

(2025) 07 OHC CK 1284

In the Orissa High Court

Case No : Criminal Revision Petition No. 676 Of 2023

Dillip Kumar Biswal @ Dillip Biswal

APPELLANT

Vs

State Of Odisha Vs

RESPONDENT

Date of Decision : 11-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 205, 317, 397, 401, 438, 482
Indian Penal Code, 1860 — Section 34, 177, 182, 272, 273, 376, 417, 420, 506
Food Safety and Standards Act, 2006 — Section 56, 59, 89
Wildlife Protection Act, 1972 — Section 51
Prevention of Money Laundering Act, 2002 — Section 3, 4

Citation : (2025) 07 OHC CK 1284

Hon'ble Judges : Savitri Ratho, J

Bench : Single Bench

Advocate : Himanshu Sekhar Mishra, Samapika Mishra

Final Decision : Dismissed

Judgement

Savitri Ratho, J

1. This application under Sections 397, 401 of the Code of Criminal Procedure has been filed challenging the order dated 27.09.2023 passed in C.T. Case No. 60 of 2021 by the learned J.M.F.C, Chandikhol rejecting the application of the petitioners filed under Section 205 of Cr.P.C.

2. The petitioners have been charge sheeted in Badachana P.S. Case No. 10 of 2021 for commission of offences punishable under Sections 272, 273, 420, 34 of IPC and Section 56 of the Food Safety and Standards Act, 2006 along with co-accused Ramesh Biswal and cognizance of the offences under Sections 272, 273, 420, 34 of IPC against the petitioners and Section 56 of the Food Safety and Standards Act against the co-accused Ramesh Biswal has been taken on 26.10.2021 and summons has been issued to the petitioners.

PROSECUTION CASE

3. The prosecution allegations in brief are that on receiving reliable information about the adulteration of chili and tomato sauce in the manufacturing unit of the petitioners, which was being run by petitioner no.1, the informant proceeded to the spot along with his staff on 08.01.2021 and found that the main door of the room was locked from inside. After entering inside the house, he found huge quantity of chilli and tomato sauce kept inside the room along with stickers and also found pumpkin being boiled in a big aluminium container in a unhygienic condition and bad odour was coming from the room. On verification he found that one person who gave his identity as Ramesh Biswal was engaged in manufacture of sauce and on being questioned he stated that he has been engaged by the petitioner no.1 and that petitioner no.2 is the owner of the business and petitioner no.1 her husband is looking after the manufacturing unit. No technical certificate could be produced by him and he confessed that he was not trained and did not have any certificate. The informant did not find any raw tomato and chilli in the room and the co-accused Ramesh Biswal stated that sauce is being prepared in the room from pumpkin since the last three years and different colours and essence have been used for preparing the sauce and selling the same at cheaper rate in the market as compared to Kissan, Maggi etc. and the owner was fraudulently affixing logo and stickers and giving the impression to the public that the product is genuine and of a good brand.

4. After receipt of summons, the petitioners filed an application under Section 205 of Cr.P.C. before the learned Magistrate stating therein that they were businessman and engaged in business outside the State. One of them was a woman and the other was suffering from chronic diseases, for which they are unable to appear physically in the Court. The learned counsel for the complainant had objected to the petition stating that offences under Sections 272 and 273 of IPC are non-bailable in nature and triable by a Court of Session and in view of the nature of allegations against the petitioners, their presence was necessary for commitment of the case and during trial for identification. The learned JMFC Chandikhol, rejected the petition observing that personal appearance of the co-accused persons are necessary for committing of the case record and further appearance of the accused in the criminal case is the rule and exemption from appearance is an exception, which can be done in suitable cases. It was also observed that though it is stated that one of the co-accused person is a woman and other is suffering from chronic disease but in the petition it has been stated that they are businessman and engaged in business outside the State and that no medical document has been submitted showing that one of co-accused is suffering from chronic disease. The Court further held that it is a case of triable by Court of Session of the year 2021 and the appearance of the accused persons has been completed and rejected the application and in view the seriousness of the allegations.

5. I have heard Mr. Himanshu Sekhar Mishra, learned counsel for the petitioners and Ms. S. Mishra, learned Additional Standing Counsel and perused the impugned order and the orders passed in ABLAPL NO. 733 OF 2021 and CRLMC

NO. 805 OF 2021, which are available in the website of this Court.

SUBMISSIONS

6. Mr. Himanshu Sekhar Mishra, learned counsel for the petitioners has submitted that the proceedings against the petitioners are not maintainable in view of the decision of the Apex Court in the case of Ram Nath vs. The State of Uttar Pradesh & Others reported in 2024 INSC 138 for which he has filed CRLMC No. 4496 of 2023 with a prayer to quash the impugned order of cognizance dated 26.10.2021 and in the said case notice has been issued by this Court and further proceedings have been stayed. He has submitted that in view of the nature of allegations against the petitioners the necessity of identification may not be necessary for which their personal appearance should not be insisted upon. He has further submitted that the petitioner no.1 is suffering various chronic diseases, while petitioner no.2 is a woman and insisting on their personal appearance will result in prejudice to them. He has also submitted that even if their personal appearance is dispensed with, the petitioners undertake to appear in the Court below as when they are directed to do so by the Court.

7. Ms. S. Mishra, learned Addl. Standing Counsel for the State has vehemently opposed the submissions of the learned counsel for the petitioner, stating that the petitioners are allegedly involved in the heinous offence of adulteration of food articles and since the cognizance of offences under Sections 272 and 273 of IPC has been taken and against them and the offences are triable by a Court of Session and punishable with imprisonment for life, their application has been rightly rejected. She further submits that as the petitioners have claimed to be businessman, they can very well appear before the Court below and seeks for exemption under Section 317 Cr.P.C. on any particular date, it is not possible for them to appear in the Court. In support of her submission, that prayer for dispensing with the personal appearance should not been allowed in case of serious offences, she relies on the decision of the Supreme Court in the case of Lily Begum vs. Joy Chandra Nagbanshi reported in (1994) 2 Supreme Court Cases 39 and the decision of this Court in the case of Chintan Joshi vs. Niranjana Behera in CRLMC No. 2940 of 2022 decided on 11.04.2023.

8. CRLMC NO. 805 OF 2021 had been filed by the petitioners challenging the FIR. The same has been dismissed with the following order:

"Permitting the Petitioners to raise all the please, urged in the present petition before the trial Court at the appropriate stage, the petition is disposed of. The interim order passed earlier stands vacated.

2. The Superintendent of the concerned Branch is directed to communicate this order to the concerned Subordinate Court forthwith."

ABLAPL NO. 733 OF 2021 has been dismissed on 19.07.2021 by this Court on 19.07.2021 holding as follows:

..."4. Considering the fact that the Petitioners are indulged in adulteration of food

articles which endangers the health of the public in general, I am not inclined to enlarge the Petitioners on pre-arrest bail.

5. Accordingly, the prayer for pre-arrest bail of the Petitioners stands rejected and the ABLAPL is disposed of being dismissed.

6. The interim order dated 08.03.2021 passed by this Court shall stand vacated.”...

Thereafter CRLMC No. 4496 of 2023 has been filed by the petitioners challenging the order of cognizance dated 26.10.2021 where notice has been issued and further proceedings stayed and the case had been posted to 02.05.2024.

STATUTORY PROVISIONS

9. Sections 272 and 273 of the I.P.C. are reproduced below:

“272. Adulteration of food or drink intended for sale.-Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

273. Sale of noxious food or drink.- Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sections 56 and 59 of the F.S.S. Act is also reproduced below :

“56. Penalty for unhygienic or unsanitary processing or manufacturing of food.-

Any person who, whether by himself or by any other person on his behalf, manufactures or processes any article of food for human consumption under unhygienic or unsanitary conditions, shall be liable to a penalty which may extend to one lakh rupees.

59. Punishment for unsafe food.-

Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable-

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with

imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees."

The provisions of Section 205 of the Cr.P.C., are also reproduced below :

"Whenever a Magistrate issues a summons, he may, if he sees reason so to do, dispense with the personal attendance of the accused and permit him to appear by his pleader.

(2) But the Magistrate inquiring into or trying the case, may, in his discretion, at any stage of the proceedings, direct the personal attendance of the accused, and, if necessary, enforce such attendance in the manner hereinbefore provided."

JUDICIAL PRONOUNCEMENTS

10. In the case of Ram Nath (supra), the Supreme Court considered the interplay between the provisions of Chapter IX of the FSSA, 2006 and Sections - 272 and 273 of the I.P.C. The Court quashed the proceedings under Section- 272 and 273 holding that by virtue of Section - 89 of the FSSA, Section - 59 will override the provisions of Section 272 and 273 of the IPC and simultaneous prosecution under both the statutes is not permissible. Liberty was granted to the authorities to initiate appropriate proceedings in accordance with law if not already initiated and to act in accordance with the FSSA for offences punishable under Section - 59 of the FSSA.

11. In the case of Lily Begum (supra) the Supreme Court has held as follows:

"3. The respondent (accused) Joy Chandra Nagbanshi had filed a petition before the High Court for quashing the criminal proceedings initiated against him for offences punishable under Sections 376, 417 and 506 IPC. The High Court dismissed that petition but, however, it directed the trial court to dispense with the personal attendance of the respondent (accused) and to permit him to appear by his advocate. The relevant portion of the direction reads thus:

Mr. Roy, however states that the petitioner is a social worker and he is known to people of the village. He therefore prayed that he be allowed to be represented by his advocate on subsequent dates. I accept this prayer and direct the trial court to allow representation by his advocate if he is known to the people and no identification is required."

4. In our opinion, the reason given by the High Court to dispense with the

personal attendance of the respondent (accused) by invoking the powers under Section 205 of the Code of Criminal Procedure is untenable especially in a case of this nature, wherein serious allegations are made against the respondent (accused). If such a privilege, in our opinion, is given to an accused in a case of this nature, people will lose their confidence in the administration of justice. Hence we set aside that direction and direct the respondent to appear before the trial court on all hearings. In case, there is any extreme and exceptional circumstance brought to the satisfaction of the court that the accused is unable to appear before the court, the court may consider the request, if any, made by the respondent for dispensation of his personal attendance on any particular hearing, and pass appropriate orders. However, we make it clear that the respondent should make his appearance before the trial court on all the hearings when the material witnesses are examined. The appeal is allowed accordingly."

12. In the case of Chintan Joshi (supra), charge sheet had been submitted against the petitioner for commission of offences under Sections 177/182/420 of IPC read with Section 51 of the Wildlife Protection Act, 1972. As the Enforcement Directorate, Bhubaneswar found that the FIR and charge sheet submitted by the CID, CB made out a prima face case of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 (in short "PMLA Act") punishable under Section 4 of the Act. Accordingly, ECIR bearing No. ECIR/BBSZO/03/2018 was registered against the petitioner and investigation was taken up. In course of investigation, it was found that from proceeds of the crime of illegal possession and sale of Monitor Lizard hemi-penises, various articles had been procured by the petitioner and proceeds had been deposited in his bank accounts and the accounts of his proprietorship concern. A provisional attachment order was made and an original complaint has also been filed before the PMLA, New Delhi for confirmation of attachment of properties. The application under Section 205 Cr.P.C. had been filed seeking exemption from personal appearance and representation through his counsel on the ground that he is the only son of his old and ailing parents, who are undergoing treatment for various ailments and that he would not be prejudiced if the trial is conducted in his absence through his counsel. This was rejected by the trial court. This Court after discussing the nature of allegations against the petitioner and different decisions, dismissed the application under Section – 482 Cr.P.C. holding as follows:

"In the present case, the petitioner claims that he is the only son of his aged parents, who are ill and require constant attention. No document is filed in this regard. This Court finds that the petitioner is a relatively young man, aged about 38 years. He is a resident of Bhubaneswar and also has his business in Bhubaneswar. Therefore, attending the Court can by no stretch of imagination be treated as causing undue hardship on him. As already stated, the power under Section 205 is not meant to be used routinely but only when circumstances so demand."

ANALYSIS

13. Whether the order of cognizance should be quashed will be decided in CRLMC No.4496 of 2023. In view of pendency of the said CRLMC, in my opinion, it would not be proper for me to express any opinion on the maintainability of the proceeding or the cognizance order. My duty is to consider the correctness of the impugned order rejecting the application filed by the petitioners under Section - 205 of the Cr.P.C.

14. After a careful consideration of the nature of allegations against the petitioners, the different decisions, provisions of law, orders passed in ABLAPL No. 805 and CRLMC No. 733 of 2021, referred to above, I am of the opinion that in view of the rejection of the prayer of the application of the petitioners under Section - 438 Cr.P.C., and as some of the offences of which cognisance has been taken by the Court are triable by a Court of Sessions/ Special Court, I do not find any illegality in the impugned order , so as to interfere with the same.

15. The Criminal Revision is dismissed.

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