

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2702 of 2022

Amiya Prasad Mallick

....

Petitioner

Mr. Partha Sarathi Nayak, Advocate

-Versus-

State of Odisha

....

Opposite Party

Mr. T.K. Praharaj, SC

CORAM:

MR. JUSTICE R.K. PATTANAİK

ORDER

28.11.2022

Order No.

02.

1. Heard learned counsel for the petitioner and learned counsel for the State.

2. The challenge is to the impugned order dated 29th August, 2022 passed by the learned S.D.J.M., Hindol in G.R. Case No.13 of 2015 arising out of Balimi P.S. Case No.6 of 2015 whereby the application under Section 205 Cr.P.C. moved by the petitioner was rejected.

3. Learned counsel for the petitioner submits that the FIR was lodged in the year 2015 for an accident dated 16th February, 2014, as a result of which, Balimi P.S. Case No.6 of 2015 was registered under Sections 285, 304(A) and 34 of IPC and thereafter, chargesheet was filed against the petitioner. It is contended that the petitioner was posted as the SDO at the relevant point of time when the alleged incident happened. According to learned counsel for the petitioner, an application under Section 205 Cr.P.C. was moved for dispensing with personal attendance of the petitioner on the ground that he is at present posted at Baripada as the Divisional

Manager, TPNODL, Baripada and on each date of posting of the matter, his attendance in the court below would be causing immense inconvenience to him, however, the learned court below was not inclined to allow the same and finally passed the impugned order under Annexure-3.

4. A copy of the FIR which is at Annexure-1 is perused by the Court. The circumstances for lodging the report stands described in Annexure-1. In fact, on the date of occurrence i.e. 16th February, 2014, the victim came in contact with a live electric pole, as a result of which, he succumbed to the injury later to which the FIR was lodged and the case under Sections 285, 304(A) and 34 of IPC was registered against the petitioner and others.

5. The offences are triable by a Magistrate of First Class and bailable in nature and since the case was pending for long since awaiting appearance of the petitioner, learned court below rejected the application filed under Section 205 Cr.P.C.

6. Learned counsel for the petitioner, in support of his argument, cites decisions of this Court reported in **2016 (63) OCR 710** and **Ram Parbesh Gosain Vrs. Republic of India (2005) 31 OCR 368** to contend that the Court is to exercise judicious discretion while dealing with Section 205 Cr.P.C. and should not always insist upon personal appearance.

7. Having regard to the facts of the case and decisions cited (supra), the Court is of the view that the petitioner is a public servant and was posted now as the Divisional Manager of TPNODL and admittedly, the accident took place leading to the death of the victim.

8. Considering the nature of service and the fact that petitioner is presently posted at Baripada, to insist upon his appearance on each and every date of posting of the case, would definitely cause great hardship to him and for the said purpose, an application under Section 205 Cr.P.C. was moved but the same was

rejected by the learned court below. In the considered view of the matter, since the matter is pending in the court at Hindol and the petitioner is at present posted at Baripada, he should not have been directed to appear in person on each and every date of posting of the matter in the court as the same would subject him to hardship and inconvenience. The aforesaid fact should have been kept in mind by the learned court below while considering the application under Section 205 Cr.P.C. moved by the petitioner.

9. Having regard to the above facts and the fact that the petitioner is at present posted at the place which is at a distance of 250 kilometers from Hindol, the Court is of the opinion that it is a fit case where discretion should have been exercised in allowing exemption from personal appearance of the petitioner in terms of Section 205 Cr.P.C.. In other words, it is a case where the attendance of the petitioner should be exempted under Section 205 Cr.P.C.

10. Accordingly, it is ordered.

11. In the result, the CRLMC stands allowed.

12. The impugned order under Annexure-3 passed by the learned S.D.J.M., Hindol in G.R. Case No.13 of 2015 is hereby set aside with a direction that the personal attendance of the petitioner shall be exempted in terms of Section 205 Cr.P.C.

13. Issue urgent certified copy of this order on proper application.

(R.K. Pattanaik)
Judge