

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

Present:

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

*Dated, Bhubaneswar the 13<sup>th</sup> Nov. '14.*

**Crl. Rev. No.21 of 2013.**

(Arising out of the order dated 20.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C.Case No.2278 of 2012.)

Govinda Associates, Represented through its Proprietor  
Ajit Kumar Sahu, Son of Govinda Sahu, 101-A, Budheswari  
Colony, Bhubaneswar, Dist. – Khurda.

... **Petitioner.**

***-V e r s u s-***

1. M/s. Lingaraj Agencies, represented through its  
Proprietor Sri Kiran, Venkateswar Temple Street, Berhampur,  
Dist. – Ganjam.

2. Sisir Kumar Mahapatra, Son of Mahadev Mahapatra, C/o.  
Snigdharani Das, Bapuji Nagar (3<sup>rd</sup> Lane), Near Medical  
Bank Colony, Berhampur, Dist. – Ganjam.

... **Opp. Parties.**

**Counsel :**

For Petitioner	--	Shri R.K. Jena & Associates.
For O.P. No. 1	--	Shri S.D. Prasad & Associates.
For O.P. No.2	--	None.

Date of argument : 30.10.2014.

Date of order : 13.11.2014.

**O R D E R**

The order dated dated 20.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C.Case No.2278 of 2012, dismissing the complaint petition filed by the complainant (petitioner herein) is under challenge in this revision.

2. The case of the petitioner is that he filed the complaint in the Court below alleging commission of the offences under sections 420/120-B/406/34 of the Indian Penal Code, but after recording his statement under section 200 of the Code of Criminal Procedure (“the Cr. P.C.”, for short) and the statement of a witness examined from his side under section 202 of the Cr. P.C. dismissed the complaint petition. It was submitted by learned counsel appearing for the petitioner that there is prima facie case made out, but the learned S.D.J.M., Bhubaneswar did not appreciate the evidence adduced by the petitioner and his witness for which the order passed by the learned trial Court is wrong and illegal. He further submitted that there is clear cut material to show that the petitioner has sent medicines worth Rs.16,108/- and the opposite parties (who are accused in the Court below) have duly received the same. But, later, the opposite parties claimed to have not received any medicines with an intention to misappropriate the

same amounting to Rs.16,108/-. As a result, prima facie a case under the aforementioned sections of law is well made out against them. It was further contended by learned counsel for the petitioner that when there is ample material for taking cognizance considering only whether there is prima facie case made out, the impugned order passed by the learned S.D.J.M. is unsustainable in law. According to him, the learned S.D.J.M. has failed to exercise the jurisdiction properly for which the order dated 20.02.2013 passed by him should be set aside with a direction to the learned Court below to take cognizance of the offences and to issue processes against the opposite parties.

3. Learned counsel appearing for opposite party No.1 submitted that there is no iota of material to take cognizance of the offences against the opposite parties and the learned S.D.J.M., Bhubaneswar has rightly refused to take cognizance of the same and dismissed the complaint petition. So, he prayed to dismiss the revision.

4. Perused the lower Court record containing plaint, initial statement of the petitioner recorded under section 200 of the Cr. P.C., statement of his witness recorded under section 202 of the Cr. P.C., the documents filed by the petitioner and the impugned order. The learned Court below has not believed

the story of the petitioner because no staff of the bus, through which medicines were sent, has been examined on his behalf to lend corroboration to the allegations made. It is true that the Court can take cognizance of the offences if the evidence adduced by the complainant is cogent and reliable; but the Court has to apply its judicial mind to the materials before it. Whether further evidence is necessary or not cannot be determined at the time of taking cognizance, but the same can be opined while disposing of the case at the end of the trial. The order of the learned S.D.J.M., Bhubaneswar does not disclose if he has applied his judicial mind to the initial statement of the petitioner and the statement of his witness. In my considered opinion, the learned S.D.J.M. has not applied his mind properly and has misdirected himself to the facts which are not necessarily to be disposed of at the time of taking cognizance. He should have taken into consideration the statements of the petitioner and his witness and applied his mind to find out if any offence is made out against the opposite parties. As such, the order passed by the learned trial Court is vulnerable being bad and illegal and, therefore, the same is liable to be set aside. Hence ordered :

**O R D E R**

The Criminal Revision is allowed on remand and the

order dated 20.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C.Case No.2278 of 2012 is hereby set aside.

The matter is remitted back to the learned S.D.J.M., Bhubaneswar, who would do well to examine the materials on record afresh and pass necessary orders in accordance with law.

**Sessions Judge, Khurda  
at Bhubaneswar.**

13.11.2014.

Dictated, corrected by me and pronounced in the open Court this day the 13<sup>th</sup> November, 2014.

**Sessions Judge, Khurda  
at Bhubaneswar.**

13.11.2014.