

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.914 of 2022

Sangram Kehari Barik

....

Petitioner

Mr. S.J. Mohanty, Advocate

-versus-

State of Odisha and Another

....

Opp. Parties

Mr. K.K. Das, Additional Standing Counsel

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

13.4.2022

Order No.

01. 1. Heard Mr. S.J. Mohanty, learned counsel for the Petitioner and Mr. K.K. Das, learned Additional Standing Counsel for State – Opposite Party No.1.
2. The present petition has been filed challenging the order dated 14th December, 2021 of the learned S.D.J.M., Bargarh wherein the prayer of the Petitioner to dispense with his personal attendance under Section 205 of the Cr.P.C. has been rejected.
3. The Petitioner is the sole accused in I.C.C. No.52 of 2021 before the learned S.D.J.M., Bargarh for alleged commission of offence under Section 138 of the NI Act.
4. The Petitioner upon receipt of summons appeared through his Advocate and filed the application under Section 205 of the Cr.P.C. praying to dispense with his personal attendance and to permit him to be represented through his Advocate on the ground that he is a permanent resident of Jeypore town in the district of Koraput, which is around 345 kilometers away from Bargarh.
5. His prayer was rejected by the learned S.D.J.M., Bargarh on the ground that the nature of offence is serious.

6. The Hon'ble Supreme Court in the case of *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. and Others*, (2001) 7 SCC 401 have observed that in summons case such as one involving offence under Section 138 of N.I. Act, the court may dispense with the personal attendance of the accused either throughout or at any particular stage of the proceedings after taking an undertaking from the accused that he would not dispute his identity and a counsel on his behalf would be present in court and he would have no objection in taking evidence in his absence. The same view is also taken in the case of *TGN Kumar v. State of Kerala and Others*, (2011) 2 SCC 772.

7. Here is a case where offence under Section 138 of the NI Act has been only alleged without any additional offence. The Petitioner is a permanent resident of Jeypore town which is around 345 kilometers away from Bargarh. So keeping in view the principles enumerated in the case of *Bhaskar Industries* (supra) and the distance factor, his prayer for dispensing with personal appearance before the Trial Court is allowed. The impugned order dated 14th December, 2021 of the learned S.D.J.M., Bargarh is set aside and the learned S.D.J.M. is directed to pass appropriate direction dispensing personal attendance of the Petitioner under Section 205 Cr.P.C. subject to such conditions to be fixed.

8. The CRLMC is disposed of.

9. An urgent certified copy of this order be issued as per rules.

(*B.P. Routray*)
Judge