
(1998) 02 OHC CK 0038

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 96 and 270 of 1998

Kamaljeet Singh Ahluwalia

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 19-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 205, 317, 482
Penal Code, 1860 (IPC) — Section 120B, 420

Citation : (1998) 1 ALT(Cri) 18 : (1998) 85 CLT 372 : (1998) CriLJ 2191 :
(1998) 3 RCR(Criminal) 463

Hon'ble Judges : P.G. Tripathy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

P.G. Tripathy, J.—Heard learned counsel for the petitioners, learned counsel for the informant the learned Addl. Standing Counsel.

2. These two petitions u/s 482 of the Code of Criminal Procedure, 1973 (in short, "the Code") have been filed challenging legality and correctness of the order dt. 3-11-1997 passed by the S.D.J.M., Bhubaneswar in G.R. Case No. 867 of 1997 and this common order will abide the result in both the Criminal Misc. cases.

3. Petitioners are accused in G.R. Case No. 867 of 1997 of the Court of S.D.J.M., Bhubaneswar. Cognizance of the offences Under Sections 420/120B, I.P.C. has been taken on the allegation of cheating to the tune of lakhs of rupees in connection with a mining dealing. On the basis of the information lodged by the complainant police investigated into the case and submitted charge-sheet against the petitioner Maitfi Shukla and on that basis on 13-5-1997 cognizance was taken. Complaint filed a protest petition in which an inquiry was conducted u/s 202 of the Code and vide order dated 21-8-1997 cognizance for the aforesaid offences was taken against both the petitioners. After taking cognizance, order was passed by the learned S.D.J.M. to "issue summons to both the accused" fixing 30-9-1997 for their appearance. Before the process could be issued,

complainant filed a petition to issue N.B.W.A. against the petitioners on various grounds including the ground that they may tamper with the evidence and that they would avoid to appear in the Court. When the petition was pending consideration, on 30-9-1997 both the petitioners entered appearance through counsel and filed petitions u/s 205 of the Code. Petitioner-Maitri Shukla had advanced the grounds of old age, ailment and treatment at Rourkela whereas petitioner-Kamaljeet Singh Ahluwalia had taken the stand of old age, ailment as well as staying at a distant place i.e. Barbil. Both the petitions were heard and rejected by learned S.D.J.M. vide the impugned order. Maitri Shukla's petition was rejected on the grounds that she is not a Paradanashin lady and having been shown to be a resident of Unit-III, Bhubaneswar the plea of residing and undertaking treatment at Rourkela gives rise to suspicion. Kamaljeet Singh Ahluwalia's petition was rejected on the grounds that plea of illness and stay at a distant place are not sufficient grounds. It was also observed by learned S.D.J.M. that keeping in view the nature of allegations, gravity of the offences and the principle of law in criminal trial relating to personal appearance, he was not inclined to allow, the petitions u/s 205 of the Code. The case was then posted to 17-12-1997, 3-1-1998 and 12-1-1998 directing for personal appearance of the petitioners and they sought for time on one ground or other. On 12-1-1998 adjournment was sought for on the ground that the petitioners have challenged correctness of the order dated 3-11-1997 in these two petitions. That ground was not treated as sufficient and order was passed to issue N.B.W.A. That is the whole background fact.

4. Learned counsel for the petitioners citing a series of decisions argues that the discretionary power to allow the representation was not considered judiciously and liberally and the S.D.J.M. rejected their prayer on flimsy grounds. He also argues that the complainant has no locus standi to contest this matter in view of the ratio in the case of Sudhakar Das v. Nirupama Mishra 62 (1986) CLT 445. Learned counsel for the complainant, on the other hand, supports the impugned order and argues that the petitioners are avoiding to appear in the Court, though in a criminal trial normal rule is regarding recording of evidence in presence of the accused. Learned Addl. Standing Counsel supporting the aforesaid contention of the complainant further contends that accused persons having applied for representation u/s 317, they cannot persue relief u/s 205 of the Code.

5. As regards locus standi of the complainant to participate in a proceeding of this nature petitioners strongly resist the same and rely upon the observation of this Court in the case of Sudhakar Dash (supra). In that case while disposing of a criminal revision at the stage of hearing on admission, though no contention was raised regarding competency of the complainant to appear and contest a matter relating to representation, Hon"ble single Judge felt it proper to dispose of the revision without issuing notice to the complainant on the ground that complainant has no right to say anything on the matter of representation and that it is a matter between the accused and the Magistrate. A similar view expressed by the Hon"ble Judge in the case of Raghunath Das and Others Vs.

Hari Mohan Pani, was referred to in the case of Ganesh Choudhury v. Harish Chandra Misra (1988) 14 OCR 305 and it was held by this Court that, the aforesaid principle stated is a mere observation and no ratio was propounded not to hear the complainant if he appears and prays to be heard.

6. Learned counsel for the petitioners argues that when petitioner-Maitri Shukla is a lady aged about 87 years and petitioner-K.S. Ahluwalia is residing at a distant place from Bhubaneswar, and the principle of law as propounded by this Court in the cases of Jogendra Mohan Panda and Another Vs. State and Another, ; Rudrapanki Dhurjati Devara v. Rama Chandra Subudhi (1988) 1 OCR 108; Jayakrishna Das v. State of Orissa (1988) 1 OCR 628; Hiramani Pattanaik v. Kumudini Devi 67 (1989) CLR 313; Ramesh Chandra Lath Vs. State of Orissa, ; K. Nageswar Senapati v. K.C. Panda (1995) 8 OCR 94; K. Narayan Patra Vs. Gopinath Sahu, ; Bikram Kumar Routray v. State of Orissa (1994) 7 OCR 721 : (1994) 2 OLR 537; Sudhakar Das (62) 1986 CLT 445 (supra); Raghunath Das and Others Vs. Hari Mohan Pani, and Ganesh Choudhury (1988 (14) OCR 305) (supra) clearly indicate the guideline that a petition u/s 205 of the Code should be considered liberally and exemption from personal appearance should be granted, learned S.D.J.M. is not justified in rejecting the petitions on the grounds assigned by him.

7. Relying on the case of Kama Prasad Rout v. Madan Mohan Das 60 (1990) CLT 456 and referring to many of the above citations the complainant argues that in a criminal trial personal appearance of the accused is the rule and grant of exemption from personal appearance is exception and keeping in view nature and gravity of the offence and the punishment prescribed, relief u/s 205 of the Code was rightly refused. He further argues that in connection with their business matter both the petitioners come to different offices and authorities at Bhubaneswar and other places and when the old age, ailment and place of residence at considerable distance does not create any problem for them, why they cannot appear in the Court to answer to the accusations levelled against them.

8. On a perusal of the case law referred to above it appears that this Court has taken a consistent view regarding the scope of Section 205 of the Code. It is readable from the aforesaid decisions that:-

i) personal appearance of the accused in a criminal trial is the normal rule and exempting from personal appearance is an exception which can be resorted to in suitable cases by due exercise of judicial discretion;

ii) when the alleged offence(s) involves moral turpitude, relates to grievous offences or prescribes considerable length of substantive sentences, the Court exercising the discretion shall take the total fact and circumstances into consideration and through a speaking and reasonable order exercise the discretion judiciously;

iii) no hard and fast rule or a strait-jacket "formula can be prescribed as to

where exemption shall be granted and when it is to be refused. It all depends upon the facts and attendant circumstances and the wisdom of the Court;

iv) when there is no prospect of quick disposal of the case, no question involves identity of the accused, direction for personal appearance may cause harassment as in the case of Paradanasini ladies, old, ailing or infirm persons or Government servants or business man, Court should consider their case keeping in view to the totality of all circumstances; and

v) a liberal construction of the provisions of law be made unless the converse is necessary in the interest of justice.

9. The lower Court has rejected the prayer of petitioner-Maitri Shukla on the ground that she being a resident of Bhubaneswar on her own showing, the place of stay at Rourkela gives rise to suspicion. In fact, in that connection, Maitri Shukla has not explained anything excepting stating that she was undertaking her treatment there. In a criminal trial, whereabouts of an accused and her place of abode cannot be lightly dealt with. Therefore, view expressed by learned S.D.J.M. cannot be regarded as unreasonable or improper when both the petitioners, as stated by the complainant and not disputed by the petitioners, are moving to different offices and authorities including such offices and authorities at Bhubaneswar, the ground advanced for exemption u/s 205 of the Code. This Court should not interfere with the order as the same is a reasonable view which that Court has taken. Apart from that, at later stage in the trial, petitioners may apply for exempting from personal appearance as provided u/s 317 of the Code.

10. Contention of learned Addl. Standing Counsel that after filing petitions u/s 317 of the Code, petitioners cannot resort to Section 205 stage is of no relevance in this case inasmuch as such petitions u/s 317 were rejected as premature.

11. In view of the aforesaid discussions and findings there is nothing to interfere with the impugned order by invoking inherent power u/s 482 of the Code. Accordingly both the criminal misc. cases are dismissed at admission stage. It is seen from the certified copy of the orders passed in the complaint case that learned S.D.J.M. has issued non-bailable warrant of arrests for default in appearance of the petitioners. It need not be construed as wilful default inasmuch as both of them approached this Court to get the relief of exemption from personal appearance. Hence, keeping in view submission of the petitioners, it is observed that in the event the petitioners will surrender in the Court of S.D.J.M. within a period of six weeks from today and apply for bail, that shall be disposed of on merit and in accordance with law during the course of the day and without taking note of the abovesaid conduct of default in appearance. Till expiry of the period of above six weeks the N.B.W.A. shall remain stayed.

12. Hence, both the criminal misc. cases are dismissed with the aforesaid observations.