
(2009) 10 OHC CK 0021
In the Orissa High Court

Jitendra Kumar Mishra

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 28-10-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 273, 317, 401, 482

Citation : (2009) 2 OLR 901

Hon'ble Judges : C.R. Dash, J

Bench : Single Bench

Judgement

C.R. Dash, J.—It is submitted by learned Counsel for the petitioner that the defects pointed out have already been removed.

2. Learned Counsel for the petitioner prays to take up the case for admission. Mr. Mishra, learned Addl. Government has no objection. The matter is, therefore, taken up for admission and final disposal.

3. Order dated 18.8.2009 passed by the learned S.D.J.M., Bolangir on a petition u/s 205 Cr.P.C. filed by the present petitioner is impugned in this Revision.

4. It has been held by this Court in the case of K. Nageswar Senapati v. K.C. Panda and Ors. (1995) 79 CLT 25 that an order passed u/s 205 Cr.P.C. is an interlocutory order and is not revisable. In view of such fact the present Revision is not maintainable. Learned Counsel for the petitioner submits that without attaching importance to the nomenclature of the petition to be one u/s 401 Cr.P.C, the order impugned can be revised u/s 482 Cr.P.C. or he may be given liberty to convert the Revision to CRLMC u/s 482 Cr.P.C. It is well settled in law that in the guise of exercise of inherent power, revisional power which is otherwise not available to be exercised, should not be exercised. In view of such position no liberty as sought for can be granted to the petitioner. This Court in the case of Surojit Sen and Sanjaya Singh v. Sanatan Behera 1999 (II) OLR 361 has ruled that even if a petition u/s 205 Cr.P.C. has been rejected on earlier stage, such power can be exercised at a subsequent stage by invoking the

principles recognized in Sections 273 and 317 Cr.P.C.

5. In view of such position of law while dismissing this Revision as not maintainable, it is observed that if the petitioner files a petition u/s 205 Cr.P.C. giving better particulars to justify his entitlement, at the appropriate stage of the proceeding, learned S.D.J.M. may do well to dispose of the same in accordance with law.

6. Certified copy of this order be granted on proper application.