



IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2459 of 2022

An application under Articles 482 of the Criminal Procedure Code, 1973.

Lalita Mohan Das

....

Petitioner

Mr. M.M. Pattanayak, Advocate

-versus-

Assistant Director, E.D.

....

Opp. Party

*Mr. Bibekananda Nayak,
Special Counsel for E.D.*

CORAM:

JUSTICE A.K. MOHAPATRA

Date of hearing : 22.02.2024 | Date of Judgment: 26.04.2024

A.K. Mohapatra, J. :

1. The present application has been filed by the Petitioner by invoking the inherent power of this Court under Section 482 Cr.P.C. to quash the impugned order dated 16.08.2022 under Annexure-2 to the application whereby the learned Sessions Judge-cum-Special Judge under PMLA Act, Khurda at Bhubaneswar has declined to allow exemption from personal



attendance of the Petitioner by rejecting the application filed by the Petitioner under Section 205 Cr.P.C. in PMLA Case No.32 of 2017.

2. Heard Mr. M.M. Pattanayak, learned counsel for the petitioner as well as Mr. Bibekananda Naik, learned counsel appearing for the Enforcement Directorate. Perused the application under Section 482 Cr.P.C. as well as materials placed on record by both sides for perusal of this Court.

3. The factual background leading to filing of the present case, in short, is that the Petitioner while continuing as Executive Engineer, RWS&S Division, Bhubaneswar during the year 2009 was entangled in Bhubaneswar Vigilance P.S. Case bearing F.I.R. No.28 dated 20.08.2009 under Section 13/2 read with Section 13 (1) (e) of the P.C. Act, 1988. A charge sheet was submitted against the Petitioner vide C.S. No.27 dated 31.12.2015 after lapse of more than 6 years of the institution of the vigilance case. On the basis of the aforesaid vigilance F.I.R., the case was registered by the Enforcement Directorate at Bhubaneswar



bearing E.C.I.R. No.18 dated 27.10.2010 against the present Petitioner.

4. The aforesaid vigilance case was registered as T.R. No.39 of 2016 before the learned Special Judge, Bhubaneswar which was eventually transferred to the Special Judge, Special Court, Bhubaneswar. Pursuant to the summons issued by the aforesaid Court, the Petitioner along with his wife appeared in T.R. Case No.5/38 of 2017/16 and they were released on bail on their appearance before the trial court. The aforesaid Special Court was established and functioning under Section 21 of the Odisha Special Court Act, 2006 which provides that the said act is in addition to any other law for the time being in force.

5. On the basis of the aforesaid Vigilance Case, PMLA Case No.32 of 2017 was registered and the same is pending before the Sessions Judge, Special Court, Khurda at Bhubaneswar under PMLA Act, 2002 even 7 years after the F.I.R. was lodged by the Vigilance Police. Finally, cognizance was taken on 21.09.2017. Pursuant to the summons issued by the Sessions Judge, Bhubaneswar the petitioner appeared before the said Court.



Initially, the Petitioner filed an application challenging the maintainability of the PMLA Case, however, the same was rejected by the learned Court below vide order dated 09.04.2018. While rejecting the prayer of the Petitioner, the learned Trial Court has also directed the Petitioner to appear before the Court and fixed the date of appearance to 30.04.2018.

6. While the matter stood thus, Assistant Director, E.D. lodged a complaint before the learned Adjudicating Authority, New Delhi under the PMLA Act, 2002. Pursuant to the summons by the Adjudicating Authority the Petitioner appeared before the learned Adjudicating Authority. The said case was disposed of on 11.07.2017. Against order dated 11.07.2017, the Petitioner preferred an appeal bearing PMLA Appeal No.1879/2017 before the learned Appellate Tribunal under the PMLA Act, New Delhi and it is stated that the said appeal is still pending for final adjudication.

7. Learned counsel for the Petitioner submitted that the Opposite Parties have not independently inquired into the allegation. On the contrary, they have lodged the complaint on the



basis of the Vigilance Dept. F.I.R. and the charge sheet and accordingly the proceeding was initiated under Section 5 of the PMLA Act before the Adjudicating Authority. Learned counsel for the Petitioner submitted that in T.R. Case No.5/38 of 2017/2016, arising out of the above noted vigilance case which is pending before the Special Judge, Special Court, Bhubaneswar, the petitioner has been released on bail. However, since the trial was not taking place on regular basis, the Petitioner moved an application under Section 205 Cr.P.C. to dispense with his personal appearance before the said Court. Such application under Section 205 Cr.P.C. having been rejected by the learned Trial Court vide order dated 16.08.2022 with a direction to the petitioner to appear on 07.09.2022, the Petitioner has approached this Court by filing the present application under Section 482 Cr.P.C. with a prayer to quash order dated 16.08.2022 under Annexure-2 to the present application.

8. At the outset, learned counsel for the Petitioner referred to the provision of Section 205 Cr.P.C. He further contended that all criminal trials are to be conducted by following the procedure as prescribed in the Code of Criminal Procedure. Be it a general



Penal statute or any special penal statute, the trial has to take place by following the procedure or law as prescribed in the Code of Criminal procedure. In such view of the matter, learned counsel for the petitioner submitted that there being no prohibition in the PMLA Act with regard to applicability of Section 205 Cr.P.C. and in the absence of any other bar in law with regard to applicability of the Section 205 Cr.P.C. to the trials under the PMLA Act, the learned Court below should have accepted the application filed by the Petitioner under Section 205 of the Cr.P.C. and accordingly keeping in view the fact that the case is lingering for more than a decade, the learned Trial Court should have extended the benefit of Section 205 Cr.P.C. to the Petitioner by allowing his application.

9. In course of his argument, learned counsel for the Petitioner by referring to the impugned order dated 16.08.2022 submitted before this Court that the learned Trial Court has dealt with the application under Section 205 Cr.P.C. in a mechanical manner. He further contended that while considering the application under Section 205 Cr.P.C., the learned Trial Court has referred to Section 45 of PMLA Act and has observed that



keeping guard on release of the accused persons involved in such nature of offences and further keeping in view the gravity of the offences alleged and the nature of allegations made against the Petitioner and further keeping in view the restrictive provisions of the Act incorporated to secure the attendance of accused persons, the learned Trial Court has finally rejected the application of the Petitioner under Section 205 Cr.P.C. While challenging the aforesaid rejection order dated 16.08.2022 passed by the Sessions Judge-cum-Special Judge Khurda at BBSR learned counsel for the Petitioner submitted that Section 45 of the PMLA Act has no applicability to an application under Section 205 Cr.P.C. Therefore, it was contended that placing reliance on Section 45 of PMLA Act while considering the application of the Petitioner under Section 205 Cr.P.C. is completely misconceived.

10. In course of his argument, learned counsel for the Petitioner referred to the judgment of this Court rendered by the Coordinate Bench in *Chintan Joshi vs. Niranjan Behera* in *CRLMC No.2940 of 2022* disposed of on *11.04.2023*. By referring to the aforesaid judgment, learned counsel for the Petitioner submitted that the aforesaid case was instituted before



this Court on being aggrieved by the order passed by the learned Trial Court dated 16.08.2022 thereby rejecting the petition filed under Section 205 Cr.P.C. thereunder seeking for dispensation of the personal appearance of the accused. The above noted case was registered for commission of an offence under the PMLA Act and the Investigating Agency, i.e. Enforcement Directorate (E.D.) had filed ECIR dated 14.06.2018 against the Petitioner. During trial of the said case, an application was moved by the Accused-Petitioner who had been summoned by the Court to appear before it under Section 205 Cr.P.C. Such an application was filed on the ground that the Petitioner is the only son of his ailing old parents, who are undergoing treatments for various ailments and that no prejudice would be caused to the prosecution if the trial is carried on in the absence of the accused and while the accused is being represented by his lawyer. The learned Trial Court rejected such application by referring to the provisions contained in Section 45 of the PMLA Act, 2002.

11. During hearing of the aforesaid matter, learned counsel appearing for the Petitioner in that case argued that Section 45 of the PMLA Act would not be attracted to the facts of that case and



that the learned Trial Court had committed an illegality by rejecting the application under Section 205 Cr.P.C. by relying on the provisions of Section 45 of the PMLA Act. It was also argued that proceeds of crime involved in the aforesaid case is less than Rs.1 crore, the rigors of the provisions contained in Section 45 of the PMLA Act would not apply to the facts of that case.

12. Mr. G. Agarwal, learned Special Counsel appearing for the E.D. in the above noted case, objected to the contentions raised by the learned counsel appearing for the Petitioner. He further contended that irrespective of the amount of the proceeds of crime involved in the case, the learned Trial Court considering the seriousness and gravity of the offence and that such offence would have a direct impact on the economy of the country has rightly rejected the application of the Petitioner in the above noted case which was filed under Section 205 Cr.P.C. It was also contended that Section 205 Cr.P.C. cannot be used as a substitute for bail and that the exemption from personal appearance is not a vested right conferred on the accused. A similar argument was also advanced by Mr. Agarwal in the present case.



13. The Coordinate Bench then proceeded to examine the provisions contained in Section 45 of the PMLA Act. Then the Coordinate Bench has recorded the relevant portion of the allegation made against present Petitioner in the complaint filed by the Assistant Director (PMLA), Bhubaneswar. Furthermore, the amount involved i.e. Rs.3,19,100/- has been emphasized by the Coordinate Bench. In the ultimate analysis, the learned Coordinate Bench referring to the judgment in ***Bhaskar Industries Ltd. vs. Bhiwani Denim & Apparels Ltd.*** reported in ***(2001) 7 SCC 401*** came to a conclusion that the discretion conferred by Section 205 Cr.P.C. on the Court is to be used only in rare cases where personal appearance of the accused would cause great hardship on him. In other words, if the accused is residing at a far off place or has any physical ailment or is otherwise indisposed, the prayer for exemption from personal attendance can be favourably considered. Having said that, learned Coordinate Bench has cautioned that the discretion is not to be exercised in a routine manner or on the mere asking of the accused-Petitioner.



14. Finally, the learned Coordinate Bench in the above referred case of *Chintan Joshi* (supra) observed that the Petitioner failed to substantiate his claim that his old parents are ailing and no documents to that effect was filed. Further, taking into consideration the age of the Petitioner i.e. 38 years and that he is a his resident of Bhubaneswar, came to a conclusion that attending the Court can by no stretch of imagination be treated as causing undue hardship to the accused-Petitioner. Accordingly, learned Coordinate Bench found no infirmity in the order passed by the learned Trial Court and as such, the application filed by the accused-petitioner challenging the rejection of 205 petition vide order dated 16.08.2022 was dismissed.

15. It is relevant to mention here that after rejection of the application of the accused-Petitioner in the above noted case, the Petitioner, namely, *Chintan Joshi* approached the Hon'ble Supreme Court by filing an appeal bearing SLP (C) No.8917 of 2023. The Hon'ble Supreme Court vide order dated 04.08.2023 while disposing of the aforesaid SLP has categorically held as follows:-



“Heard the learned counsel appearing for the Petitioner.

The blanket exemption as prayed by the petitioner cannot be granted under Section 205 of the Code of Criminal Procedure, 1973. However, if for sufficient and cogent reasons, the petitioner is unable to appear before the Trial Court, he can always make an application through his advocate for grant of exemption from personal appearance.

We are sure if such an application is made, the concerned Court will consider it on its own merits in accordance with law notwithstanding the impugned orders.

The Special Leave Petition is disposed of accordingly. Pending applications, if any, also stand disposed of.”

16. The factual background involved in the above noted case of *Chintan Joshi* is almost identical to the facts of the present case. The allegation made and the offences alleged are almost similar. Thus, this Court has no hesitation in coming to a conclusion that although an application under Section 205 Cr.P.C. is maintainable in a case involving offences under the PMLA Act, 2002 and the bar under Section 45 would not be attracted to such an application, however, while exercising the discretion conferred upon the Court by Section 205 Cr.P.C., the Trial Court has to take a decision with lot of circumspection and caution. Particularly, while considering such application, the learned Trial Court is to satisfy itself with regard to availability of sufficient and cogent



reasons and inability of the Petitioner to appear before the Trial Court. The learned Trial Court, in such eventuality, is duty bound to consider such application on its own merit and in accordance with law. That is, if the Trial Court is satisfied with regard to the sufficiency and cogentness of the reasons cited by the Petitioner and the grounds taken by the Petitioner expressing his inability to appear before the Trial Court and to pass an order strictly in accordance with law and basing on the materials placed on record from both sides. Therefore, from the reading of the order passed by the Hon'ble Apex Court in *Chintan Joshi's* case, it is cleared that the Bar under Section 45 of the PMLA Act, 2002 shall not stand in the way of the Trial Court while considering an application under Section 205 Cr.P.C. filed by the accused-petitioner.

17. Reverting back to the facts of the present case and on a plain reading of the complaint, it appears that the alleged amount involved in the present crime is Rs.35 lakhs. Therefore, the same is admittedly less than Rs.1 crore. In the present case, the accused-Petitioner filed an application under Section 205 Cr.P.C. to dispense with his personal attendance before the Court. It has



been stated that the accused-Petitioner is now posted at Berhampur Municipal Corporation in Ganjam district under deputation in Foreign Service terms and conditions for which he is unable to appear before the Trial Court at Bhubaneswar in Khurda district on each date of posting. Learned Trial Court while passing the impugned rejection order dated 16.08.2022 has been swayed away by the provisions contained in PMLA Act, 2002 and that the offence of money laundering is an economic offence, which impacts the national economy and security as a whole. Further, he has taken into consideration Section 45 of the PMLA Act. Finally, considering the gravity of the offences committed and the restrictive provisions of the Act in the shape of Section 45 and to secure the attendance of the accused persons, the application filed by the Petitioner has been rejected.

18. On a careful consideration analysis of the judgment delivered by the Coordinate Bench in *Chintan Joshi's* case as well as the observation of the Hon'ble Supreme Court in appeal against the order passed in *Chintan Joshi's* case, further keeping in view the provisions contained in Section 205 Cr.P.C., this Court is of the considered view that the impugned order passed by



the learned Trial Court is unsustainable in law. Accordingly, the same is hereby set aside. Further, the matter is remanded back to the Court of Sessions Judge-cum-Special Judge, Khurda at Bhubaneswar to consider the application afresh by taking into consideration the grounds raised by the Petitioner in his application and in the light of the discussion made hereinabove particularly keeping in view the observation of the Hon'ble Supreme Court in *Chintan Joshi's* case which has been quoted hereinabove. On production of a copy of this judgment by the Petitioner, the learned Trial Court shall do well to dispose of the application filed by the Petitioner under Section 205 Cr.P.C. as directed hereinabove within a period of six weeks from the date of communication of a certified copy of this judgment.

19. With the aforesaid observations/ directions, the CRLMC application stands disposed of.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 26th April, 2024/ Anil/ Jr. Steno.