

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 314 of 2022

Niranjan Jani

.... Petitioner

Mr. S.K. Bhanjdeo, Advocate

-versus-

State of Odisha

.... Opp.Party

*Mr.Manoranjan Mishra
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
13.09.2022**

Order No.

04.

This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

None appears on behalf of the petitioner. Heard the learned counsel for the State.

The petitioner Niranjan Jani has filed this revision petition under section 401 read with section 397 of the Code of Criminal Procedure, 1973 challenging the impugned order dated 06.06.2022 passed by the learned J.M.F.C., Khalikote in G.R. Case No.13 of 2022 which arises out of Khalikote P.S. Case No.7 of 2022 in rejecting the petition under section 205 Cr.P.C. filed by the petitioner to dispense with his personal attendance in the

Court and to allow him to appear through his Advocate.

It appears that the first information report was lodged on 03.01.2022 before the Inspector -in- charge of Khalikote police station on the basis of a letter dated 27.12.2021 issued by Smt. Bichitra Manjari Mishra, Block Education Officer of Khallikote wherein it is stated that the petitioner who is serving as Asst Teacher, Paladhuapalli Govt. UP School got appointment by producing fake Madhyama certificate at the time of appointment as Sikhya Sahayak on 11.03.2005. Certificates of the teacher were verified during July 2021 and letter was issued to Board of Secondary Education, Odisha, Cuttack to verify the genuineness of the certificates and the Board informed that 'particulars of certificates' of the petitioner does not tally with Board's records and it appears to be a fake one.

The learned Magistrate while adjudicating the petition under section 205 of Cr.P.C. has been pleased to hold that from the allegation made against the petitioner, it appears that he was appointed as Sikhaya Sahayak by producing fake Madhyama Certificate and has been drawing salary from the State Exchequer as an Asst. Teacher ever since and the allegations are very serious in nature and carry maximum punishment of seven years, if proved. It is further mentioned that the Investigating Officer has prayed for issuance of warrant against the

petitioner on 29.04.2022. The learned trial Court further held that in view of the nature and gravity of the offences and manner of commission of crime by the petitioner in the interest of justice, it would not be proper to allow such petition filed by the petitioner under section 205 of Cr.P.C. and accordingly, rejected the same. It appears that the petitioner approached this Court in an application under section 438 of Cr.P.C. vide ABLAPL No.2110 of 2022 and this Court vide order dated 15.03.2022 considering the nature and gravity of the accusation against the petitioner, while not inclining to grant anticipatory bail to the petitioner, observed that in the event the petitioner surrenders in the Court below within a period of four weeks from that day and moves an application for bail before the learned Court below, the same shall be disposed of as expeditiously as possible by the Courts below in accordance with law and the case records is directed to be made available to the Court concerned for adjudication of the bail application.

Section 205 Cr.P.C. deals with the power of a Magistrate to dispense with personal attendance of accused. Sub-section (1) states that at the time of issuance of summons under Section 204 Cr.P.C., if the Magistrate thinks that the personal attendance of the accused is not necessary, he may dispense with such personal attendance and permit him to appear by his

pleader.

The meaning of “dispense with” as per the Law Lexicon is to exempt, excuse from doing something, to relax or set aside the obligation.

In the case of **Kamaljeet Singh Ahluwalia – Vrs.- State of Orissa reported in Vol.85 (1998) Cuttack Law Times 372**, after considering the scope and object of Section 205 Cr.P.C., this Court summarized.

- (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 facts and sentences into consideration and through a speaking and reasonable order exercise the discretion judiciously;
- (iii) No hard and fast rule or straight 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 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."

In the case of **Dayanidhi Rout –Vrs.- State of Orissa reported in (2012) 52 Orissa Criminal Reports 43**, it is held 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 involves moral turpitude and is of grievous nature prescribing considerable length of substantial sentence, the Court while exercising discretion shall take into consideration the totality of the circumstance of the case, whether the discretion should be exercised or not and no hard and fast rule can be prescribed.

In case of **Lily Begum –Vrs.- Joy Chandra reported in 1994 Supreme Court Case (Criminal) 303**, where the High Court directed the trial Court to

dispense with the personal attendance of the accused in a case under sections 376/417 and 506 of the Indian Penal Code, Hon'ble Supreme Court while setting aside the order held that if in such a case, privilege is given to an accused, people would lose their confidence in the administration of justice.

In case of **M/s. Annapurna Machinery -Vrs.- Gayatri Parida reported in (2008) 40 Orissa Criminal Reports 56**, it is held that the personal attendance of an accused should not be insisted upon unless it is absolutely necessary in the proceeding. The offence in the case being one under section 138 of the N.I. Act, the same is distinctly separate from offences under the other Acts which can be effectually adjudicated even in the absence of the accused persons on the basis of documents available. The subtle difference has to be kept in mind by the Magistrate while deciding an application under section 205 of Cr.P.C.

In case of **Ram Parbesh Gosain -Vrs.- Republic of India reported in (2005) 31 Orissa Criminal Reports 368**, it is held that the Court should always make a reasonable approach with regard to personal appearance of an accused and should not insist upon the same, if not essential for the progress of the case.

In case of **Bhramarbar –Vrs.- Sayed reported in (2005) 32 Orissa Criminal Reports 677**, it is held that where there is no prospect of quick disposal of the case and no question involves regarding identity of the accused, direction for personal appearance may cause harassment. In case of Pardanasin lady, old and ailing or infirm person or a Government servant or businessman the Court should consider their case keeping in view the totality of all circumstances.

In case of **Durowelds Pvt. Ltd. –Vrs.- TISCO reported in (2002) 23 Orissa Criminal Reports 846**, it is held that law is well settled that it is within the province of the Magistrate and in his judicial discretion to dispense with the personal attendance of an accused either throughout or at a particular stage of criminal proceeding in a summons case if the Magistrate finds that insistence of personal appearance would cause serious difficulties and is convinced to him and the comparative advantage would not outweigh non-appearance. The discretion of the Magistrate under sub-section (1) of Section 205 of the Cr.P.C. should be exercised only where an accused due to his physical disability and/or because of distance at which he ordinarily resides or carrying on business and his appearance on each date would cause great hardship or for any other good and cogent reasons. Where the Magistrate feels that the personal attendance

in the attending circumstances should be dispensed with in the interest of justice, he has to take precaution in such a situation by asking and obtaining from the accused an undertaking to his satisfaction that the counsel in his behalf would be present in the Court throughout the proceeding and that the accused has no objection in taking evidence in his absence.

In case of **A. Sundara Pandian –Vrs.- State reported in 1987 (3) Crimes 655**, it is held that section 205 Cr.P.C. has been enacted more in the interest of the accused than of the prosecution. Nowhere does the Code require the presence of an accused person at every hearing during trial. Sections 205 and 317 Cr.P.C. provide for contingencies where, in the interest of expeditious proceedings in criminal Courts, a discretion is given to the trial Court to carry on the proceedings in the absence of an accused when the accused himself applies for the same and he is represented by a counsel. Courts should not hesitate to dispense with the personal appearance of the accused, unless the interest of the prosecution would thereby suffer or under the Code itself the presence of the accused is statutorily required.

In case of **Manager, V.G. Panneerdas –Vrs.- Nataraja Thevar reported in 1988(1) Crimes 222**, it is held that it is the basic principle of criminal jurisprudence that nothing shall take place behind the

back off the accused. If a presumption of innocence is raised in his favour, it is the primary duty of the Court to take all steps to ensure that a fair trial is given to him. It is on the basis of this principle that the accused is required to be present during trial. Nowhere in the Criminal Procedure Code do we find that the accused has to be present at each and every hearing of the case. To require so would cause hardship to the accused and would also stand in the way of an expeditious trial. Permitting the accused to appear through a Pleader under section 205 Cr.P.C. is within the discretion of the trial Court. That discretion has to be judiciously exercised. When insistence on the presence of the accused is primarily required in the interest of the Court, the Court could liberally apply section 205 Cr.P.C. when the accused themselves come forward with an application that they are prepared to allow the Court proceedings to proceed in their absence while they are represented through their pleader.

In case of **S.V. Muzumdar –Vrs.- Gujarat State Fertilizer** reported in **A.I.R. 2005 S.C. 2436**, Hon'ble Court held that while dealing with an application in terms of section 205 of the Code, the Court has to consider whether any useful purpose would be served by requiring the personal attendance of the accused or whether progress of the trial is likely to be hampered on

account of his absence. If at any stage, the trial Court comes to the conclusion that the accused persons are trying to delay the completion of trial, it shall be free to refuse the prayer for dispensing with personal attendance.

In view of the settled principle of law that 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 and in the case in hand, when the offences alleged against the petitioner are serious in nature and involves moral turpitude and prescribes considerable length of substantial sentence, in my humble opinion, the learned trial Court is quite justified in rejecting the petition under section 205 of Cr.P.C. and therefore, I find no cogent reason to interfere with the same.

Accordingly, the CRLREV stands dismissed.

A copy of the order be communicated to the concerned Court.

(S.K. Sahoo)
Judge