

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

Present :

Shri N.Sahu, LL.B.,
Special Judge (Vigilance) Bhubaneswar.

CrI. Revision No. 1/22 of 2013

(Arising out of the order, dt.8.1.2013 passed
in I.C.C. Case No.718/2012 by the learned
SDJM, Bhubaneswar).

Dr. Ramashraya Tiwari, aged about 65 years,
S/o.Late Vishwa Nath Tiwari, resident of
B-314, Phase-IV, Rapti Nagar,
PS/PO/Dist-Gorakhpur, Uttar Pradesh.

.... Petitioner.

-Versus-

Kripa Shankar Tiwari,
S/o. Late Devi Prasad Tiwari,
resident of Plot No.140, Cuttack Road,
PO-Budheswari Colony, PS-Laxmisagar,
Bhubaneswar, Dist.Khurda, Odisha

.... Opp. Party.

For the Petitioner : Sri A.K.Chanda & Associates.
For the Opp.Party : Sri S.Das & Associates.

Date of argument : 15.11.2013.
Date of judgment : 22.11.2013.

J U D G M E N T

1. This Revision has been filed against the order, dt.8.1.2013 of the learned SDJM, Bhubaneswar passed in I.C.C. Case No.718/2012 taking cognizance of the offences u/s.451,294,506/34 IPC and issuing process against the accused persons.
2. The background of the case is that the present O.P. who was the complainant before the lower Court, filed one complaint petition against the present accused and two others. The learned lower Court recorded the initial statement of the complainant and posted the case for enquiry u/s.202 Cr.P.C. He recorded the statements of two witnesses during enquiry u/s.202 Cr.P.C.

Vide the aforesaid order, the learned lower Court took cognizance of the offences and issued process to the accused persons which order is under challenge.

3. The learned counsel for the petitioner during hearing of the revision submitted that the learned lower Court seriously erred in not following the mandatory requirement of law as envisaged u/s.202 Cr.P.C. and the Court also erred in taking cognizance of the offences solely basing on the oral evidence. The learned counsel placed reliance of a decision of the Hon'ble Apex Court reported in (2013) 54 OCR (SC), Page-861, National Bank of Oman-Vrs.-Barakara Abdul Aziz & another. The learned counsel also contended that a false case has been foisted by the complainant-O.P. to take revenge. So, the said order is liable to be set aside.

4. Perused the materials on record. At the outset, it would be appropriate to reproduce Section-202 Cr.P.C. which reads as follows :-

“202.Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction,] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

xxxx xxxx xxxx xxxx xxxx

5. It is seen that the accused persons are residents of Uttar Pradesh which is beyond the jurisdiction of the learned SDJM, Bhubaneswar. So, as contemplated u/s.202 Cr.P.C., it is obligatory of the Magistrate to hold an enquiry or direct an investigation u/s.202 Cr.P.C. In fact, the Magistrate has enquired u/s.202 Cr.P.C. and examined two witnesses during such enquiry. So, there was compliance of mandatory requirements of Section-202 Cr.P.C.

At this stage, it would be appropriate to reproduce the relevant portion of the judgment of the Hon'ble Apex Court reported in the case of (2013) 54 OCR (SC), Page-861, (Supra) :

xxx xxxx xxxx xxxx

“The scope of enquiry under Section 202 of the Cr.P.C. is, therefore, limited to the ascertainment of truth or falsehood

of the allegations made in the complaint-(i) on the materials placed by the complainant before the Court (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have.”

6. Vide order, dt.8.1.2013, the Magistrate on perusal of complaint petition, initial statement of the complainant and the statements of the witnesses recorded u/s.202 Cr.P.C. found a prima facie case and took cognizance of the offences u/s.451,294,506/34 IPC and issued summons to the accused persons. So, I do not find any illegality in the said order of the Magistrate. As such, I found no merit in the revision. Hence, it is ordered.

ORDER

The Revision is dismissed on contest but without any cost.

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 22nd day of November, 2013.

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

