

Spl (A) Case No. 8/2023
CNR- WBBB01-000525-2023
JO-WB00702

Order No. & Date
12/ 05.12.2023

This day is fixed for hearing of a petition dated 07.10.2023 u/s 205 of Cr. P.C. and appearance of accused persons namely Prof. Bidyut Chakraborty, Mahua Banerjee, Dr. Tanmoy Nag and Prasanta Kumar Ghosh.

Out of 4 accused persons, the accused persons namely Mahua Banerjee, Dr. Tanmoy Nag and Prasanta Kumar Ghosh on Court bail are present by filing their respective hazirahs. Prof. Bidyut Chakraborty, accused no.1 did not render his appearance before this Court as ordered but he filed one supplementary affidavit in respect of a petition u/s 205 of Cr. P.C. along with the photo copy of the Aadhaar Card, medical prescription dated 13.10.2023.

Be it mentioned here that Prasanta Kumar Ghosh, another accused did not file any petition u/s 205 of Cr. P.C.

The defacto complainant namely Dr. Prashant Meshram is not present before this Court although he is represented by his Ld. Advocate, Ranjit Ganguly. Ld. Special P.P., Tapan Goswami is also present.

Now, the petition u/s 205 Cr. P.C. is taken up for hearing.

Heard Ld. Advocate for the accused persons at length. Heard Ld. Special P.P. and the Ld. Advocate appearing on behalf of the defacto complainant.

At the time of hearing, Ld. Advocate for the accused persons has contended that the accused persons above named were/ are the officials of Visva Bharati University and discharging their official duties of Central Government. Ld. advocate also submitted that the accused persons would be facing immense difficulty to come up before this Court on each and every date and on the basis of her contention, Ld. advocate prayed for exemption of their personal appearance. Ld. advocate has also undertaken that in any event their personal appearance would be dispensed with/exempted, they would not challenge their identity before this Court and remain present by their Ld. Advocate, Sucharita Biswas through out the proceeding and also in day to day proceeding. Ld. Advocate would

further submit that the said accused persons would appear before this court as and when called for.

Ld. Special P.P. raised strong objection against the instant petition and submitted that a heinous offence has been labelled against the accused persons above named and if they would not remain present before this court in further proceedings, the prosecution case would be prejudiced and accordingly prayed for rejection of the instant petition.

Ld. Advocate for the defacto complainant strenuously submitted that this is a case triable under the Special Act of SC & ST (POA) Act, 1989 and also submitted that only to avoid the court proceedings, the accused persons have filed the instant petition and accordingly prayed for rejection the prayer of the accused persons.

Heard the rival submissions of Ld. Advocates of both sides. Perused the petition along with entire materials on record.

This is a case u/s 500 IPC read with section 3 (1) (r)(u)(p)(s) of SC & ST (POA) Act, 1989. The legal position is clenched by now that the court in proper situation may dispensed with the personal appearance of the accused persons. It is now trite that any latter stage even at the first appearance before this Court; the power u/s 205 Cr. P.C. can be invoked (**Ramen Nayer vs State of Kerala, 1999 (3) KIT 714** even in **Rameswar Yadab vs State of Bihar (SC) 2018 (2) Crimes 24**, wherein the Hon'ble Supreme Court also reiterated the same principle while dealing a case u/s 205 of Cr. P.C.

Hence, this Court cannot venture to go beyond the observation of the Hon'ble Apex Court as it is binding on this Court as per Article 141 of our Constitution. The legal position is not ambiguous but it is very clear that now in an appropriate and proper situation, the personal appearance of the accused persons may be dispensed with.

In this case, the above named accused persons are the officials of Visva Bharati University and their appearance on day to day proceeding may cause hardship to them.

In the aforesaid circumstances, I would like to mention here that this is a case of Special Legislature under SC & ST (POA) Act. So, when the accused persons being the public servants have undertaken to appear before this court as and when required and they would not challenge their identity and they would be represented by

their Ld. Advocate namely Sucharita Biswas on day to day basis in this proceeding, I am of the considered opinion that if their personal appearance be dispensed with certain conditions i.e. to be personally present on the date of framing of charge, the date of examination u/s 313 of Cr. P.C. and the date of delivery of judgment and on any other date when their personal appearance/attendance would be considered necessary before this court.

Hence, the prayer of the accused persons namely Mahua Banerjee and Dr. Tanmoy Nag may be allowed conditionally as stated above. Accordingly, the petition u/s 205 Cr. P.C. is thus disposed of.

It is very pertinent to mention here that so far as the accused Prof. Bidyut Chakraborty is concerned, on this day he neither turned up before this court nor furnished any reliable, cogent document for his non-appearance only one supplementary affidavit has been filed on his behalf by the Ld. Advocate praying for dispensing his personal appearance on the ground stated therein.

Pursuant to the decision of our Hon'ble Apex Court reported in **Inder Mohan Goswami vs State of Uttaranchal (2007) 12 SCC 1 para (31- 32)** and the decision reported in **Satender Kumar Antil vs Central Bureau of Investigation and another (2022) live law (SC) 577** and also keeping in mind the order of the Hon'ble High Court dated 17.07.2023 and subsequent order dated 20.09.2023 in connection with **CRR 2599 of 2023** where the Hon'ble High Court was pleased to opine that no coercive measure shall be taken against the above named accused person. So, in view of the above circumstances, issue notice upon Prof. Bidyut Chakraborty, accused no.1 with a direction to appear before this Court on 19.01.2024 and the petition u/s 205 will be considered only on his appearance.

To 19.01.2024 for appearance of Prof. Bidyut Chakraborty and Prasanta Kumar Ghosh.

The copies which are lying with the record be supplied to the accused persons in compliance of provision of section 207 of Cr. P.C. and hearing of a petition u/s 22 of SC & ST (POA) Act. Objection, if any, in the mean time.

Dictated & Corrected.

Judge, Special Court under
Atrocity Act, 1st Court, Suri

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Atrocity Act, 1st Court, Suri.