

**IN THE COURT OF THE SESSIONS JUDGE, KHURDA
AT BHUBANESWAR.**

Present:

Dr. D.P. Choudhury,
Sessions Judge, Khurda
at Bhubaneswar.

Dated, Bhubaneswar the 25th June'14.

Crl. Revision No. 05 of 2013.

(Arising out of the order dated 11.12.2012 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.3237 of 2011.)

Rabindra Kumar Patra, aged 58 years, S/o. Late Radhakrushna Patra of Village – Gola Mohammad Patna, P.O. - Bhakar Sahi, P.S. - Balipatna, Dist. - Khurda. At present : Vill. - Panidola, P.O. -Kanti, P.S. - Pipli, Dist. - Puri.

... **Petitioner.**

-V e r s u s-

Kailash Patra, aged about 44 years, S/o. Krutibash Patra, Vill. - Gola Mahammad Patna, P.O. - Bhakar Sahi, P.S. - Balipatna, Dist. - Khurda.

... **Opp. Party.**

Counsel :

For Petitioner	--	Shri S.K. Mishra & Associates.
For Opp. Party	--	Shri S.K. Pradhan & Associates.

Date of argument : 11.06.2014.

Date of order : 25.06.2014.

O R D E R

This revision is directed against the order dated 11.12.2012 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.3237 of 2011.

2. The unsworn details of the case of the petitioner are

that the opposite party being one of the accused in G.R. Case No.2588 of 1992 faced trial with other accused persons for the offences punishable under sections 447/294/379/506/34, IPC. In that case, the learned JMFC, Bhubaneswar found the opposite party guilty, but instead of sentencing him, released him under section 4(1) & 4(3) of the Probation of Offenders Act, 1958 (“the Act”, for short). In the process of obtaining bond and supervision order from the opposite party, his village name was described as Banamalipur instead of Golam Mohammad Patna. The present petitioner is the informant in that case. Since the opposite party furnished bond by inserting another village name with the intention to get rid of the bond and not to abide by its conditions, the present petitioner filed a complaint case in the Court of S.D.J.M., Bhubaneswar, registered as 1C.C. Case No.3237 of 2011. The learned S.D.J.M., after examining the complainant and going through the record observed that taking of cognizance on a private complaint is a bar under section 195 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) and, ultimately, dismissed the complaint. It is the case of the petitioner that such dismissal of the complaint is bad in law. Hence, the revision petition.

3. Learned counsel appearing for the petitioner submitted that in view of the decision reported in **AIR 2010 SC 812 (Mahesh Chand Sharma Vs. State of U.P. & Ors.)**, the complaint is not barred under section 195 of the Code because before bond is accepted, it was filed by the opposite party by

forging the same and using the same as true declaration knowing it to be false. It is, therefore, submitted by learned counsel for the petitioner that the learned Court below has erred in law by dismissing the complaint.

4. Learned counsel appearing for the opposite party while supporting the order of the learned S.D.J.M. submitted that after conviction, the opposite party comes under the custody of the concerned Court and while bond under section 4(1) & 4(3) of the Act is taken, he becomes *custodia legis* and, as such, section 195 of the Code is a bar to take cognizance of the offence on the complaint filed by the petitioner.

5. Perused the complaint, lower Court record and the record in G.R. Case No.2588 of 1992. For better appreciation, provisions of section 195 of the Code are quoted herein below :

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. - (1) No Court shall take cognizance -

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, or attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any

Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii),

[except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.]

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate :

Provided that -

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue

Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed”.

6. It is also required to go through the decision reported in **(1998) 14 (SC) OCR – 312 (Sachida Nand Singh & Another Vs. State of Bihar & Another)**, where Their Lordships at para-23 have observed :

“23. The sequitur of the above discussion is that the bar contained in Section 195(1)(b)(ii) of the Code is not applicable to a case where forgery of the document was committed before the document was produced in a Court”.

With due respect to the above decision, I find that in the instant case provision under section 195(1)(b)(ii) of the Code will be applicable if forgery of the document is committed during custody of the Court.

7. There is also another decision of the Hon'ble Apex Court in the case of **Iqbal Singh Marwah and another Vs. Meenakshi Marwah and another [2005 (II) OLR (SC) – 102]**, wherein the Constitution Bench was pleased to observe at para-25 that :

“.....Section 195(1)(b)(ii), Cr. P.C. would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court i.e., during the time when the document was in *custodia legis*”.

With due respect to the above decision, I find that before invoking section 195(1)(b) of the Code, there must be

offences enumerated in the said provision to have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any Court during the time when the document was in *custodia legis*.

8. In the instant case, on going through the impugned order, it appears that the learned S.D.J.M. has elaborately discussed the application of the provisions of section 195 of the Code. He has also gone through the record in G.R. Case No.2588 of 1992; but he has mainly concentrated on the application of section 195 of the Code. In his order, the learned S.D.J.M. has cited the argument and decisions relied upon by learned counsel for the complainant. But, his order does not disclose as to whether the relevant document has been actually executed by the opposite party after conviction is recorded or it was prepared outside and submitted before the learned J.M.F.C., Bhubaneswar in G.R. Case No.2588 of 1992. Since the learned S.D.J.M. has recorded the statement of the complainant and gone through the record in G.R. Case No.2588 of 1992, it is incumbent on his part to form an opinion whether prima facie the document in question has been forged and submitted with fictitious village name before the concerned Court or the learned J.M.F.C. has recorded the same during judicial custody of the opposite party. Without determination of such factual aspect, it is not proper to apply the provisions under section 195 of the Code into motion, as submitted by learned counsel for the petitioner. Since the complaint has been dismissed at the threshold without

determining whether the document in question was in *custodia legis*, the impugned order is vulnerable being not in conformity with law. As such, the same is liable to be set aside. Hence ordered :

O R D E R

The criminal revision is allowed without cost. The order dated 11.12.2012 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.3237 of 2011 is hereby set aside. The matter is remitted back to the learned S.D.J.M., Bhubaneswar with a direction to dispose of the complaint petition according to law, keeping in view the observations made above, within a period of one month from the date of receipt of this order.

**Sessions Judge, Khurda
at Bhubaneswar.**

25.06.2014.

Dictated, corrected by me and pronounced in the open Court this day the 25th June, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

25.06.2014.