

**Anam Charan Behera Vs. State**

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**Court :** Orissa

**Decided On :** Jul-25-2001

**Reported in :** 2002CriLJ381

**Judge :** C.R. Pal, J.

**Acts :** Code of Criminal Procedure (CrPC) , 1974 - Sections 205 and 205(1);  
Indian Penal Code (IPC) - Sections 224, 225, 380, 457 and 511

**Appeal No. :** Crl. Misc. Case No. 4411 of 2001

**Appellant :** Anam Charan Behera

**Respondent :** State

**Advocate for Def. :** D.R. Mohapatra, A.G.A.

**Advocate for Pet/Ap. :** U.K. Mohanty, ;H.K. Mallick and N. Biswal, Advs.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**C.R. Pal, J.**

1. The petitioner being aggrieved by the order dated 9-5-2001 passed by the learned S.D.J.M. (Sadar), Cuttack in G.R. Case No. 1775 of 1985 rejecting his

prayer to dispense with his personal attendance in terms of Section 205, Cr. P.C. has filed this petition for quashing the impugned order.

2. The petitioner is an accused in G.R. Case No. 1775 of 1985 of the Court of S.D.J.M. (Sadar), Cuttack. The allegation against him is that on 11-7-1985 at about 2.00 a.m. he entered into the house of the informant Mula Sahoo through the window of the kitchen room and seeing him the inmates of the house raised alarm and with the help of others caught hold of the petitioner and handed him over to the Grama Rakhi. But, the Grama Rakhi freed him on the request of the villagers. The matter was reported at the police station and a case was registered against the petitioner for the alleged offences under Sections 457, 380, 511, 224, 225, IPC. After investigation, police submitted charge sheet for the alleged offences showing him as an absconder. The learned Magistrate on receiving charge sheet took cognizance of the offences and since the offences alleged include offences triable under warrant procedure, he issued N.B.W. against the petitioner to secure his attendance in the Court. However, the warrant could not be executed. The petitioner through his counsel moved a petition under Section 205, Cr. P.C. on 9-5-2001 to dispense with the personal attendance of the petitioner' allowing his counsel to represent him in the case. The learned Magistrate after hearing both the sides rejected the said petition by the impugned order which is now under challenge.

3. The learned Counsel of the petitioner submitted that the petitioner is an employee under the State Government and as such it is difficult on his part to attend the Court on each date. It is also submitted that the learned Magistrate should have been liberal and keeping in view the principle laid down in (1999) 17 OCR 473 Surojit Sen v. Sanatan Behera should have allowed the prayer. The learned Addl. Govt. Advocate, however, argued in support of the impugned order. In this context, it is brought to the notice of the Court that the case is of the year 1985. Even though warrant was issued, the petitioner's attendance could not be procured and the case is pending for appearance of the petitioner for about 16 (sixtten) years. He has been described in the charge sheet as an absconder. It is well known that the power conferred under Section 205(1), Cr. P.C. is discretionaiy and no hard and fast rule can be laid down as to the manner in which it is to be

exercised. Court is to exercise the discretion after looking into all the relevant circumstances like inconvenience likely to be caused to the accused if he is required to be absent from his vocation, profession, trade, occupation and calling for attendance in Court, against prejudice likely to be caused if he does not appear in Court. Here the case is pending for the last 16 years for the appearance of the accused/petitioner in Court. It also appears that his attendance could not be secured despite issuance of warrants. In the above circumstances, it cannot be said that the learned Magistrate has exercised his discretion improperly. 4. Under the above circumstances, the order passed by the learned Magistrate rejecting the prayer of the petitioner to be represented by his counsel does not appear to be unjust inquiring interference.

Accordingly, the petition is dismissed.

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