

**IN THE COURT OF THE ADDL.SESIONS JUDGE,
BHUBANESWAR**

Present:

Shri A.C.Behera, LL.B.
Addl. Dist.& Sessions Judge,
Bhubaneswar.

Criminal Revision No.20/02/04/83 of 2013/08/06/05
(Arising out of an order dated 15.09.2005 passed by the
learned S.D.J.M., Bhubaneswar in I.C.C. No.1508/2005)

Dated this the 30th day of May, 2014

1. Gangadhar Mohapatra, aged about 44 years,
Son of Sri Trinath Bai of village-Jagannathpur,
P.O.-Jadunathpur Sasan, P.S.-Fategarh,
District- Nayagarh, At/Present- resident of
Plot No.1134/1128, Bhimatangi, Kapilaprasad,
P.S.-Airfield, Bhubaneswar, Dist.-Khurda.

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Petitioner.

-Versus-

Suresh Chandra Das, aged about 36 years,
Son of Sri Biswanath Das of plot No.1550,
Bhimatangi, Kapilaprasad near Punama Gate
behind PRAGATI MEDICINE STORE,
P.S.-Airfield, Bhubaneswar, Dist.-Khurda.

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Opp.Party

Counsel for the Petitioner : Sri R.C.Sarangi Advocate.

Counsel for the Opp.Party :Sri P.K.Dash, Addl.P.P.,BBSR

Date of Hearing :28.05.2014

Date of Judgment :30.05.2014

JUDGMENT

This is a revision U/s.397 of the Cr.P.C., which has been filed by the petitioner against the order of cognizance and issuance of process passed on dated 19.05.2005 in ICC No.1508/2005 by the learned SDJM, Bhubaneswar, wherein the learned SDJM, Bhubaneswar had taken cognizance U/s. 294/323/506 of the I.P.C. and U/s. 3 of the S.C. & S.T. (P.A.) Act against the petitioner and had directed for issuance of process against him.

The petitioner and Opp.party were the accused and the complainant respectively before the learned Court below in ICC No. 1508/2005.

2. The factual backgrounds of this revision, which prompted the petitioner/accused for filing of the same is that, the Opp. Party being the complainant had approached the learned Court below by filing a case vide ICC No.1508/2005 on dated 13.04.2005 against the petitioner praying for cognizance and issuance of process against him (petitioner) U/s. 341/294/325/506 r/w. Section 34 of the I.P.C. and Section 3 of S.C. & S.T.(P.A.) Act.

After filing of the aforesaid case vide ICC No. 1508/2005 by the Opp.party against the petitioner, the learned Court below posted the said case for recording of initial statement of the complainant/Opp.Party. Then the initial statement of the

Opp.Party/complainant was recorded U/s. 200 of the Cr.P.C. on dated 18.08.2005 by the learned Court below and thereafter the said case was posted to 20.8.2005 for an inquiry U/s. 202 of the Cr.P.C. But due to non-production of any witness on behalf of the complainant/Opp.Party on dated 20.08.2005 for inquiry U/s.202 of the Cr.P.C., the case was posted to 24.08.2005, 30.08.2005, 03.09.2005 and 06.09.2005 for the said purpose. In spite of the posting of the case by the learned Court below for inquiry U/s. 202 of the Cr.P.C., since 18.8.2005, the complainant/ Opp.party neither produced any witness nor filed any document before the learned Court below for the said purpose i.e. for the purpose of an inquiry U/s. 202 of the Cr.P.C. But on dated 06.09.2005, the learned Court below passed specific order by stating that, no witness is present on behalf of the complainant/Opp.Party in the inquiry and no time petition is filed on his behalf, for which, it is assumed that, the complainant is not interested to adduce evidence in the inquiry. Hence the inquiry is closed. Put up on 15.09.2005 for order. On dated 15.09.2005 the learned Court below passed the order of taking cognizance of the offences U/s. 294/323/506 of the I.P.C. and Section 3 of the S.C. & S.T. (P.A.) Act and also for issuance of process against him (petitioner/accused) for the aforesaid offences on perusal of the complaint petition and initial statement of the complainant/OPP.Party.

3. On being aggrieved with the above order of taking cognizance and issuance of process passed on dated 15.09.2005 by

the learned Court below against the the petitioner/ accused, he (Petitioner/accused) has challenged the same by filing this revision after taking the several grounds in his revision petition.

4. I have already heard from the learned Counsel for the petitioner and learned Addl.P.P. for the Opp.Party and so also have perused the materials available in the record including the impugned order of the learned Court below.

5. Basing upon the rival submissions of the learned Counsels of the parties, the grounds taken by the petitioner in his revision petition and impugned order of the learned Court below, the crux of this revision is;

Whether the impugned order of cognizance and issuance of process passed on dated 15.09.2005 by the learned Court below against the petitioner in ICC No.1508/2005 is sustainable under law ?

6. It appears from the records of the learned Court below that, the case vide ICC No. 1508/2005 filed by the complainant/ Opp.Party before the learned Court below had been posting since 18.8.2005 for an inquiry U/s. 202 of the Cr.P.C., as the learned court below was not prima facie satisfied with the complaint and sworn statement of the complainant U/s.200 of the Cr.P.C.(that is his initial statement) to issue process against the petitioner. For which, the said learned Court below should not have taken cognizance U/s. 294/323/506 of the I.P.C. and U/s. 3 of S.C. &

S.T. (P.A.) Act and so also should not have ordered for issuance of process against the petitioner/ accused on dated 15.09.2005, as there was no additional material before him on that day except those were already before him when he (learned Court below) ordered for an inquiry U/s. 202 of the Cr.P.C. on dated 18.08.2005. So the impugned order of cognizance and issuance of process passed on dated 15.09.2005 by the learned Court below against the petitioner/accused is bad and illegal under law. The above conclusion of this revisional court finds support from the ration of the following decisions;

A.I.R. 1981 S.C. Page 1155 Mohammad Ataulah Vrs. Ram Saran Mahto;

Cr.P.C.1973-Sections-190, 200 & 202- The Magistrate had directed an investigation U/s.202 of the Cr.P.C. because, he was prima facie not satisfied with the complaint and sworn statement of the complainant for issuance of process against the accused. But subsequent thereto, the Magistrate took cognizance and passed order for issuance of process against the accused, when there was no additional material before him except what was already there, when he ordered an investigation U/s.202 of the Cr.P.C. - held the order of the Magistrate taking cognizance of the case and issuing process to the accused is bad.

(1993) 6 O.C.R.-507 – Niranjan Parida and another Vrs. Paresh Chandra Parida Cr.P.C. 1973- Section 482- Magistrate after examining complainant and perusing records ordered for an

inquiry U/s. 202 Cr.P.C.- But on a subsequent, he ordered for issuing summons without any further materials on record – the second order is bad.

7. When, it is held that the impugned order dated 15.09.2005 passed by the learned Court below i.e. for taking of cognizance and issuance of process is bad under law, for which the same is not sustainable. So there is justification under law for making interference with the same in this revision filed by the petitioner. Accordingly, there is merit in the revision of the petitioner. The same must succeed. Hence ordered.

ORDER

8. The revision filed by the petitioner is allowed on contest but under the circumstances without costs. The impugned order of cognizance U/s. 294/323/506 of the I.P.C. and U/s. 3 of the S.C. & S.T. (P.A.) Act and issuance of process passed on dated 15.09.2005 by the learned SDJM, Bhubaneswar in ICC No. 1508/2005 against the petitioner is hereby set aside. The revision is disposed of finally.

Send back the LCR to the learned Court below forthwith.

Pronounced the judgment, in open Court this the 30th day of May, 2014 under my seal and signature.

Dictated & corrected by me

Addl. Sessions Judge,
Bhubaneswar.

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