

# **Bhagwan Das And Ors. vs State Through Badri Prasad on 4 March, 1953**

**Equivalent citations: AIR1953ALL630, AIR 1953 ALLAHABAD 630**

**Author: Raghubar Dayal**

**Bench: Raghubar Dayal**

## **JUDGMENT**

Mukerji, J.

1. These two applications have been made by certain persons who are standing their trial under Section 420, I. P. C. before a Magistrate at Bareilly. The applicants are residents of Orissa and they have a business office at Calcutta. They are the producers of certain vegetable products in the nature of vegetable ghee, etc. and the complainant entered into an agreement with them on which, according to his case, he was appointed a sole distributor of the products of the Company which is sponsored by the accused applicants, for the Uttar Pradesh and Delhi Province. According to the complainant he parted with a total sum of Rs. 25,000/- by way of security to the Company sponsored by the accused and that the accused used deception in getting this money from the complainant. The complainant wanted his money back but the accused have not so far refunded the money which they took under the pretext of its being a kind of security deposit.

2. On 14-8-1951, the accused moved an application, through counsel, in the Court of the Magistrate for being exempted from personal appearance on the dates of hearing of the complaint. On 27-8-1951, they moved another application before the learned Magistrate under the provisions of Section 250, Criminal P. C. for quashing the complaint and for award of compensation against the complainant. The two matters before us, namely, the one, which is a revision and the other which is a miscellaneous application under Section 561A, Cr. P. C. and under Arts. 226 and 227 of the Constitution, arise out of the two applications to which reference has just been made.

3. The application of 14-8-1951, which was for exemption of personal appearance, was rejected by the learned Magistrate by his order dated 31-8-1951. The learned Magistrate made an exceedingly short order in these words :

"The grounds of exemption are not sufficient. As this application, as the counsel says, has been presented on the instructions of the accused, he may be directed to produce all the accused on the next date. Case be put up on 20.9."

The other application, namely, the application of 27-8-1951, for the quashing of proceedings under Section 250, Criminal P. C. has not yet been decided by the learned Magistrate, at any rate counsel appearing on either side have not been able to state anything to the contrary.

4. An application in revision was preferred to the Sessions Judge from the order rejecting the prayer for the exemption of personal appearance and that revision was rejected by the learned Sessions Judge. Revision No. 1737 of 1951 is directed against that order of the learned Sessions Judge. As we have pointed out, the applicants are residents of the State of Orissa and normally reside in a place called Chatrapur in the District of Ganjam of that State. Their main business office is situated at Calcutta at 26 Jhautola Road, Calcutta. So that for them to come all the way from either Chatrapur or Calcutta to be present for the trial which is pending at Bareilly would, 'prima facie', be not only inconvenient but positively difficult. The law enjoins that an accused should be present during the course of the trial more to safeguard his interests than to cause him inconvenience. In a case where the accused himself applies to the court to be exempted from personal appearance, then a court should grant the request unless it is of opinion that in the interests of justice it is necessary that the accused should be present throughout the course of the trial, or unless there are some other good reasons for directing the presence of the accused throughout the course of the trial. Under the circumstances of this case, we are of the opinion that it would be a hardship for the accused to be present during the course of the trial in the Court of the Magistrate which may, for all we know, be a protracted and lengthy one.

5. In the circumstances, therefore, we direct that the learned Magistrate will exempt the personal appearance of the accused on such terms as he may consider fit. This order of ours does not, however, restrict the power of the Magistrate to direct the presence of the accused if he is of the opinion that such presence on some particular occasion may be necessary for a proper decision of the case. In the event of the Magistrate making any such direction in regard to the presence of the accused, the Magistrate will see that the case is taken up on that date and not adjourned to another date involving unnecessary waste of time and money for the accused.

6. In the result, we allow revision No. 1737 of 1951 in the above mentioned terms.

7. Miscellaneous Case No. 2508 of 1951 has been directed against the prayer which was made by the applicants by their application dated 27-8-1951, for the quashing of the criminal proceedings initiated on the complaint of the opposite party. As we have already pointed out, this application has not yet been disposed of by the learned Magistrate. We have no doubt that this application will come up before the Magistrate in due course when he will decide it in accordance with law. By the application to this Court the applicants wish us to exercise our inherent powers under Section 561 A, Cr. P. C. and the extraordinary powers conferred on us by Articles 226 and 227 of the Constitution. We are not inclined to exercise any of our powers under those sections for the simple reason that the matter has not yet been decided by the trial court.

The applicant has his remedy there and, as a matter of fact, he should seek that remedy in that court. The fact that the application has not been decided so long is not a good ground for our deciding it now, for the delay that has been caused has been, caused to a large extent by the fact that

the applicants themselves rushed up to this Court and had the proceedings in the court below stayed. We accordingly dismiss Miscellaneous Case No. 2508 of 1950 in the terms indicated above. The record of this case will be sent back to the Court of the Magistrate immediately so that he may be able to proceed with the trial of the case at an early date.