court has rightly rejected the petition.

8. In view of the above submissions of learned counsel appearing for the parties, the court has gone through the materials available on record and finds that admittedly the learned court has taken the cognizance against the petitioner under Section 500 of the Indian Penal Code and the petitioner moved before this Court in Cr.M.P. No. 152 of 2020 and by order dated 27.02.2020, interim protection was provided to the petitioner, however, subsequently, when the matter was finally heard by this court, the said Cr.M.P. was dismissed by the judgment dated 05.07.2022 and against that judgment, the petitioner has not moved before the Higher Court and in the meantime, the learned court has issued the summon against the petitioner for appearance and thereafter the petitioner has filed a petition under Section 205 Cr.P.C. for exemption from personal appearance in the trial, which has been rejected by the learned court on the ground that the High Court has already rejected the quashing application, filed by the petitioner and it has been noted that he has appeared in other places, where identical nature of case is going on and the learned court has also held that what is the extraordinary situation of not appearing before the learned court not explained and on that ground Section 205 petition has been rejected.

9. Section 205 Cr.P.C. was considered by the Hon'ble Supreme Court in the case of ***Bhaskar Industries Ltd. Versus Bhiwani Denim & Apparels Ltd. & Ors.***, reported in (2001) 7 SCC 401, where in Paras-18, 19 and 20, it has been held as follows:-

*“18. A question could legitimately be asked - what might happen if the counsel engaged by the accused (whose personal appearance is dispensed with) does not appear or that the counsel does not co-operate in proceeding with the case? We may point out that the legislature has taken care for such eventualities. Section 205(2) says that the magistrate can in his discretion direct the*

*personal attendance of the accused at any stage of the proceedings. The last limb of Section 317(1) confers a discretion on the magistrate to direct the personal attendance of the accused at any subsequent stage of the proceedings. He can even resort to other steps for enforcing such attendance.*

*19. The position, therefore, bogs down to this: It is within the powers of a magistrate and in his judicial discretion to dispense with the personal appearance of an accused either throughout or at any particular stage of such proceedings in a summons case, if the magistrate finds that insistence of his personal presence would itself inflict enormous suffering or tribulations to him, and the comparative advantage would be less. Such discretion need 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 dispensing with the personal attendance of the accused would only be in the interests of justice. However, the magistrate who grants such benefit to the accused must take the precautions enumerated above, as a matter of course. We may reiterate that when an accused makes an application to a magistrate through his duly authorised counsel praying for affording the benefit of his personal presence being dispensed with the magistrate can consider all aspects and pass appropriate orders thereon before proceeding further.*

*20. In the result, we allow this appeal and set aside the order passed by the Sessions Judge on 30.6.2000 (in Criminal Revision Petition 197/2000). However, this course is adopted without prejudice to the rights of the second accused to move a fresh application seeking relief under Section 317 of the Code. If any such application is filed the magistrate shall pass orders thereon before proceeding further in the light of the observations made in this judgment.”*

10. Section 205 of Cr.P.C. clearly speaks of that whenever a Magistrate issues a summons he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader. As per sub-section 2 of section 205 of Cr.P.C., the learned Magistrate inquiring into or trying the case may, in his discretion, at any

stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinafter provided. Thus the learned Magistrate has a discretion to dispense with the personal attendance of the accused and permit to appear by the pleader if sees no express reason to do so applicable to the extent that reason should be sufficient reason requirement of law is that the Magistrate sees the reason he may dispense with the personal attendance of the accused and at the same time he is having the power to enforce the accused to appear before the Court and measures prescribed in absence of complying the order the measures prescribed in the Cr.P.C. he can invoke.

11. There is no doubt that section 205 of Cr.P.C power is a discretionary power of the learned court however in the interest of justice and to avoid the unnecessary harassment upon the accused the learned court is further required to consider the said application in view of the several judgments which has been considered by this Court hereinabove.

12. In view of the above judgment of the Hon'ble Supreme Court, it is crystal clear that the learned court can allow an accused to make even the first appearance through a counsel. The learned court is also empowered to record the plea of the accused even when his counsel makes such plea on behalf of the accused in a case where the personal appearance of the accused is dispensed with. Section 317 Cr.P.C. of the Code has to be viewed in the above perspective as it empowers the court to dispense with the personal attendance of the accused, of course provided that he is represented by a counsel in that case even for proceeding with the further steps in the case. The exception is that the court should take in such a situation is that the said benefit only to an accused who gives an undertaking to the satisfaction of the court that he would not dispute his identity as the particular accused in the case, and that a counsel on his behalf would be present in court and that he has no objection in taking evidence in his absence and if conditions are fulfilled, the learned court proceeds including examination of the witnesses as has been held in that case.

13. *Bhaskar Industries Ltd. Case (Supra)* was further considering by the Hon'ble Supreme Court in the case of *Puneet Dalmia Versus Central Bureau of Investigation, Hyderabad*, reported in (2020) 12 SCC 695. In the case of *Puneet Dalmia*, serious allegations were there, however considering the hardship of the accused in that case, the Hon'ble Supreme Court thus granted the exemption to Puneet Dalmia considering

the case of *Bhaskar Industries Ltd. (Supra)* and further added by way of saying in para-6 of the said judgment and after that exemption was granted to Puneet Dalmia.

14. Thus, in view of the above ratio of the Hon'ble Supreme Court, the court comes to a conclusion that *prima facie* it appears that the petitioner is a sitting Member of Parliament and he is busy with other works including attending the Parliament Session. Further in para-15, the terms and condition for such exemption has been stated to be complied by the petitioner by way of filing the fresh affidavit before the learned court and in view of said statement, the trial will not hamper and the case will proceed and there is justification of allowing the said petition under Section 205 Cr.P.C.

15. Accordingly, the order dated 03.05.2023, passed in Miscellaneous Criminal Application No. 963 of 2023, in connection with MP / MLA Case No. 17 of 2021 (arising out of Complaint Case No. 1993 of 2019), whereby, the petition filed by the petitioner under Section 205 Cr.P.C. to dispense with the personal attendance has been rejected by the learned Judicial Magistrate, 1<sup>st</sup> Class, Ranchi, is hereby, set aside and consequently, the application submitted by the petitioner to dispense with the personal appearance before the learned court on all the dates and adjournment and permitting his counsel to appear on his behalf, is hereby, allowed on the following conditions:-

(i) The petitioner shall give an undertaking to the learned trial court that he will not dispute his identity in his case and that the name of the learned Advocate representing him before the learned court will be disclosed before the learned court and he will be permitted to represent the petitioner and would appear before the learned trial court on his behalf on each and every date of hearing and that he shall not object recording of evidence in his absence and no adjournment shall be asked on behalf of the petitioner or his Advocate who will represent the petitioner.

(ii) Considering that the case is summary in nature and the substance of explanation can be explained to the learned counsel appointed by the petitioner.

(iii) There will not be a failure on the part of the Advocate of the petitioner who will represent the petitioner either to appear before the learned court on each adjournment or any

adjournment sought on behalf of the petitioner and if the learned trial court comes to the conclusion that the petitioner or his advocate is trying to delay the trial in that case, it would be upon the learned court to exercise its power under Sub-Section 2 of section 205 Cr.P.C and direct the appearance of the petitioner on each and every date of adjournment.

(iv) The petitioner is directed to file a fresh petition on affidavit in light of the above directions before the learned trial court.

16. This petition is allowed and disposed of in above terms.

17. There is no doubt that the petitioner is a public figure and he is required to appear in the public with very caution and such loose word is not required to be used in such a manner by a person of stature like petitioner. This is only the opinion of the court and that observation is nothing to do with the merit of the case.

**(Sanjay Kumar Dwivedi, J.)**

*Amitesh/-*

*[A.F.R.]*