

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2439 of 2022

Sri Kalia Panigrahi

....

Petitioner

Mr. Soubhagya Kumar Dash, Advocate

-Versus-

Sri Ashok Kumar Palo and another

....

Opposite Parties

None for OP No.1

Mr. S.S. Mohapatra, ASC , OP No.2

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

20.09.2022

Order No.

02.

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. Instant petition at the behest of the petitioner is filed praying for quashing of the order dated 7th July, 2022 passed by the learned S.D.J.M., Berhampur in I.C.C. No.115 of 2018 on the grounds stated therein.
3. In fact by the impugned order under Annexure-2, learned court below rejected the application which was moved under Section 205 Cr.P.C. by the petitioner denying the exemption from personal appearance which is currently under challenge on the ground that the petitioner is having health issues and on that ground such exemption was prayed for was unjust and not properly taken care of and ultimately the impugned order under Annexure-2 was passed which is unjustified.
4. On a perusal of the impugned order under Annexure-2, this Court finds that petitioner filed an application under Section 205 Cr.P.C. for exemption of his appearance on health ground along

and praying for some other documents, but then the learned court below was denied such prayer. It appears that there has been no consideration of medical papers produced before the learned court below and the impugned order was passed. Learned counsel for the petitioner submits that petitioner in fact suffering from spinal related issues and filed some medical documents and therefore consideration the documents on record before the leaned court below exemption should have been allowed. Learned counsel has referred to a decision reported in **Debasis Samantaray Vrs. State of Orissa and another** 2008 Cri. Law Journal 3774 in support of his case

5. Considering the grounds of stated in the application for exemption filed under Section 205 Cr.P.C., this Court finds that such grounds has not been considered properly. In other wods, having regard to the medical conditions of the petitioner, which is supported by paper produced today. Accordingly, petitioner claimed for exemption of his appearance.

6. In view of such submissions, CRLMC stands allowed.

7. Consequently, the impugned order dated 7th July, 2022 passed by the learned S.D.J.M., Berhampur in I.C.C. No.115 of 2018 is set aside with a direction to reconsider the prayer of the petitioner in terms of the application filed under Section 205 Cr.P.C. taking into consideration all the medical documents and consider the same as per and in accordance with law and direct production of the petitioner at the time of hearing.

8. Issue urgent certified copy as per rules.

(R.K. Pattanaik)
Judge