

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**CR. REV. No.138 of 2006**

**Hiremagalur Parthsarthy Shamalah @ H.P.Shamala @ A.Shyamla  
D/O Parthasharthy Shamla, Deputy Commissioner, Navodaya  
Vidyalaya Samiti, Regional Office , 270 , Senapati Rapat Marg,  
Pune-16 ( Maharashtra). ----- Petitioner**

**Versus**

- 1. THE STATE OF BIHAR**
- 2. Pramod Kumar Singh, Son of Late Jitendra Singh, resident of  
Mohalla- Gajadharganj, P.S. Buxar, District-Buxar  
----- Opp.Parties.**

**-----  
WITH**

**CR. REV. No.140 of 2006**

**Kshitish Chandra Das @ K.C.Das Son of Late Gangadhar Das,  
Assistant Commissioner, Navodaya Vidyalaya Samiti, Regional  
Office,Nongrim Hills, Shillong ----- Petitioner**

**Versus**

- 1. THE STATE OF BIHAR**
- 2. Pramod Kumar Singh, Son of Late Jitendra Singh, resident of  
Mohalla- Gajadharganj, P.S. Buxar, District-Buxar  
----- Opp.Parties.**

**For the petitioners : M/S Y.V.Giri , Sr. Advocate, and  
Shailendra Kr.Singh ( in both cases).**

**For the State : (i) Mr.Jharkhandi Upadhaya, A.P.P.  
( Cr.Rev.138 of 2006)  
(ii) Mr. R.B.S. Pahepuri, A.P.P.  
Cr.Rev.No.140 of 2006)**

**For Opp.Party no.2: M/S Rajendra Pd. Singh, Sr. Advocate,and  
Alok Kumar Singh, Advocate (In both cases)**

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ORDER**

Both these cases were directed to be heard together with  
Cr.W.J.C.No.613 of 2007 since the two revision petitions arise out of  
the same Complaint Case No.1751(C) of 2005 and the writ petition  
arises out of Shri Krishnapuri P.S. Case No.82 of 2005 by one of the  
accused of the complaint case, namely, P.S. Kansal in respect of the  
same cause of action. . However, the two revisions were heard

on 22.10.2008, whereas the writ petition was heard separately on 10.12.2008 and in my opinion since the matter involved are not the same, I am of the opinion that the order in the writ petition is required to be passed independently and separate from the orders in the revisions. In the aforesaid circumstances while separate orders shall be passed in respect of Cr.W.J.C.No.613 of 2007, this order shall govern the two revisions which have been heard together on 22.10.2008.

The petitioner of Cr.Revision No.138 of 2006 and the petitioner of Cr.Revision No.140 of 2006, namely, Hiremagalur Parthsarthy Shamala @ H.P.Shamla @ A Shyamla and Kshitish Chandra Das @ K.C.Das respectively, both of whom along with others have been made to figure as accused in the aforesaid complaint petition, have by the two revisions prayed for the quashing of the order dated 18.1.2006 passed in the aforesaid complaint case by the learned Sub Divisional Judicial Magistrate, Patna, whereby their petition under Section 205 Cr.P.C. has been rejected.

The aforesaid complaint was filed by one Pramod Kumar Singh, impleaded as Opp.Party no.2 in both the revisions, inter alia alleging commission of overt acts by the twelve persons, all except one, being officials of Navodaya Vidyalaya Samiti, posted at various places, arrayed as accused. The allegation therein is that one Ashraf Ali, accused no.11, was illegally appointed as T.G.T. ( Sc.) at Jawahar Navodaya Vidyalaya, Bikram, Patna by remaining accused persons in connivance and in conspiracy with each other by means of

forgery and manufacturing documents and thereby making wrongful gain for themselves and causing wrongful loss to the government exchequer and also committing deceit and the appointment letter was allegedly under the forged signature of the Dy. Director, D.S. Singh. It is further alleged that the forged letter of appointment of Ashraf Ali was detected in 1998 by the Assistant Director, R.K. Sharma, who brought it to the notice of Shamsul Haque, Dy. Director, at the time of confirmation of service of appointed teachers who had completed two years of service, but the Dy. Director did not take any notice of the matter and issued orders for his confirmation with other teachers. It is further alleged that the issue of illegal appointment was raised time and again in the year 2000-2001 with Dr. Hazarika as the Dy. Director and K.C. Das as Assistant Director when seniority of T.G.T (Sc.) was under preparation. The matter was referred to the headquarter at New Delhi, wherefrom orders for terminating the services of Ashraf Ali after completing necessary formalities were issued but the Regional Office at Patna sat tight over the same. It is said that in the meantime, Dr. Hazarika got transferred and his successor H.P. Shamlal took over charge as Dy. Director. It is also said that in the meanwhile said Ashraf Ali got best teacher's award of 'Guru Ratna' with the blessings of the officials of the Regional Office and Headquarters at Delhi and the order of termination remained unattended. It is said that K.C. Das, the Assistant Director at the Regional Office, Patna, in connivance with others managed things and having obtained the consent of Shyama recommended the

regularization of illegal appointee Ashraf Ali. On the aforesaid premise, the allegation of the complainant is that all the accused persons including the two revisionists have committed offences under Sections 409, 420, 468, 471 and 120B I.P.C.

Assailing the impugned order, it has been submitted by the learned counsel for the revisionists that the two revisionists on receipt of summons appeared and filed petitions under Section 205 Cr.P.C. for dispensing with their personal appearance and to be represented through this counsels. The ground taken by Shyamla for dispensing with her personal appearance was that she was presently posted at Pune as Dy. Commissioner, Navodaya Vidyalaya Samiti , Regional Office and looks after three States of Maharashtra ,Goa and Gujrat and her nature of work being that of superintendence/inspection , she has to undertake several tours and visits to the institutions in those three States and in the circumstances it would not be possible for her to attend the court on each and every date. The ground taken by K.C. Das for dispensing with his personal appearance was that he was presently posted at Shillong as Assistant Commissioner , Navodaya Vidyalaya Samiti , Regional Office and looks after seven States of Assam, Manipur, Meghalaya, Sikkim , Arunachal Pradesh , Mizoram and Tripura and nature of duty being identical to that of Shyamla ,he was also required to undertake several tours and visits to the institutions of the seven States and in the circumstances, it was difficult for him to attend the court on each and every date. Both the petitioners had given undertaking to be personally present in the court

as and when so directed by the court. However, their difficulties did not impress upon the court who appears to have rejected their petitions on the twin grounds of cognizance having been taken and the offences being non-bailable.

By way of a supplementary affidavit filed in Cr.Revision No.138 of 2006 , it was sought to be impressed that co-accused Dr. Rakesh Kumar Sharma had filed Cr.W.J.C.No.115 of 2006 and by order dated 20.12.2006 a Bench of this Court quashed the aforesaid complaint case so far as the petitioner was concerned taking into account the fact that the allegation so far as the petitioner was concerned is false and concocted inasmuch as the said petitioner was never posted at Navodaya Vidyalaya prior to 2001 . The said order also took into account the fact that two other co-accused, namely, Parmatama Sharam Kansal and Man Mohan Swaroop Khanna had also succeeded in similar terms by filing Cr.W.J.C.No.587 of 2005 and Cr.W.J.C.No.31694 of 2006, disposed of on 6.12.2005 and 20.11.2006 respectively.

Opp.Party no.2 has appeared to contest the revision application and though no counter affidavit or show cause has been filed, oral submissions have been made to justify the impugned order rejecting the petition under Section 205 Cr.P.C.

The law is now well-settled in respect of petition under Section 205 Cr.P.C. and though the power is discretionary, the court has to consider whether any useful purpose would be served by requiring personal attendance of the accused or whether progress of

the trial is likely to be hampered on account of their absence . It is also the well-settled law that where the persons are busy executives who have to move at various places of the country , such matters when an undertaking to be present in court is given , should be given preference. In *Jayant Dang Vrs. State of Bihar* , reported in 2004 (4) PLJR 25 , it was held that the power under Section 205 Cr.P.C. is to be considered in a reasonable manner and no hard and fast rule could be laid down and at the same time the court should be liberal in granting exemption from personal appearance except where serious issues or allegations of moral turpitude are involved . Nature of allegation, conduct of accused, inconvenience in personal appearance are the relevant considerations for deciding the question of exemption of personal appearance and even after issuance of warrant the court may dispense with personal appearance in exercise of power under Section 482 Cr.P.C. if a proper case is made out for the ends of justice.

In the instant case, the revisionists are high officials posted at Pune and Shillong respectively while trial is to be conducted at Patna and the inconvenience caused to them by insisting upon their personal appearance in court on each and every date does not appear to have been considered in the impugned order rejecting the prayer for dispensing with personal appearance ,moreso when both of them have given undertaking to be physically present in court when so ordered by the court. Although the court has taken the view that cognizance has been taken and the offences alleged are non-bailable

those by themselves cannot be reasons for rejecting the prayer under Section 205 Cr.P.C.

In the facts and circumstances of the case, both the revisions are allowed and the impugned order rejecting the prayer of the two revisionists for dispensing with their personal appearance under Section 205 Cr.P.C. is hereby set aside.

As stated above, separate orders shall be pronounced in the writ petition.

( Abhijit Sinha, J )

**Patna High Court, Patna**  
**Dated : the 30<sup>th</sup> June, 2009**  
**Nawal Kishore Singh/ A.F.R.**

