

(2003) 05 OHC CK 0006
In the Orissa High Court
Case No : CRLMC. No. 916 of 2003

Agro Service Center and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 12-05-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2005) 1 BC 308 : (2004) 1 OLR 137

Hon'ble Judges : A.S. Naidu, J

Bench : Single Bench

Advocate : Manoj Bihari Das and Associates, for the Appellant; Govt. Counsel for Opp. Party No. 1, for the Respondent

Judgement

A.S. Naidu, J.—Heard learned counsel for the petitioners and learned counsel for the State. This is an application u/s 482 of Cr.P.C., inter alia praying to quash the order dated 3.4.2003 passed by the learned S.D.J.M., Bhubaneswar in I.C.C. No. 30/2003.

2. Admittedly, a complaint case was filed against the petitioners and cognizance had been taken for commission of an offence u/s 138 of Negotiable Instrument Act. It is submitted that when the case was posted, an application u/s 205, Cr.P.C. was filed on behalf of the petitioners with a prayer to dispense with their personal attendance and permitting them to appear by their pleader. The said petition was rejected by the impugned order. The learned Court below relying upon a decision of the Hon''ble Supreme Court in the case of K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another, has arrived at a conclusion that the Court has a discretion u/s 205, Cr.P.C. and such discretion needs to be exercised in rare instances. But then, an offence u/s 138 of Negotiable Instrument Act is something distinctly separate from offences under other Acts. A case u/s 138 of N.I. Act can be effectually adjudicated even in the absence of the accused persons on the basis of documents available. This subtle difference was not kept

in mind by the Court below. In the case of Ramesh Chandra Lath v. State of Orissa reported in (1992) 5 OCR 97, this Court has clearly held that the personal attendance of the accused should not be insisted upon unless it is absolutely necessary in the proceeding.

3. In the case of Surojit Sen and Sanjaya Singh Vs. Sanatan Behera, , it has been held that power u/s 205(1) Cr.P.C. can be exercised not only at the stage of issuing summons but at a subsequent stage also, having regard to the facts and circumstances of the case the Magistrate should liberally allow an application u/s 205, Cr.P.C., if the personal attendance of the accused is not very much necessary. In the case of Durowelds Private Limited and Ors. v. The Tata Iron and Steel Company Limited (TISCO) 2002 OLR 765 reported in (2002) 23 OCR 846, this Court unambiguously expressed that it is within the province of the Magistrate and his judicial discretion to dispense with the personal attendance of an accused either throughout or at a particular stage of Criminal proceeding in a summons case. It has also been held that the offence u/s 138 of N.I. Act mostly depends on documentary evidence and presence of the accused is not very much necessary at all stages.

4. In view of the aforesaid authoritative pronouncements, I have no hesitation to set aside the impugned order and dispose of this case directing the Court below to permit the petitioners to be represented through their Advocate u/s 205. Cr.P.C. unless their presence is very much necessary for an effectual adjudication of the dispute.

5. Issue urgent certified copy.