

## APPELLATE CRIMINAL.

*Before Mr. Justice Kumaraswami Sastri.*

SRI SRI SRI KANDAMANI DEVI (THIRD ACCUSED IN  
SESSIONS CASE NO. 2 OF 1922 ON THE FILE OF THE SESSIONS  
COURT OF GANJAM), PETITIONER.\*

1922,  
January 27.

*Criminal Procedure Code (V of 1898), ss. 205, 353—Sessions Judge—Personal attendance of accused—Power to dispense with such attendance.*

A Sessions Judge has power to dispense with the personal attendance of an accused and allow him to appear by pleader during the Sessions trial.

Such a power may properly be exercised in favour of Pardanishin ladies at least until they are convicted.

PETITIONS under sections 435 and 439 of the Criminal Procedure Code praying the High Court to revise the order of S. RANGANATHA MUDALIYAR, Sessions Judge of Ganjām, in Sessions Case No. 2 of 1922, and to dispense with the personal attendance of the petitioner.

The facts of the case are set out in the Order.

*C. Sambasiva Rao* for petitioner.

KUMARASWAMI SASTRI, J.—The third accused is a gosha lady and belongs to a respectable zamindar family of Gumsur. I am of opinion that the Sessions Judge has power to dispense with the personal attendance of the accused and permit her to appear by pleader during the Sessions trial. Section 205 of the Code of Criminal Procedure empowers a Magistrate to do so and section 353 of the Code of Criminal Procedure, which refers to the mode of recording evidence in trials, including Sessions trials, states that evidence shall be taken

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SASTRI, J.

\* Criminal Revision Case No. 93 of 1922 and Criminal Revision Petition No. 87 of 1922.

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SASTRI, J.

in the presence of the accused except where personal attendance is dispensed with, in which case it shall be taken in the presence of his pleader. I do not think that there is anything in the Code to prevent the Sessions Judge from doing what a Magistrate is empowered to do as regards attendance by the accused and section 353 impliedly gives the power as Chapter XXIII, which relates to trials before High Courts and Courts of Session, is included in section 353. In *Emperor v. C. W. King*(1) it was held that the High Court has power under the provisions of section 353 of the Code of Criminal Procedure to dispense with the attendance of the accused during the Sessions trial. In *Raj Rajeshwari Debi v. The King-Emperor*(2), IMAM and CHAPMAN, JJ., directed pardanishin ladies to appear by pleader both in the Magistrate and Sessions Courts, subject to their having to appear in Court to hear sentence in case of conviction.

Having regard to the habits and customs of the country and the social stigma that attaches to gosha ladies breaking purda, I think it will be in the interests of justice that they should not be compelled to appear in public, at least until they are convicted.

On the merits, I think that, having regard to the nature of the evidence against the petitioner in the Committing Magistrate's Court, I will be exercising a proper discretion in allowing her to appear by pleader and dispensing with her personal attendance.

M. H. H.

(1) (1912) 14 Bom. L.R., 236.

(2) (1913) 17 C.W.N., 1248.