
(2005) 1 OLR 678

Orissa High Court

Case No: CRLMC No. 1998 of 2004

Ram Parbesh Gosain

APPELLANT

Vs

Republic of India

RESPONDENT

Date of Decision: April 20, 2005

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 205, 205(1), 317, 482

Citation: (2005) 1 OLR 678

Hon'ble Judges: A.K. Parichha, J

Bench: Single Bench

Advocate: Sanjeev Udgata and P.K. Nayak, for the Appellant; S.K. Padhi, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

A.K. Parichha, J.

Though the matter was listed for admission, on the consent of both parties, it is taken up for final disposal at the stage of admission.

2. Heard the learned counsel for the petitioner and learned Sr. Standing Counsel appearing for the C.B.I.

3. The petitioner, who is an accused in R. C. No. 13 (A) of 2002 corresponding to T.R. No. 6 of 2004 in the Court of learned Special Judge, C.B.I., Bhubaneswar, prayed to dispense with his personal appearance in Court and to allow him to appear through his advocate under the provision of Section 205, Cr.P.C. The said prayer having been rejected by the learned Special Judge, Bhubaneswar, he has come up with the present application u/s 482, Cr.P.C. with a prayer to quash the order of rejection dated 17.8.2004 passed by the learned Special Judge, C.B.I., Bhubaneswar in the above noted case.

4. Mr. Sanjeev Udgata, learned counsel for the petitioner submits that the petitioner, who is a senior citizen, is suffering from various ailments including Glaucoma in eyes and is

under constant medical treatment and for that reason he expressed his inability to appear in Court in person and filed some medical papers to support his plea of illness. But learned Special Judge, C.B.I., Bhubaneswar without taking note of his difficulty and without appreciating the spirit of Section 205, Cr.P.C. rejected the prayer of the petitioner. According to Mr. Udgate, this is a fit case where the impugned order should be quashed and the petitioner be allowed to appear through his counsel in the Court.

5. Mr. Padhi, learned Senior counsel appearing for the C.B.I. opposes to the prayer of the petitioner indicating that the petitioner, who is able to move from his native place Bihar to Rourkela, can as well appear before the Court of Special Judge, C.B.I., Bhubaneswar. Mr. Padhi indicates that the petitioner need not appear in the Court on each and every date in person but after his initial appearance, he can take recourse to provision of Section 317, Cr.P.C.

6. From the impugned order itself it appears that the petitioner is an old man suffering from various ailments and is undergoing treatment for the ailments and that he filed a number of medical documents with his application u/s 205, Cr.P.C. Learned Special Judge (Vigilance) however reasoned that when the petitioner is able to come to Rourkela from his native place Bihar for treatment, he cannot take plea that he is unable to appear in Court at Bhubaneswar in person. There may be some logic in the approach of learned Special Judge, C.B.I., the fact remains that the petitioner is an old and retired person suffering from various ailments including serious Glaucoma in his eyes, A close reading of Section 205 Cr.P.C. would indicate that personal appearance of an accused is to be normally dispensed with if it appears to the Court that the accused has genuine difficulty in making his personal appearance before the Court. There are also several judicial pronouncements to support this view. If the personal appearance of an accused is essential for trial of a case, then only the personal appearance of such accused should be insisted. Sub-section (1) of Section 205, Cr.P.C. also contemplates that after dispensing with the personal appearance of an accused the Court can direct the accused to appear in person, as and when required. So, a 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. As has been indicated, in the present case the petitioner is an old man having various ailments and he wants to appear through his advocate. His advocate is also willing to represent the petitioner in Court. It is also submitted by the learned counsel for the petitioner that the petitioner is willing to give an undertaking that he will appear in person in Court, as and when directed.

7. In such backdrop, I feel that rejection of the prayer of the petitioner for appearing in Court through his counsel will be unreasonable and harsh. I, therefore, quash the impugned order dated 17.8.2004 passed by the learned Special Judge, C.B.I., Bhubaneswar and direct the said Court to allow the prayer of the petitioner u/s 205, Cr.P.C., if a fresh approach is made and if such occasion arises, the petitioner would give an undertaking before the said Court that he will appear in person in Court, as and when directed.

8. With the above observations, the CRLMC stands disposed of.
9. Urgent certified copy of the order be granted on proper application.