

IN THE HIGH COURT OF ORISSA AT CUTTACK**CRLMC NO.998 of 2016**

(In the matter of application under Section 482 of the Criminal Procedure Code, 1973.).

Rabindranath Nayak ***Petitioner***

-versus-

Chittaranjan Satpathy and another ***Opposite Parties***

For Petitioner : ***Mr. P.C. Das , Advocate***

For Opposite Parties : ***Mr. P.K. Pattnaik, AGA[O.P.No.1]***
Mr. D.K. Sahoo, Advocate[O.P.No.2]

CORAM:

JUSTICE G. SATAPATHY

DATE OF HEARING :12.12.2022

DATE OF JUDGMENT:22.12.2022

G. Satapathy, J.

1. Feeling aggrieved by the order passed on 08.09.2015 by the learned S.D.J.M., Kendrapara in 1.C.C. Case No.90 of 2014 taking cognizance of offence U/S.417 of IPC, the petitioner has approached this Court in an application U/S.482 of Cr.P.C. challenging such order.

2. The upshot of controversy arises out of a dispute between the petitioner and O.P. No.1 for matters relating to monetary transaction between them. Accordingly, O.P. No.1 instituted a complaint against the petitioner stating therein that he is running a poultry firm and the petitioner was dealing with poultry feeds and, thereby, believing the petitioner, O.P. No.1 started doing business with him and the petitioner accordingly took Rs.24,000/- (Rupees Twenty Four Thousand) on 02.03.2011 and Rs.50,000/- (Rupees Fifty Thousand) on 05.11.2011 towards Poultry feeds. Further, it is stated in the complaint by O.P.1 that the petitioner had taken 3.5 quintals of chicken meat @ Rs.60/- per Kg. total Rs.21,600/- (Rupees Twenty One Thousand and Six Hundred) during the election of his son on different dates, but when O.P. No.1-complainant demanded the aforesaid total amount of Rs.95,600/- (Rupees Ninety Five Thousand and Six Hundred), the petitioner refused to pay the amount and abused him in filthy language and threatened to take away his life.

After filing of the complaint, the initial statement of O.P.1-complainant was recorded U/S.200 of Cr.P.C. and one witness was examined in an enquiry U/S.202 of Cr.P.C. for the complainant. On finding prima facie materials, the learned S.D.J.M.,

Kendrapara by the impugned order took cognizance of offence U/S.417 of IPC. Hence, this CRLMC by the petitioner.

3. In the course of hearing the CRLMC, Mr. P.C. Das, learned counsel for the petitioner submits that the petitioner had instituted a complaint against O.P. No.1 in I.C.C. Case No.107 of 2012 for commission of offence U/S.138 of N.I. Act relating to dishonor of cheque issued by O.P. No.1 in the course of their business for supply of poultry feeds by O.P. No.1 to the petitioner for his poultry firm and such complaint against O.P. No.1 having ended in conviction, O.P. No.1 has instituted this complaint against the petitioner to satisfy his grudge and vendetta, but neither the complaint nor the initial statement of the complainant-O.P. No.1 as well as the statement of the witness examined in an enquiry U/S.202 of Cr.P.C. discloses commission of offence of cheating by the petitioner, but the learned S.D.J.M., Kendrapara without application of mind has taken cognizance of offence U/S.417 of IPC mechanically and issued process against the petitioner, which *per se* is an abuse of process of Court. It is further submitted by him that no where the complaint discloses the commission of any offence by the petitioner and, thereby, the complaint being unmerited with the impugned order arising

thereof needs to be quashed. In relying upon the decisions in *Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors.*; (2008) 39 OCR (SC) 188, *Lalit Mohan Patnaik v. Sadasiba Mohapatra and others*; (2021) 81 OCR 465, *Pramod Chandra Rath v. State of Orissa and other*; (2008) 39 OCR 100, *K.L.E. Society & Ors. V. Siddalingesh*; (2008) 40 OCR (SC) 251, *Fakhruddin Ahmad v. State of Uttaranchal & Anr.*; (2008) 41 OCR (SC) 607 and *Sri Bikash Chandra Deb v. State of Orissa and another*; (2008) 41 OCR 493, learned counsel for the petitioner prays to quash the impugned order.

4. On the contrary, Mr. D.K. Sahoo, learned counsel appearing for the O.P. No.1 submits that there is ample material against the petitioner for commission of offence U/S.417 of IPC and, thereby, the learned S.D.J.M., Kendrapara has not committed any illegality in taking cognizance of offence. It is also submitted by him that in a proceeding to quash the order taking cognizance, appreciation of evidence is impermissible and, thereby, the contention advanced on behalf of the petitioner that O.P. No.1 has instituted the complaint against the petitioner to get rid of the conviction recorded in 1.C.C. case No.107 of 2012 instituted by

the petitioner is fallacious. Learned counsel for the O.P. No.1 accordingly prays to dismiss the CRLMC.

5. On coming back to examine the legal sustainability of the impugned order, there appears no difficulty in finding that the learned S.D.J.M., Kendrapara has taken cognizance of offence U/S.417 of IPC by the impugned order which is extracted as under:

Order Dtd. 08.09.2015

“The case record is put up today for order on the point of cognizance. Perused the Complaint Petition, Initial Statement of the Complainant recorded U/s.200 Cr.P.C. and statement of witnesses recorded U/s.202 Cr.P.C. There is prima facie materials available against the accused for commission of offence U/s.417 of IPC. Hence, Cognizance for commission of offence U/s.417 of IPC is taken against the accused namely Rabindranath Nayak, S/o. Benudhar Nayak of Vill. Mukundapur, P.S. Kendrapara Sadar, Dist. Kendrapara. As there is sufficient materials in the case record to proceed against the accused. Hence, Issue summons to the accused fixing 02.12.15 for his appearance in the Court. Complainant is directed to file the requisites within three days hence.”

Dictated.

*Sd/- Shri P.K. Routray
S.D.J.M., Kendrapara”*

6. Chapter XXXVI of Cr.P.C. prescribes limitation for taking cognizance of certain offences and Section 468 of Cr.P.C. therein provides for bar to taking cognizance after lapse of the period of

limitation. Accordingly, Section 468(2)(b) of Cr.P.C. prescribes the period of limitation of one year for offences punishable with imprisonment for a term not exceeding one year. Section 469 of Cr.P.C. provides for commencement of the period of limitation and Section 469(1) of Cr.P.C. prescribes the starting period of the limitation in relation to an offence on the date of such offence. There appears little dispute about punishment prescribed for offence U/S.417 of IPC, which is punishable with imprisonment for either description for a term which may extend to one year or with fine or with both and, therefore, the period of limitation to take cognizance of offence U/S.417 of IPC would be one year. A bare perusal of the impugned order does not disclose about any discussion with regard to bar for limitation to taking cognizance after lapse of the prescribed period of one year in this case, no matter that the Court may take cognizance of offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstance of the case that the delay has been properly explained or that it is necessary so to do in the interest of justice in terms of Section 473 of Cr.P.C.

7. In paragraph-8 of the complaint which is meant for description of the complaint, the complainant has only stated about

the date of transaction of money to be on 02.03.2011 and 05.11.2011, which is admittedly near about four years before taking cognizance of offence on 08.09.2015. In the course of hearing of the CRLMC, learned counsel for O.P. No.1 has strenuously tried to impress upon the Court that the offence alleged against the petitioner in this case is a continuing offence as the O.P. No.1 was demanding the money for which he was cheated, till the year 2014, but such submission has no force as the complainant has specifically stated about the date of transaction of money on two occasions. It, therefore, appears to the Court that the learned S.D.J.M., Kendrapara has not taken into consideration the important aspect of limitation of bar to taking after lapse of the period of limitation. Besides, the complainant has also not explained in the complaint about the delay in approaching the Court with respect to cheating of money by the petitioner. In addition, the offence of cheating as contemplated U/S.415 of Cr.P.C., it requires *mens rea* to cheat the person so deceived, but there is little averment in the complaint about the petitioner's dishonest intention for deceiving O.P No.1 to deliver any property or cash.

8. In *Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors.*; (2008) 39 OCR (SC) 188, the apex Court at paragraph-40 has observed as under:

“40. Firstly, we shall deal with the section 420 IPC. Cheating is defined in Section 415 IPC and is punishable under Section 420 of IPC. Section 415 is set out below:

“415. Cheating.- Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or commission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to ‘cheat’.

Explanation.- A dishonest concealment of facts is a deception within the meaning of this section.”

Section 415 IPC thus requires-

1. deception of any person.
2. (a) fraudulently or dishonestly inducing that person-

(i) to deliver any property to any person; or
(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not to do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body mind, reputation or property.”

A cursory glance of the ingredients of Section 415 of IPC and taking into consideration the principle as reiterated in *Indra Mohan Goswami* (supra), it is very clear that to hold a person

liable for cheating, it is necessary to show that the said person had a fraudulent or dishonest intention at the time of making the promise.

9. In ***R.P. Kapur v. State of Punjab; AIR 1960 (SC) 866*** the apex Court has summarized some categories of cases where inherent power can and should be exercised to quash the proceedings, as under:-

“(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings;

(ii) where the allegations in the first information report or complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

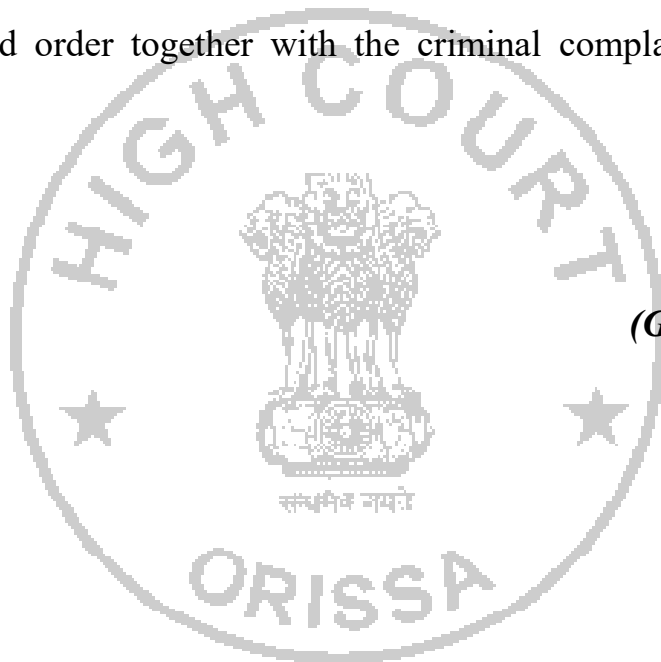
(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.”

When the impugned order is scrutinized on the aforesaid principle as set out by the apex Court in ***R.P. Kapur*** (supra), it could not successfully pass the test of bar to taking cognizance of offence as provided U/S.468 of Cr.P.C.

10. In view of the aforesaid discussion of facts and law together with the principles laid down in the decisions referred to above and taking into consideration the fact that the complaint does not disclose the required *mensrea*/fraudulent or dishonest intention of the petitioner to cheat and the impugned order taking

cognizance of offence being barred by limitation, the impugned order cannot sustain in the eye of law and, thereby, the continuance of criminal proceeding against the petitioner is nothing but an abuse of process of Court. Hence, the impugned order is required to be quashed along with the complaint.

11. In the result, the CRLMC is allowed on the contest, but in the circumstance without any costs. As a necessary corollary, the impugned order together with the criminal complaint is hereby quashed.



(G. Satapathy)
Judge

*Orissa High Court, Cuttack,
Dated the 22nd of December, 2022/Subhasmita*