

(1985) 09 OHC CK 0022

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 101 of 1985

Jogendra Mohan Panda and Another

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 26-09-1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 205

Citation : (1985) 60 CLT 452 : (1985) 2 OLR 601

Hon'ble Judges : B.K. Behera, J

Bench : Single Bench

Advocate : P.V. Ramdas and N.C. Naik, for the Appellant; Indrajit Roy, Additional Government Advocate for Opp. party. No. 1, for the Respondent

Final Decision : Allowed

Judgement

B.K. Behera, J.—I have heard the learned counsel for the petitioners and the learned Additional Government Advocate. The complainant-opposite party No. 2 has not appeared in this Court.

2. The petitioners one of them being a Forest Ranger and the other being a Forester, who are deemed to be public servants within the meaning of Section 21 of the Indian Penal Code as provided in Section 78 of the Orissa Forest Act, 1972, seek exercise of inherent jurisdiction by this Court for quashing the criminal proceeding against them under Sections 147: 447: 323 and 379 of the Indian Penal Code.

3. The ground taken by Mr. Ramdas, appearing for the petitioners, is that sanction is necessary for their prosecution, as they have allegedly committed the offences while acting in the discharge of their official duties. The learned counsel for both the sides have, however, submitted at the time of hearing that the two petitioners are not such public servants who are not removable from their office save by or with the sanction of the Government, Section 197 of the Code of Criminal Procedure would apply - to the case of a public servant removable from

his office by the Government. The contention raised on behalf of the petitioners with regard to want of sanction cannot, therefore, prevail.

4. The learned counsel for the petitioners has submitted that the learned Sub divisional Judicial Magistrate has improperly rejected an application of the petitioners to appear through their counsel u/s 205 of the Code of Criminal Procedure. It would be noticed from the impugned order that without giving any reason therefor, the application has been rejected. This is highly improper. When an application is made u/s 205, it should be allowed or rejected with reasons. Justice must not only be done, but must also appear to have been done. There should be no arbitrary exercise of judicial discretion. The learned Additional Government Advocate has fairly submitted that the two petitioners may be allowed to be represented as provided in Section 205 and they shall appear in the Court in person for the purpose of identification or for other purposes when the Court requires their personal attendance. I would vacate the impugned order in this regard in the interest of justice and allow the application of the petitioners made u/s 205 of the Code of Criminal Procedure with a direction that they shall appear personally in the Court as and when called upon so to do.

5. The Criminal Miscellaneous Case is accordingly allowed in part.