

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

Present :

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

Crl. Revision No. 20/64 of 2011/2009.

(Arising out of the order, dt.17.9.2009 passed
in I.C.C. Case No.477/2005 by the learned
J.M.F.C., Bhubaneswar).

Pravat Das, aged about 65 years,
S/o.Sankar Charan Das, resident
of Shree Niwas, Naharkanta,
PS-Mancheswar, Bhubaneswar,
Dist.Khurda.

.... Petitioner.

-Versus-

S.N.Tiwari, aged about 64 years,
Son of Not known, resident of
Plot No.354, Patia Chhak, PO-Kitt,
Bhubaneswar, Dist.Khurda.

.... Opp. Party.

For the Petitioner : Sri S.N.Subudhi & Associates.
For the Opp.Party : Sri G.R.Mohanty & Associates.

Date of argument : 04.11.2013.

Date of judgment : 19.11.2013.

J U D G M E N T

1. This Revision has been preferred against the order, dt.17.9.09 of the learned JMFC, Bhubaneswar passed in I.C.C.No.477/2005.
2. The case of the petitioner is that he is the complainant in I.C.C.No.477/2005 before the lower Court wherein the present O.P. was the accused. On 19.8.09 the petitioner filed one petition before the lower Court to alter the charge and to add Sections-420,467,468 IPC against the accused. But, the learned lower Court rejected the said petition vide the

impugned order stated above which is under challenge. The learned counsel for the petitioner during course of hearing of the revision submitted that the O.P. is the proprietor of Natural Marbles and had issued the cheque. But the said firm is in the name of one Bijay Sharma. But the O.P. handed over the cheque to the petitioner which has been issued in the name of said Bijay Sharma. So, the O.P. has cheated the petitioner and has forged the cheque. Hence, he is liable for the offences u/s.420,467,468 IPC. But the learned lower Court dismissed the petition without proper application of mind.

3. The learned counsel for the O.P. supported the impugned order.

4. Perused the materials on record. Admittedly, basing on the complaint petition and the materials on record, the learned lower Court took cognizance of the offence u/s.138 N.I.Act and issued summons to the accused. The trial proceeded. When the case was posted for argument, the present petitioner filed this petition to alter the charge and to add Sections-420,467,468 IPC.

5. The learned counsel for the petitioner placing reliance on a decision of our own Hon'ble High Court reported in 1990 (II) OLR, Page-361, Narayan Das-Vrs.-Laxmidhar Nayak & others submitted that the Court has ample power to amend the charge at any stage. I fully agree with the proposition of law settled therein. But, the crucial point to be determined is whether there are materials on record justifying the alteration of charge. In the instant case, the petitioner in para-1 of the compliant petition has specifically mentioned that the accused being the proprietor of Natural Marbles had taken marbles from him and he (accused) had handed over the cheque in question to him on 11.9.2004. In his evidence before the Court the accused has specifically stated that he is not the proprietor of Natural Marbles nor he was the proprietor of that firm at any time. He has also stated that he had never issued any cheque to the complainant. During his examination u/s.313 Cr.P.C., the accused had taken a plea that he does not know the complainant and he had never

issued any cheque. In Ext.A (the reply of the accused through advocate) he had also taken such stand that he had never issued the cheque in question nor he had purchased any granite tiles from the complainant.

6. DW-3 an employee of the bank stated that one Bijay Sharma was the proprietor of Natural Marbles and he had a current account in their Cuttack branch. The cheque in question was returned with an endorsement "Insufficient funds" vide Ext.2. The accused has specifically denied that the purported signature on the cheque vide Ext.1/1 does not belong to him. With such state of evidence at this stage, it would not be just and proper to hold that the accused had signed on the cheque forging the signature of the account holder particularly when he himself has specifically denied that he had neither issued the cheque nor that signature belongs to him. The said question can only be decided by the time of final disposal of the case. As such, I hold that the impugned order of the learned JMFC, Bhubaneswar rejecting the petition of the petitioner to alter the charge, does not suffer from any irregularity. Accordingly, I hold that the revision petition has no merit. Hence, it is ordered.

ORDER

The Revision is dismissed on contest without 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 19th day of November, 2013.

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

