

IN THE COURT OF THE 1ST ADDL. SESSIONS JUDGE- CUM-
SPECIAL JUDGE (VIGILANCE) BHUBANESWAR.

Present :

Shri N.Sahu, LL.B.,
1st Addl. Sessions Judge, Bhubaneswar.

Crl. Revision No. 1/10 of 2012/2009

(Arising out of the order, dt.30.4.2007 passed
in I.C.C. Case No.724/2007 by the learned
SDJM, Bhubaneswar).

Chittaranjan Das, aged about 52 years,
Son of Shatrughna Das, resident of Plot No.351/6441,
Sameigadia, PS-Mancheswar, Bhubaneswar, Dist.Khurda.

Petitioner.

-Versus-

Rabindra Kumar Mallik, aged about 54 years,
Son of Nirakar Mallik of Vill.:Nuapada,, PS-Aul,
Dist.-Kendrapara and Plot No.351/6577, Sameigadia,
PS-Mancheswar, Bhubaneswar, Dist.-Khurda,
At present working as Grade-II in Food Corporation
of India, Jaypore Branch, Umuri Depot,
At/PO-Jaypore, Dist.: Koraput.

Opp. Party.

For the Petitioner : In person.
For the Opp.Party : Sri N.Kanungo & Associates.

Date of argument : 22.10.2014.

Date of judgment : 01.11.2014.

J U D G M E N T

1. This Revision arises out of the order, dt.30.4.07 passed in I.C.C.No.724/2007 by the learned SDJM, Bhubaneswar.
2. Briefly stated the case of the petitioner is that he filed the aforesaid complaint case with allegation of offences u/s.448, 294, 323, 382, 506 and 465 IPC. Though the learned SDJM, Bhubaneswar took

cognizance of all the other offences, but did not take cognizance u/s.465 IPC and being aggrieved by the said order, the petitioner has filed this case stating that the statements of the complainant and other witnesses recorded u/s.202 Cr.P.C. attracts u/s.465 IPC and the learned lower court without considering the materials on record arbitrarily refused to take cognizance which is illegal and liable to be set aside. He has also stated in the petition that he had complained before the BDA that the accused by submitting the false plan got it approved and the BDA authorities after hearing the parties directed for removal of unauthorized construction vide order No.9586, dt.19.11.07 and the above facts were narrated by the witnesses, but no cognizance was taken u/s.465 IPC.

During course of hearing of the revision petition, the petitioner appeared in person and reiterated the aforesaid facts and the learned advocate for the opposite party-accused resisted the petition stating the revision petition is barred by limitation and there is no illegality in the order, dt.30.4.07 of the learned SDJM, Bhubaneswar in not taking cognizance of the offence u/s.465 IPC. Moreover, by the time of taking cognizance, absolutely there was no material to make out a case u/s.465 IPC against this accused.

3. The present revision petition was filed by the petitioner on 7.2.09. He had filed one petition u/s.5 of the Limitation Act to condone the delay. Ordersheet, dt.18.1.12 shows that delay was condoned and the revision petition was admitted considering the stand of the petitioner that he was not aware of the fact of not taking cognizance u/s.465 IPC by the learned lower Court, but on 16.1.09 he came to know about that fact. LCR in ICC No.724/2007 shows that the complaint petition was filed on 20.2.07 and the initial statement of the complainant was recorded on 28.3.07. Wife of the complainant was examined u/s.202 Cr.P.C. on 20.4.07. Vide order, dt.30.4.07 the learned Magistrate considering the materials on record took cognizance of the offences u/s.448, 294, 323, 382, 506 IPC, but cognizance of the offence u/s.465

IPC was not taken. The said order is under challenge. The learned counsel for the O.P. submitted that as seen from the ordersheet, dt.30.4.07, the counsel for the complainant was present before the Court on 30.4.07 and was well aware of the fact of non-taking of cognizance of the offence u/s.465 IPC. But deliberately the complainant has filed this Revision Petition after a prolonged period of about 2 years. Ordersheet, dt.18.1.12 of this case shows that inspite of service of copy of limitation petition, the present O.P. had not filed any objection to that petition and the learned Sessions Judge had allowed that petition and condoned the delay. So, I am not inclined to dwell upon that matter again.

4. Section-463 IPC defines forgery. Section-464 IPC defines making a false document. Section-465 IPC provides punishment for forgery. In the complaint petition the complainant had alleged that the accused by giving false information before the BDA got his plan approved vide letter No.2204, dt.23.3.95 and he (complainant) had reported before the BDA about submission of false sketch map. In his initial statement he had not stated anything about submission of false plan and sketch map before BDA. Wife of the complainant during her examination u/s.202 Cr.P.C. has not stated anything about submission of any false plan and sketch map by the accused before BDA. The complaint petition was not accompanied by any document in this regard. Of course in the revision petition, dt.7.2.09 at PARA-IX the petitioner has stated that the B.D.A. instituted UAP Case No.141/2006 against the O.P. and after hearing the BDA directed for removal of the unauthorized construction vide Order No.9586, dt.19.11.07. In PARA-X of the present revision petition, the complainant-petitioner has stated that the above facts were narrated by the witness, but no cognizance was taken u/s.465 IPC. Such assertion of the complainant is quite impossible as because the so called order, dt.19.11.07 was not in existence by the time when the learned S.D.J.M. passed the impugned order, dt.30.4.07.

5. It may be mentioned here that in the meantime the complaint case No.ICC-724/2007 has been disposed of on 20.8.2011 and the accused has been acquitted of the offences u/s.448, 294, 323, 382,506 IPC. The crucial factor is to decide whether the impugned order, dt.30.4.07 suffers from any illegality or impropriety. From the above discussion, it emerges that as on the date of taking cognizance i.e.30.4.2007 no material was available on record to make out a prima facie case u/s.465 IPC against the accused-O.P.

6. Therefore, after considering the materials on record and for the discussion made above, I do not find any illegality or impropriety in the impugned order, dt.30.4.07 passed by the learned S.D.J.M. in not taking cognizance of the offence u/s.465 IPC. As such, I do not find any merit in the present revision. Hence, it is ordered.

ORDER

The Revision is dismissed on contest.

1st Addl. Sessions Judge-Cum-Special Judge
(Vigilance), Bhubaneswar.

The judgment having been typed to my dictation and corrected by me and being sealed and signed by me is pronounced in the open court today this the 1st day of November, 2014.

1st Addl. Sessions Judge-Cum-Special Judge
(Vigilance), Bhubaneswar.

