

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

Present:

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

Dated, Bhubaneswar the 23rd Aug'14.

Crl. Revision No. 20 of 2013.

(Arising out of the order dated 18.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.405 of 2013.)

M/s. Dandeswar Pharmaceuticals, Represented through its Proprietor Ajit Kumar Sahu, Son of Govinda Sahu, Kodala, Berhampur, Dist. – Ganjam, at present Office at Plot No.101-A, Budheswari Colony, Cuttack-Puri Road, P.S. – Laxmisagar, Bhubaneswar, Dist. – Khurda.

... **Petitioner.**

-V e r s u s-

1. Sri Ajaya Jain, Son of Sri Nem Chandra Jain, Partner of M/s. Platinum Life Science.
2. M/s. Platinum Life Science, represented through its Partner, Sri Ajaya Jain, Son of Sri Nem Chandra Jain. Both are Office of 27-A, New Haridwar Colony, Near Dev Bhumi Hospital, Haridwar, Uttarakhanda.

... **Opp. Parties.**

Counsel :

For Petitioner -- Shri R.K. Jena & Associates.
For Opp. Parties -- None.

Date of argument : 13.08.2014.

Date of order : 23.08.2014.

O R D E R

This revision is directed against the order dated 18.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.405 of 2013, refusing to take cognizance of the offences and thereby dismissing the complaint filed by the petitioner (complainant in the Court below).

2. The case of the petitioner, in brief, is that the petitioner being one of the distributors of various brands of medicines in the state of Orissa supply the same to different wholesalers as well as retailers within the state. Accused Company is the manufacturer of different types of medicines and supply the same to distributors throughout India, including the petitioner. During course of business transaction, the accused-Company received one blank cheque bearing No.522086 drawn on Bank of Baroda, Bhubaneswar for security purpose through the Marketing Manager, Rajit Singh Kaintura. It is the further case of the petitioner that as per demand of the accused, the petitioner again sent two numbers of blank cheques bearing Nos.147205 and 147206 drawn on Andhra Bank, Acharya Vihar Branch, Bhubaneswar through speed post for smooth transaction and to continue business between the parties. But, the accused-Company neither sent the required medicines nor responded in a positive manner; rather gave

assurance for delivery of the consignment. It is alleged, inter alia, that the accused-Company misutilised the blank cheques by manipulating the same and issued legal notice claiming imaginary cheque amount of Rs.10,10,991/- without presenting the cheques before their Banker for collection. The petitioner also issued reply, but no further correspondence was received from the side of the accused persons. Thus, the petitioner filed a complaint in the Court of the learned S.D.J.M., Bhubaneswar alleging all those facts with a prayer to take cognizance of the offences. The petitioner examined himself under section 200 of the Code of Criminal Procedure (hereinafter called "the Code"). One witness from the side of the petitioner was also examined under section 202 of the Code. But, the learned S.D.J.M. dismissed the complaint under section 203 of the Code. Such order has been assailed in this revision.

3. On going through the impugned order, it is found that the learned S.D.J.M., Bhubaneswar has passed the same on 18.02.2013 after perusing initial statement of the petitioner recorded under section 200 of the Code and the statement of a witness recorded under section 202 of the Code. Not believing the story of the petitioner, the learned S.D.J.M. has observed that the petitioner has filed this case to make out a defence if there would be filing of a complaint against him under section

138 of the Negotiable Instruments Act, 1881 (“the Act”, for short). Apart from this, on perusal of initial statement of the petitioner and the statement of a witness, he has held that there is no ingredient made out for the offences under sections 294 & 506 of the I.P.C. Finally, the learned S.D.J.M. has not found any offence to have been committed by the accused (opposite parties herein) and, accordingly, dismissed the complaint under section 203 of the Code.

4. Learned counsel appearing for the petitioner submitted that the impugned order dated 18.02.2013 passed by the learned S.D.J.M., Bhubaneswar is unjust, illegal and unsustainable in the eye of law. He further submitted that the impugned order suffers from material irregularity and non-application of judicial mind because the learned Court below is only required to be satisfied that there is material on record showing a prima facie case for taking cognizance. But, the learned Court below has not taken into consideration the evidence adduced by the petitioner at the time of taking cognizance and has erred in law by ignoring the averments made in the complaint petition and the oral evidence adduced by the petitioner. So, it is prayed to set aside the order and direct the learned Court below to take cognizance of the offences and issue process against the opposite parties to face

trial.

5. The opposite parties did not appear in spite of notice.

6. Perused the impugned order, complaint, initial statement and statement of the witness recorded under section 202 of the Code. On going through those materials, it is revealed that during business transaction with the opposite parties, the petitioner sent blank cheques duly signed as per their arrangement for consignment of medicines by the opposite parties. Not only this, but also it is revealed from the initial statement of the petitioner that he has paid cash of Rs.90,000/- to opposite party No.1; but no medicines was sent. In spite of his best efforts time and again, the medicines were not consigned to the petitioner. Rather, the opposite parties harassed and threatened to his life. Even on the request of the petitioner, the opposite parties did not return the blank cheques. After receiving demand notice from the opposite parties, the petitioner came to know that the cheques purported to be amounting to Rs.10,10,991/- have been bounced. Whether the cheques have been dishonoured or not, but the fact remains that as per their mutual arrangement, medicines were not consigned despite best efforts of issuance of cheques and payment of cash. Moreover, the petitioner has

stated that the opposite parties avoided calls. So, prima facie a case against the opposite parties cannot be ruled out. In the impugned order, the learned S.D.J.M., Bhubaneswar has observed that he does not believe the petitioner about the factum of submission of cheque maliciously and fraudulently by the opposite parties for an amount of Rs.10,10,991/-. In fact, there is no such statement of the petitioner recorded under section 200 of the Cr. P.C. Moreover, a person can be relied upon or not must be said with reasons; but no reason has been assigned by the learned Court below while passing the above remarks. Apart from this, the statement of the witness recorded under section 202 of the Code has not been discussed by the learned S.D.J.M. Rather, he has made observation that this case has been filed to set up a defence for the proceeding under section 138 of the Act initiated by the opposite parties against the petitioner. This observation is otiose inasmuch as this is not the stage where defence can be set up by the opposite parties during trial. In the case of ***Iswar Chandra Sahu*** Vs. ***Sarat Chandra Sahu*** [1991 (I) OLR - 436], His Lordship has been pleased to observe that :

“Magistrate has only to see if there is *prima facie* case on examination of witnesses before taking cognizance”.

7. In the instant case, on going through the

statement of the witness and the materials on record, prima facie there appears some alleged offences to have been committed by the opposite parties. But, the learned S.D.J.M., Bhubaneswar has disposed of the matter by giving his view, which is not based on reasonable and rational finding. Thus, this matter is required to be heard and decided by the learned Court below afresh as to whether cognizance of the offences can be taken and process can be issued against the opposite parties. Hence ordered :

O R D E R

The Criminal Revision is allowed on remand and the order dated 18.02.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.405 of 2013 is hereby set aside. The learned S.D.J.M., Bhubaneswar is directed to go through the materials on record again and pass necessary orders according to law. No cost.

**Sessions Judge, Khurda
at Bhubaneswar.**

23.08.2014.

Dictated, corrected by me and pronounced in the open Court this day the 23rd August, 2014.

**Sessions Judge, Khurda
at Bhubaneswar.**

23.08.2014.

