

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P. (Cr.) No. 417 of 2023**

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|--|------------------------|
| 1. Nawal Kumar Kanodia @ Nawal Kanodia       |                        |
| 2. Abhishek Kanodia @ Abhishek Kumar Kanodia | <b>... Petitioners</b> |
| <b>-Versus-</b>                              |                        |
| 1. The State of Jharkhand                    |                        |
| 2. Devanand Sharma                           | <b>... Respondents</b> |

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

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For the Petitioners	: Mr. Ajay Kumar Sah, Advocate
For the State	: Mr. Vineet Kumar Vashistha, S.P.P.
For Respondent No.2	: Mr. Anurag Kashyap, Advocate

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04 /01.11.2023      Heard Mr. Ajay Kumar Sah, learned counsel for the petitioners, Mr. Vineet Kumar Vashistha, learned counsel for the State and Mr. Anurag Kashyap, learned counsel for respondent no.2.

2.      Mr. Anurag Kashyap, learned counsel for respondent no.2 submits that since only the law points are involved in this petition and in view of that, this case can be heard on merit in absence of any counter affidavit of respondent no.2.

3.      This petition has been filed for quashing the order dated 08.08.2022 passed by the learned Chief Judicial Magistrate, Garhwa in connection with Complaint Case No.493 of 2019, whereby, the petition filed by the petitioners under Section 205 Cr.P.C. has been rejected.

4.      The complaint case was filed alleging therein the petitioners came to the office of the complainant (respondent no.2) at Garhwa in last week of October, 2012 and told that they are proprietors of Balmukund Sponge and Iron Limited and Balmukund Cement and Roofings Limited and their main office is at Kolkata. The petitioners stated that their cement asbestos sheets are not selling and they offered and requested the respondent no.2 to sell

Balmukund asbestos sheet in his market and help them in their business. It was further alleged that believing on that statement, respondent no.2 accepted their offer and Sharma Hardware Store upon making payment purchased asbestos sheet for Rs.23,90,412/- during financial year 2012-13 from Balmukund Sponge and Iron Limited and for Rs.63,96,252/- during financial year 2013-14 from and Balmukund Cement and Roofings Limited, totalling Rs.87,86,664/- in the said two years. The petitioners supplied damages asbestos sheets for Rs.22,50,000/- out of the aforesaid amount of Rs.87,86,664/- which were not saleable in the market. It was also alleged that thereafter respondent no.2 sent his employees to the office of the petitioners to meet them and told the said fact and they assured his employee to settle the breakage/damage sheet. Thereafter, the Sales Manager of the petitioners, namely, Chandan Kumar visited the Sharma Hardware Store of respondent no.2 and saw the damaged asbestos sheets and he said that the claim of respondent no.2 is correct and that he will speak to his employers i.e. the petitioners to get the claim of respondent no.2 of Rs.22.50 Lacs settled and paid. It was further alleged that after seeing no response from the petitioners, respondent no.2 himself went to the head office of Balmukund Sponge and Iron Limited, where, he met the aforesaid Sales Manager- Chandan Kumar and thereafter he met the petitioners and they assured respondent no.2 that his claim is correct and his damage will be settled and he should continue his business with them. It was also alleged that respondent no.2 met several times with the accused/petitioners for settlement of his claim with respect to damaged sheets, however, they refused to settle his claim and stopped talking to him. Respondent no.2 has alleged that the petitioners have deliberately and

fraudulently cheated him and by giving false assurance the petitioners have embezzled his Rs.22.50 Lacs and despite notice issued by him, the money was not paid in order to hurt the honour of the respondent no.2. Respondent no.2 also alleged that he went to Garhwa Police Station, but they did not act on his complaint and, therefore, the said complaint case was filed.

5. Mr. Sah, learned counsel for the petitioners submits that the matter is arising out of commercial dispute between the parties. He further submits that the allegations are made that cement asbestos sheets were sold by Balmukund Sponge and Iron Limited and Balmukund Cement and Roofings Private Limited in the year 2012-13 and 2013-14 respectively. He submits that however purported ante-dated manufactured letter dated 05.05.2018 has been relied upon by the respondent no.2, which has been addressed to the petitioners. He submits that for belated claim, if any, the complaint case has been filed for recovery. He further submits that the petitioners are not avoiding appearance before the learned Court. The petitioners have bonafidely filed a petition under Section 205 Cr.P.C. for dispensing with their personal appearance as they are busy with the work of the company. He also submits that the petitioners are ready to comply with any directions of this Court as well as the law laid down by the Hon'ble Supreme Court in the case of ***Bhaskar Industries Ltd. v. Bhiwani Denim and Apparels Ltd. and others***, reported in ***[(2001) 7 SCC 401]***. On these grounds, he submits that the impugned order may kindly be modified as the petitioners are ready to give undertaking before the Court that they will not hide their identity and on each and every date, the lawyer appointed by the petitioners shall appear before the learned Court.

6. Mr. Vashistha, learned counsel for the State submits that although the petition under Section 205 Cr.P.C. for dispensing with the personal appearance of the petitioners is there before the learned Court, however, such power is required to be exercised by the learned Court with circumspection. He submits that the case is arising out of warrant trial case and in view of that, the learned Court has rightly passed the impugned order.

7. Mr. Kashyap, learned counsel for respondent no.2 adopts the argument of the learned counsel for the State and he adds that there is allegation against the petitioners of misappropriating the fund of respondent no.2 and the learned Court has rightly passed the impugned order.

8. In view of the above submissions of the learned counsel for the parties, prima facie it appears that the case is arising out of commercial dispute and for that complaint case has been filed. There is no doubt that Section 205 Cr.P.C. petition is discretionary jurisdiction of the learned Court, however, at the same time, the said order is required to be considered in view of the fact that unnecessary harassment should not be there to the accused. The petitioners are higher officials of the company and they are engaged in several work of the company.

9. Recording of the evidence in presence of the accused is one of the requirement under the Cr.P.C. and if the progress of trial can be achieved even in the 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. This aspect of the matter has been considered by the Hon'ble Supreme Court in the case of *Bhaskar Industries Ltd. (supra)* at paragraph 14 of the said judgment, which reads as under:

*"14. The normal rule is that the evidence shall be taken in the presence of the accused. However, even in the absence of the accused such evidence can be taken but then his counsel must be present in the court, provided he has been granted exemption from attending the court. The concern of the criminal court should primarily be the administration of criminal justice. For that purpose the proceedings of the court in the case should register progress. Presence of the accused in the court is not for marking his attendance just for the sake of seeing him in the court. It is to enable the court to proceed with the trial. If the progress of the trial can be achieved even in the 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 present in the court in that particular case."*

10. The purpose of exemption under Section 205 Cr.P.C is that the order of the learned Magistrate should be such which does not make any unnecessary harassment to the accused and at the same time does not cause any prejudice to the complainant and the learned court is required to ensure that exemption from personal appearance granted to the accused is not an abuse or delay the trial.

11. In appropriate cases, the Courts are allowing the petitions under Section 205 Cr.P.C. In the case in hand, it appears that the petitioners are responsible persons of the company against whom allegations are made. This aspect of the matter was further considered by the Hon'ble Supreme Court in the case of ***Puneet Dalmia v. Central Bureau of Investigation, Hyderabad***, reported in ***[(2020) 12 SCC 695]***.

12. In view of the above facts and considering that the petitioners are ready to give undertaking that the trial will not hamper in their absence and in view of that, progress of trial can be achieved, accordingly, the impugned order dated 08.08.2022 passed by the learned Chief Judicial Magistrate, Garhwa in connection with Complaint Case No.493 of 2019 is set aside.

13. Consequently, the application submitted by the petitioners 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 petitioners shall give an undertaking to the learned Trial Court that they will not dispute their identity in the case and that the name of the learned Advocate representing them before the learned Court will be disclosed before the learned Court and he will be permitted to represent the petitioners and would appear before the learned Trial Court on their behalf on each and every date of hearing and that he shall not object recording of evidence in their absence and no adjournment shall be asked on behalf of the petitioners or their Advocate who will represent the petitioners;
- (ii) The petitioners shall appear before the learned Court for the purpose of substance or framing of charge as the case may be and also on the hearing dates whenever the learned Trial Court insists for their appearance;
- (iii) There will not be failure on the part of the Advocate of the petitioners who will represent the petitioners either to appear before the learned Court on each adjournment or any adjournment sought on behalf of the petitioners and if the learned Trial Court comes to the conclusion that the petitioners or their 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 petitioners on each and every date of adjournment; and

(iv) The petitioners are directed to file undertaking on affidavit in light of the above directions before the learned Trial Court forthwith.

14. Accordingly, this petition is allowed and disposed of.
15. Interim order, if any granted by this Court, is vacated.

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

*Ajay/ A.F.R.*