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**(2016) 01 OHC CK 0046**  
**In the Orissa High Court**  
**Case No : CRLMC No. 5016 of 2015**

Sk. Imtiaz Ali

APPELLANT

Vs

State of Odisha and Others

RESPONDENT

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**Date of Decision :** 18-01-2016

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 205

**Citation :** (2016) 1 OriLR 513

**Hon'ble Judges :** B.K. Nayak, J.

**Bench :** Single Bench

**Final Decision :** Disposed off

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## Judgement

B.K. Nayak, J.—1. Heard learned Counsel for the petitioner and learned Additional Standing Counsel. In this CRLMC application, learned Counsel for the petitioner challenges the order dated 02.12.2015 passed by the learned S.D.J.M., Bhadrak in I.C.C. Case No. 300 of 2015 rejecting the petitioner's application filed under Section 205 Cr.P.C.

2. Mr. Das, learned Senior Counsel for the petitioner submits that the petitioner is working under CESU at Cuttack and it is not possible on his part to attend the trial court on each and every date and besides that the offences are very minor in nature. The impugned order reveals that though in the petition it was stated that the petitioner was a Government servant, no material was produced before the learned S.D.J.M., Bhadrak for which the learned S.D.J.M. stated in the order that no plausible and reasonable evidence was produced by the petitioner to substantiate his prayer to dispense with his personal attendance.

3. It is trite that personal appearance of an accused in a criminal trial is the rule and exemption from personal appearance is the exception, which can be resorted to in a suitable case in exercise of sound judicial discretion. But where the offence involved is grievous in nature prescribing considerable length of substantial sentence, the Court while exercising discretion shall take into

consideration the totality of the circumstances of the case. Whether the discretion should be exercised or not, no hard and fast rule can be prescribed. However, power can be liberally exercised in favour of Purdanashin ladies, old, infirm persons and busy public functionaries depending on the nature and gravity of the offence.

4. Considering the grounds on which the learned S.D.J.M., Bhadrak has rejected the application under Section 205 Cr.P.C. I dispose of the Criminal Misc. Case with the direction that in case the petitioner files a fresh application under Section 205 Cr.P.C. and produces adequate materials, the learned S.D.J.M., Bhadrak shall consider the same afresh.

5. CRLMC is accordingly disposed of. Issue urgent certified copy.