

(2007) 03 OHC CK 0014
In the Orissa High Court
Case No : Criminal M.C. No. 2405 of 2006

Chintamani Dyan Samantray

APPELLANT

Vs

Triguna Tito Deb

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205
Penal Code, 1860 (IPC) — Section 500, 501, 502

Citation : (2007) CLT 486 (Suppl CrI)

Hon'ble Judges : R.N. Biswal, J

Bench : Single Bench

Advocate : Suvashish Pattanaik and N.K. Praharaj, for the Appellant; S.N. Mohapatra and K.R. Mohapatra, for the Respondent

Judgement

R.N. Biswal, J.—Even though the matter was listed to date for admission, on the request and consent of learned Counsel for both parties, it is taken up for final disposal.

2. Heard.

3. In this CRLMC the Petitioner, who is one of the accused in I.C.C. No. 3139 of 2005 pending before the Court of S.D.J.M., Bhubaneswar challenges the order dated 29.7.2006 wherein the learned S.D.J.M., rejected the petition u/s 205 of Code of Criminal Procedure on the ground that earlier a similar petition u/s 205 of Code of Criminal Procedure filed by the Petitioner had already been rejected by the said Court.

4. Learned Counsel for the Petitioner submits that the Petitioner is an ex-Speaker of Orissa Legislative Assembly and he being a political man remains busy in his constituency at Chikiti. If he is asked to attend the Court regularly at Bhubaneswar, then he would face much inconvenience. Earlier he had filed a petition u/s 205 of Code of Criminal Procedure which not being properly considered, was rejected even though the prayer of four co-accused persons was

allowed. As per his submission, the finding of the Court below that once a petition u/s 205 of Code of Criminal Procedure is rejected, subsequent similar petition cannot be entertained is per se illegal as held by this Court in the case of Debasis Samantaray Vs. State of Orissa and Another, . Perused the said judgment. At paragraph-7 of the judgment this Court held that even if an application u/s 205 of Code of Criminal Procedure had been rejected earlier, a similar petition can be filed at subsequent stage. So the finding of the learned trial Court as rightly submitted by the learned Counsel for the Petitioner is erroneous and as such, cannot stand.

5. There is no dispute that the Petitioner was ex-Speaker of Orissa Legislative Assembly. The offences alleged against the Petitioner are under Sections 500, 501(b) and 502(b) of I.P.C. on the accusation that at his instance some defamatory matters were published in the daily "The Samaj" and "The Samaya". Since the Petitioner was the ex-Speaker of Orissa Legislative Assembly, his presence in the Court is not likely to be required for identification. The major part of the evidence would consist of documentary evidence. Furthermore, the Petitioner would face much inconvenience, if he is asked to attend the Court of S.D.J.M., Bhubaneswar coming from Chikiti on each date of posting.

6. Under such circumstances, the petition is allowed and the personal attendance of the accused-Petitioner in the aforesaid case is dispensed with and he is permitted to appear before the Court by his lawyer. However, the accused-Petitioner may be noticed to appear before the Court at any stage if it is so required.

7. Accordingly the CRLMC is disposed of.