

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2013 of 2022

Binod Kumar Palei

....

Petitioner

-versus-

Sri Om Prakash Tripathy

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

10.08.2022

Order
No.

- 01.
1. This matter is taken up through hybrid mode.
 2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to set aside the order dated 15th July, 2022 passed by the learned S.D.J.M., Rayagada in 1.C.C. No.61 of 2021 and consequently allow his application under Section 205 of Cr.P.C. filed before the learned S.D.J.M., Rayagada under Annexure-2 to this petition.
 3. Heard the learned counsel for the Petitioner.
 4. This Court does not feel any necessity of issuing notice to the complainant inasmuch as in Section 205 of Cr.P.C. petition, the complainant has got nothing to say.

5. The Petitioner, in this case, has challenged the order refusing to allow the prayer to dispense with his personal appearance under Section 205 of Cr.P.C.

6. Needless to say that Petitioner filed the aforesaid petition in a prosecution launched against him under Section 138 of N.I. Act. The aforesaid case is triable by summary procedure. There is no impediment to proceed against the accused, even if personal appearance is dispensed with under Section 205 of Cr.P.C. by explaining the charge to the counsel and recording the plea of the accused therein. So also even if personal appearance is dispensed with, the court can very well ask an accused to remain present in the court on any date, if his personal appearance is required. Further, the Petitioner is staying 400 kilo meters away from the court. However, while disallowing the prayer of the Petitioner, the trial court has remain oblivious to the same particularly the fact that the Petitioner is staying 400 kilo meters away from the court.

7. Considering the facts and submissions made, the Criminal Misc. Case is allowed. Consequently, the impugned order is set aside and the matter is remitted back to the learned S.D.J.M., Rayagada to readdress the application of the petitioner for dispensing with taking note of the law laid down in the case of *Bhaskar Industries Ltd. v. Bhiwani Denim & Apparels Ltd. and others, reported in (2001) 7 SCC 401* and

pass necessary order within fifteen days of receipt of the copy of this order.

8. Furthermore, it is made clear that if any affidavit is required to file pursuant to such order, personal attendance of the Petitioner for filing the affidavit need not be insisted upon.

9. Since it is stated that in the meanwhile, N.B.W.(A) has been issued against the Petitioner in the aforesaid case, it is directed that there shall be stay execution of N.B.W.(A) issued against the Petitioner.

(S. Pujahari)
Judge

DA

