

**IN THE HIGH COURT OF ORISSA AT CUTTACK****CRLA No.184 of 2024**

An appeal under section 14(A) of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 read with Section 482 of Criminal Procedure Code, 1973.

Anup Ghosh @ Aunp Kumar Ghose Appellants
and others

Mr. Prasanta Ku. Tripathy, Advocate

-versus-

State of Orissa Respondent
Mr.M.R.Patra, ASC.

CORAM:

JUSTICE A.K. MOHAPATRA

Date of Hearing : 16.01.2025 | Date of Judgment: 16.01.2025

A.K. Mohapatra, J. :

1. Heard learned counsel for the Appellants as well as the learned counsel for the State-Respondent No.1 and learned counsel appearing for private Respondent No.2. Perused the records as well as the impugned order dated 24.01.2024.
2. On perusal of the record, it appears that the present appeal has been preferred under section 14-A of the S.C. &



S.T (Prevention of Atrocities) Act, 1989, challenging the order dated 24.01.2024 passed by the learned Special Judge (S.C./S.T.), Balasore in I.C.C.Case No.31 of 2022 whereby the application of the Petitioner filed under section 205 of the Cr.P.C, for dispensing with his personal appearance, was rejected.

3. Learned counsel for the Appellants at the outset submitted that the present appeal arises out of a complaint case. He further contended that the Appellants are public servants and working with the electric distribution licensee, TP Northern Odisha Distribution Ltd. (TPNODL). He further submitted that since they are involved in the aforesaid Public Utility Company, their presence is required to ensure supply of electricity uninterruptedly. However, due to their implication in the present case, they are required to attend the court every now and then, which is causing a great deal of difficulties for the Appellants in attending their official work. Learned counsel for the Appellants further submitted that the Appellants are ready and willing to cooperate with an early conclusion of trial and appear before the trial court on the relevant dates.



4. He further submitted that although an application under section 205 of Cr.P.C was moved before the trial court seeking exemption of their personal appearance, however, the learned trial court erroneously rejected the application holding that in the present case trial is to be conducted under Chapter XVII of the Cr.P.C. and that in the event the application is allowed the identity of the accused, which is a crucial factor, is likely to remain unascertained. Learned trial court has further held that in view of the settled position of law, in a case where a comparative advantage of having the accused physically present would be less, in such cases, the personal appearance of the accused may be exempted. Since the offences in the present case involves the provisions of SC & ST (PoA) Act, learned court below has exercised its jurisdiction under the statutory provision of Section 15-A of SC & ST (PoA) Act and the legislative intention behind the said Statute, and has held that the same does not permit dispensation of the personal attendance of the accused persons. On such ground, the application under section 205 Cr.P.C. has been rejected by the learned court below.



5. Learned counsel for the Appellants at this juncture contended that the impugned order passed by the learned Special Court (SC & ST), Balasore is unsustainable in law inasmuch as the same is contrary to the provision of the Cr.P.C. and the spirit of law. He further contended that since the trial is being conducted under the provision of Cr.P.C., therefore, the Appellants cannot be singled out and cannot be denied the benefit of section 205 Cr..P.C.

6. Learned counsel appearing for the private Respondent No.2 supported the impugned rejection order. Further, he submitted that the learned trial court has rightly rejected the application of the Appellants under section 205 Cr.P.C. He further contended that the Appellants have failed to make out a case within the purview of the provisions contained under section 205 Cr.P.C. It is also contended that the rejection order has been passed by the learned trial court keeping in view the spirit of the enactment of SC & ST (PoA) Act. On such ground, learned counsel for Respondent No.2 submitted that the trial court has not committed any illegality in rejecting application under section 205 Cr.P.C. He further contended that in the event the personal appearance of the Appellants is



dispensed with, the objective of the enactment would get frustrated and the trial cannot be concluded in a time bound manner as has been provided in the aforesaid Statute.

7. Learned Additional Standing Counsel has also supported the impugned rejection order on the ground that the learned trial court has not committed any illegality in rejecting such application. He further submitted that in the event the personal appearance of the Appellants is dispensed with, then the very purpose and objective behind the enactment would get frustrated and the trial will not be concluded in a time bound manner.

8. Having heard learned counsel for the respective parties, on careful examination of the materials on record, further on a close scrutiny of the rejection order dated 24.01.2024, this Court observes that the rejection order is too harsh and not in conformity with law. It is the settled position of law that the power conferred under section 205 Cr.P.C. is a discretionary power whereunder the trial court can exempt the personal appearance of the accused persons. However, such discretion can only be exercised in a judicious manner and without any discrimination. It is not a fact that such



applications are not allowed or that there is any statutory bar in exercise of such power in a case involving the offence under the provisions of S.C. & S.T. (PoA) Act. Further, this Court also observes that the Appellants are employees of Public Utility Company involved in the distribution of electricity to the public. Therefore, in the event they are compelled to appear before the Court on each date, the same would cause wastage of time, which is likely to affect the electricity distribution work thereby causing inconvenience to the public living in the locality.

9. This Court on a combined reading of the provisions contained in the Code of Criminal Procedure as well as the S.C. & S.T. (PoA) Act is of the considered view that there exists no embargo in exercise of power conferred by Section 205 Cr.P.C. in trials involving S.C. & S.T. (PoA) Act. Moreover, the provision in the shape of 205 Cr.P.C. has been incorporated in the Statute to prevent unnecessary harassment caused to accused particularly when such accused is a public servant. Moreover, Section 205 Cr.P.C. takes care of a scenario where the accused fails to appear.



10. In view of the aforesaid analysis and keeping in view the settled legal position as well as the facts, this Court has no hesitation to hold that the order dated 24.01.2024 rejecting the application under section 205 Cr.P.C. is unsustainable in law. However, while disposing of the application, the order is modified to the extent that in the event the Appellant-Petitioners files any application under section 317 Cr.P.C. to dispense with their personal appearance for a day, the same shall be considered in accordance with law unless there is any compelling necessity and such application shall be liberally considered keeping in view the fact that the Petitioners are employees of Public Utility Company.

With the aforesaid observation/direction, the Appeal stands disposed of.

(A.K. Mohapatra)
Judge

Orissa High Court, Cuttack
The 16th Jan, 2025/ RKS

Signature Not Verified

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