

(2012) 01 OHC CK 0009
In the Orissa High Court
Case No : CRLMC No. 1648 of 2010

Sri Dayanidhi Rout and Others

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 205, 205(1), 482
Penal Code, 1860 (IPC) — Section 294, 323, 34, 341, 347

Citation : (2012) 113 CLT 981

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

Bench : Single Bench

Judgement

B.K. Nayak, J.—Heard Learned Counsel for the Petitioners & Learned Additional Government Advocate. Perused the records.... Order Dated 26.04.2010 passed by the Learned S.D.J.M., Balasore in C.T. No. 172 of 2009 rejecting the Petitioners' application u/s 205, Cr.P.C. is assailed in this application u/s 482, Cr.P.C. The impugned order shows that cognizance has been taken for the offences under Sections 341/323/294/347/ 379/354/506/34 of the I.P.C. & the Petitioners, who are the accused persons, are released, on bail by surrendering before the Learned S.D.J.M., Balasore in pursuance of the order of this Court passed in BLAPL No. 9902 of 2009. The Petitioners filed an application under-Section 205, Cr.P.C. before the Learned S.D.J.M., Balasore for dispensing with their personal appearance in Court, which has been rejected on the ground that the offences involved moral turpitude.

2. Learned Counsel for the Petitioners submits that the Petitioners are residing at a distance of 50 to 60 Kms from the Court of the Learned S.D.J.M., Balasore & that keeping in view the minor nature of offences a liberal view should be taken & the personal appearance of the Petitioners be exempted u/s 205, Cr.P.C. It is also his submission that some of the accused persons are ladies, whose appearance in Court on all the dates should not be insisted upon. He also submits that identity of the accused persons (Petitioners) is not in question & that the prosecution arises out of civil dispute & that exemption of the Petitioners

from personal appearance will not affect the trial.

3. Learned Additional Government Advocate, on the other hand, submits that personal appearance of accused persons is the normal rule & exemption is an exception which would be granted only if there are compelling circumstances, such as where the accused persons are old & infirm persons or women, & that the offences are not very serious in nature.

4. Even though the provision u/s 205, Cr.P.C. is discretionary it is trite that the power is to be exercised liberally, particularly in case of "Purdanashin" ladies, old infirm persons & busy public functionaries, inasmuch as under Sub-Section (2) of Section 205, Cr.P.C. in case of necessity of personal appearance the Court can call upon for the same. Personal appearance of an accused in a criminal trial is the rule & exemption from personal appearances the exception which can be resorted to in a suitable case in exercise of sound judicial discretion but where the offence involves moral turpitude & is of grievous 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 & fast rule can be prescribed. (See 1994 (II) OLR 537; Bikram Kumar Routray v. State of Orissa, (2001) 21 OCR 574; Kamaljeet Singh Ahluwalia Vs. State of Orissa, ; Surojit Sen and Sanjaya Singh Vs. Sanatan Behera, ; Surojit Sen (In Cr. Misc. Case No. 882/97), Sanjaya Singh (in Cr. Misc. Case No. 987/96) v. Sanatan Behera (in both). Except stating that the offences involved moral turpitude, the Learned S.D.J.M, has passed the impugned order without taking into consideration the totality of the circumstance"s of the case. Considering the nature of offences alleged & the fact that" there is civil dispute between the parties that has led to the alleged occurrence & that identity of the accused is not in question & that some of the Petitioners are women, I am of the view that prayer for exemption from personal appearance of the Petitioners in terms of Section. 205 (1), Cr.P.C. should have been allowed, & accordingly I allow the same. The Petitioners are exempted from personal appearance in the aforesaid CT Case No. 172 of 2009. It is, however, open to the Learned S.D.J.M., Balasore/Trial Court to resort to Sub-Section (2) of Section 205, Cr.P.C. for personal appearance of the Petitioner (s) as & when such occasion arises.

The CRLMC is accordingly disposed of.

Urgent certified copy of this order be granted on proper application.