
(2008) 03 OHC CK 0075
In the Orissa High Court

Annapurna Machinery and Electric Store APPELLANT
Vs
Gayatri Parida RESPONDENT

Date of Decision : 14-03-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 317, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2008) 4 BC 371

Hon'ble Judges : S.C. Parija, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.C. Parija, J.—This is an application u/s 482, Cr.P.C. filed by the petitioner assailing the Order dated 17.1.2008 passed by the learned S.D.J.M., Koraput in I.C.C. No. 80 of 2007, rejecting the petitioner's application u/s 205, Cr.P.C.

2. Opp. Party No. 1 (complainant) had filed complaint case bearing I.C.C. No. 80 of 2007 before the S.D.J.M., Koraput u/s 138 of the Negotiable Instrument Act (for short "N.I. Act") on the allegation that the petitioner in discharge of its debts had given her a cheque drawn on the State Bank of India, Berhampur. Opposite party No. 1 presented the said cheque to her Banker i.e. State Bank of India, Sunabeda, but the same was returned by the Bank with the intimation that the cheque has been dishonored for insufficient funds. After due Notice, opposite party No. 1 filed I.C.C. Case No. 80 of 2007 u/s 138 of the N.I. Act and the learned S.D.J.M. on taking cognizance, issued summons to the petitioner to appear before the Court on 17.12.2007. The case of the petitioner is that the petitioner appeared before the learned Magistrate on 17.12.2007 and filed an application u/s 205, Cr.P.C. for dispensing with his personal attendance and to allow him to appear through his Counsel. The said application of the petitioner has been rejected by the learned Magistrate vide Order dated 17.1.2008 by passing the following order:

This is a base u/s 138 of N.I. Act. The accused belongs to outside of this

jurisdiction. It reveals from Section 205(1), Cr.P.C. that the Magistrate has power to direct the accused to appear personally before this Court at any stage of proceedings. Further Section 317(1), Cr.P.C. also empowers the Advocate to represent himself on behalf of the accused before this Court at any stage of trial. Hence, the dispensation with the personal attendance of the accused before this Court viz. 205(1), Cr.P.C. is not applicable, in this stage of the proceeding. Accordingly, the petition u/s 205(1), Cr.P.C. is disposed of and the accused is directed to appear personally before this Court within 15 days of this order.

3. The petitioner has assailed the said order of the learned S.D.J.M. on the ground that the allegation against the petitioner being one u/s 138 of the N.I. Act, the learned Magistrate should not have rejected the petitioner's application u/s 205, Cr.P.C. In this regard the petitioner relies on a decision of this Court in the case of Agro Service Center and Another Vs. State of Orissa and Others, wherein this Court while discussing the scope and ambit of Section 205, Cr.P.C. has come to the conclusion that the power of the Magistrate u/s 205, Cr.P.C. is discretionary, but such discretion should be exercised judiciously and in the greater interest of justice.

4. The personal attendance of an accused should not be insisted upon unless it is absolutely necessary in the proceeding. In the instant case, the offence alleged against the petitioner being one u/s 138 of the N.I. Act, the same is distinctly separate from offences under the other Acts and a case u/s 138 of the N.I. Act can be effectually adjudicated even in the absence of the accused persons on the basis of documents available. This subtle difference has to be kept in mind by the Magistrate while deciding an application u/s 205, Cr.P.C.

5. In the case of Surojit Sen v. Sanatan Behera (1999) 17 OCR 473 this Court has held that the power u/s 205(1), Cr.P.C. can be exercised not only at the stage of issuing summon, but at a subsequent stage before having regard to the facts and circumstances of the case and 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.

6. In view of the reasons as aforesaid, the impugned order of the learned S.D.J.M., Koraput dated 17.1.2008, passed in I.C.C. No. 80 of 2007 is quashed and the petitioner is permitted to be represented through his Advocate u/s 205, Cr.P.C. and the petitioner shall appear before the learned Magistrate, as and when required during the trial of the case.

7. The CrI. Misc. Case is accordingly allowed.