

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

Present:

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

*Dated, Bhubaneswar the 15<sup>th</sup> Sept. '14.*

**CRP No.53 of 2013.**

(Arising out of the order dated 04.07.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.2682 of 2013.)

Computer Rath, aged about 27 years, S/o. Sri Man Mohan Rath, permanent resident of At - Tikra Para, P.O./P.S./Dist. - Bolangir, Pin - 767 001 and presently residing at N- 3/436, IRC Village, Nayapalli, Bhubaneswar, Pin - 751 015, Odisha.

... **Petitioner.**

***-V e r s u s-***

1. Hemant C. Parekh, aged about 45 years, S/o. Late Chimanlal Parekh, Presently residing at B-2/181, Lingaraj Vihar, Pokhariput, P.O. - Aerodram Area, P.S. - Airfield, Bhubaneswar - 20, Odisha and permanent resident of BG- 1, Aviskar-2, Before Halar Garden, Halar, Valsad, Pin - 396 001, Gujarat, President-cum-Managing Trustee of "Padmalaya Trust of India", in short, PTI.
2. Padmini Sahu, aged about 40 years, W/o. Surendra Prasad Srivastav, the Head (Administration)-cum-Trustee of Padmalaya Trust of India, Regd. Office at B-2/181, Lingaraj Vihar, P.O. - Aerodram Area, P.S. - Airfield, Bhubaneswar, Pin - 751 020, Odisha.

... **Opp. Parties.**

**Counsel :**

For Petitioner     --     Shri D.P. Das & Associates.  
For Opp. Parties  --     None.

Date of argument : 26.08.2014.

Date of order : 15.09.2014.

**O R D E R**

This revision is directed against the order dated 04.07.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.2682 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 he was appointed as Legal Officer under Padmalaya Trust of India. After working there, he found that instead of Employees' Provident Fund (EPF), Institutional Provident Fund (IPF) was being deducted from his monthly salary by the opposite parties (accused persons in the Court below). So, he verified from the Provident Fund Office that no such IPF has been deducted and sent to the said office. In this regard, he made correspondence with the opposite parties, but no answer was given, rather he was threatened by the opposite parties of dire consequence. Then, he tendered his resignation, but the same was not accepted. Thus, he filed the complaint case against opposite

parties.

3. The learned S.D.J.M., Bhubaneswar recorded the initial statement of the petitioner under section 200 of the Code of Criminal Procedure (hereinafter called “the Code”) and finally dismissed the complaint petition. Being aggrieved by the said dismissal, the present revision petition has been filed challenging the order passed by the learned S.D.J.M., Bhubaneswar.

4. The opposite parties appeared and filed objection, stating that there is no merit in the petition and, as per rules and regulations of the Government, steps have been taken for which the petition is liable to be rejected.

5. I went through the LCR. On going through the record, it appears that after filing of the complaint, the learned S.D.J.M. has recorded the initial statement of the petitioner under section 200 of the Code. After such recording, the learned S.D.J.M. set down the case to 28.06.2013 for inquiry under section 202 of the Code. On that date, the petitioner filed a memo, stating that he does not want to adduce further evidence, but requested to go through the documents filed by him. As per order dated 04.07.2013, the learned S.D.J.M., after perusal of the complaint petition and the initial statement of the petitioner recorded under section 200 of the Code, dismissed

the complaint petition, observing that no offence is made out and the matter being payment of salary, no criminal proceeding can ordinarily lie.

6. When the matter was posted for inquiry under section 202 of the Code and the documents filed by the petitioner were required to be gone through, it was the duty of the learned Court below to ask the appellant to lead evidence and prove the documents systematically under section 202 of the Code. On the other hand, I find that although the learned S.D.J.M. has passed order of inquiry under section 202 of the Code, but he has not done so. This is apparently a matter of irregularity, showing non-exercise of jurisdiction by the learned S.D.J.M. Thus, the order passed on 04.07.2013 by the learned S.D.J.M. is vulnerable, unsustainable in law and is liable to be set aside. Hence ordered :

### **O R D E R**

The Criminal Revision is allowed on remand and the order dated 04.07.2013 passed by the learned S.D.J.M., Bhubaneswar in 1C.C. Case No.2682 of 2013 is hereby set aside. The matter is remitted back to the learned S.D.J.M., Bhubaneswar to hold inquiry under section 202 of the Code and pass order according to law. No cost.

**Sessions Judge, Khurda  
at Bhubaneswar.**

15.09.2014.

Dictated, corrected by me and pronounced in the open Court  
this day the 15<sup>th</sup> September, 2014.

**Sessions Judge, Khurda  
at Bhubaneswar.**

15.09.2014.