

# **Dillip Kumar Biswal @ Dillip Biswal vs State Of Odisha ..... Opp. Party on 9 April, 2024**

**Author: Savitri Ratho**

**Bench: Savitri Ratho**

IN THE HIGH COURT OF ORISSA AT CUTTACK  
CRLREV No. 676 of 2023

1. Dillip Kumar Biswal @ Dillip Biswal

2. Aparajita Biswal .....

Petitioners

Mr. Himanshu Sekhar Mishra, Adv.

Vs.

State of Odisha

.....

Opp. Party

Ms. S. Mishra, A.S.C.

CORAM:

JUSTICE SAVITRI RATHO

ORDER

09.04.2024 Order No. (Through hybrid mode)

04.

1. Heard Mr. Himanshu Sekhar Mishra, learned counsel for the petitioners and Ms. S. Mishra, learned Addl. Standing Counsel for the State.

2. This application under Sections 397, 401 of the Code of Criminal Procedure has been filed challenging the order dated 27.09.2023 passed in C.T. Case No. 60 of 2021 by the learned J.M.F.C, Chandikhol rejecting the application of the petitioners filed under Section 205 of Cr.P.C.

3. The petitioners have been charge sheeted in Badachana P.S. Case No. 10 of 2021 for commission of offences punishable under Sections 272, 273, 420, 34 of IPC and Section 56 of the Food Safety and Standards Act, 2006 along with co-accused Ramesh Biswal and cognizance of the offences under Sections 272, 273, 420, 34 of IPC against the petitioners and Section 56 of the Food Safety and Standards Act against the co-accused Ramesh Biswal on 26.10.2021 and summons has been issued to the petitioners.

4. The allegation in brief is that on receiving reliable information about the adulteration of chili and tomato sauce in the manufacturing unit of the petitioners, which was being run by petitioner no.1, the informant proceeded to the spot along with his staff on 08.01.2021 and found that the main door of the room was locked from inside. After entering inside the house, he found huge quantity of chilli and tomato sauce kept inside the room along with stickers and also found pumpkin being boiled in a

big aluminium container in a unhygienic condition and bad odour was coming from the room. On verification he found that one person who gave his identity as Ramesh Biswal was engaged in manufacture of sauce and on being questioned he stated that he has been engaged by the petitioner no.1 and that petitioner no.2 is the owner of the business and petitioner no.1 her husband is looking after the manufacturing unit. No technical certificate could be produced by him and he confessed that he was not trained and did not have any certificate. The informant did not find any raw tomato and chilli in the room and the co-accused Ramesh Biswal stated that sauce is being prepared in the room from pumpkin since the last three years and different colours and essence have been used for preparing the sauce and selling the same at cheaper rate in the market as compared to Kissan, Maggi etc. and the owner was fraudulently affixing logo and stickers and giving the impression to the public that the product is genuine and of a good brand.

5. As stated earlier, after completion of investigation, charge sheet has been filed against the petitioners and Ramesh Biswal for commission of offences punishable under Sections 272, 273, 420, 34 of IPC and Section 56 of the Food Safety and Standards Act, 2006. After summons were received by the petitioners, an application under Section 205 of Cr.P.C. was filed on their behalf before the learned Magistrate stating therein that they were businessman and engaged in business outside the State. One of the accused is a woman and while the other was suffering from chronic diseases, so they are unable to appear physically in the Court.

6. Learned counsel for the complainant had objected to the petition stating that offences under Sections 272 and 273 of IPC are non-bailable in nature and triable by a Court of Session and in view of the nature of allegations against the petitioners, the presence was necessary for commitment of the case and during trial for identification.

7. The learned Court below has observed that the personal appearance of the co-accused persons are necessary for committing of the case record and further appearance of the accused in the criminal case is the rule and exemption from appearance is an exception, which can be done in suitable cases. It was also observed that though it is stated that one of the co-accused person is a woman and other is suffering from chronic disease but in the petition it has been stated that they are businessman and engaged in business outside the State and that no medical document has been submitted showing that one of co-accused is suffering from chronic disease. The Court further held that it is a case of triable by Court of Session of the year 2021 and the appearance of the accused persons has been completed and in view the seriousness of the allegations, rejected the application under Section 205 of Cr.P.C.

8. Mr. Himanshu Sekhar Mishra, learned counsel for the petitioners submits that in view of the nature of allegations against the petitioners the proceedings itself not maintainable in view of the decision of the Apex Court in the case of Ram Nath vs. The State of Uttar Pradesh & Others reported in 2024 INSC 138 for which he has filed CRLMC No. 4496 of 2023 with a prayer to quash the impugned order of cognizance dated 26.10.2021 and in the said case notice has been issued by this Court and further proceedings have been stayed. He further submits that in view of the nature of allegations against the petitioners the necessity of identification may not be necessary for which their personal appearance should not been insisted upon. He further submits that the petitioner no.1

is suffering various chronic diseases, while petitioner no.2 is a woman and insisting on their personal appearance will result in prejudice to them. He also submits that even if their personal appearance is dispensed with, the petitioners undertake to appear in the Court below as when their appearance will be necessary and they are directed to do so by the Court.

9. Ms. S. Mishra, learned Addl. Standing Counsel for the State vehemently objects to the said prayer stating that the petitioners are allegedly involved in the heinous offence of adulteration of food articles and since the cognizance of offences under Section 272 and 273 of IPC has been taken and against them and the offences are triable by a Court of Session and punishable with imprisonment for life, their application has been rightly rejected. She further submits that as the petitioners have claimed to the businessman, they can very well appear before the Court below and seeks for exemption on any date on which date it is not possible for them to appear in the Court. In support of her submission, that prayer for dispensing with the personal appearance should not been allowed in case of serious offences, she relies on the decision of the Supreme Court in the case of Lily Begum vs. Joy Chandra Nagbanshi reported in (1994) 2 Supreme Court Cases 39 and the decision of this Court in the case of Chintan Joshi vs. Niranjana Behera in CRLMC No. 2940 of 2022 decided on 11.04.2023.

10. Hearing is concluded.

11. Judgment is reserved.

12. List this case on 29.04.2024 for delivery of judgment.

(Savitri Ratho) Judge Sukanta Signed by: SUKANTA KUMAR BEHERA Designation: Senior Stenographer Location: Orissa High Court, Cuttack Date: 10-Apr-2024 19:52:00