

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 1121 of 2014

Govind Narain Gupta and another* *Petitioners

Mr. G.K. Acharya, Senior Advocate
-versus-

State of Orissa and another* *Opposite Parties

Mr. Ishwar Mohanty, ASC for the State
Mr. Umesh Ch. Dora, Advocate for O.P. No.2

**CORAM:
THE CHIEF JUSTICE**

Order No.

**ORDER
15.07.2022**

04. 1. The present petition under Section 482 of Cr PC seeks the quashing of an order dated 17th June 2013, passed by the S.D.J.M., Bhubaneswar taking cognizance of an offence under Section 420 read with 34 of IPC in G.R. Case No.2113 of 2008 arising out of Mancheswar PS Case No.143 of 2008 pending in that Court.
2. While directing notice to issue in the present petition on 18th March 2014, Non-Bailable Warrant (N.B.W) issued against the Petitioners in the aforementioned case, was directed not to be executed till further orders.
3. The background facts are that Petitioner No.1 is the sole proprietor of M/s. Sheel Electronics dealing with electronic components. Petitioner No.2 is the son of Petitioner No.1 both are based in New Delhi. Petitioner No.1 is stated to be running his electronic component business as sole proprietor for many years now. Petitioner No.2 is stated to be assisting Petitioner No.1 is his

day-to-day activities. The Petitioners states that they have been supplying electronic materials to different customers all over India including Bhubaneswar. Opposite Party No.2 is one such customer, who had business dealings with the Petitioners between 2003 and 2006 both on cash and credit basis.

4. It is stated that the ledger account of Opposite Party No.2 maintained by Petitioner No.1 used to be regularly updated and forwarded to Opposite Party No.2. It is stated that the last transaction took place in January 2006 and as on that date, as per the ledger account of the Petitioners, a sum of Rs.7,98,256.23 was outstanding against Opposite Party No.2. Since despite notice, Opposite Party No.2 did not repay the amount and having issued three cheques as security for the materials to be supplied, Petitioner No.1 filed M.S. No.52 of 2007 in the Court of the A.D.J., Tis Hazari, Delhi on 28th March, 2007. Initially, by a judgment dated 17th July, 2010 the suit was decreed as prayed for in favour of Petitioner No.1. Thereafter, Opposite Party No.2 who had been set ex parte filed an application under Order IX Rule 13 CPC for setting aside the ex parte decree. With the dismissal of the said application, Opposite Party No.2 filed FAO No.119 of 2011. While disposing of the said FAO, the High Court at Delhi directed Opposite Party No.2 to deposit Rs.4,50,000/- before the Registrar of the High Court as a condition for allowing Opposite Party No.2 to participate in the suit.

5. On contest, the suit was again decreed in favour of Petitioner No.1. Aggrieved, the Opposite Party No.2 preferred Regular First

Appeal No.186 of 2013 in the High Court of Delhi. The High Court refused to grant stay of the judgment.

6. It is stated that after such suit was filed, as a counter blast, Opposite Party No.2 instituted 1.C.C. Case No.1283 of 2008 before the S.D.J.M., Bhubaneswar alleging that it had issued five demand drafts (DDs) and the same had been fraudulently encashed by the Petitioners, but did not reflect the payment in the ledger account. It was alleged that offence of fraud had been committed by the Petitioners. Thereafter, the S.D.J.M., Bhubaneswar was pleased to direct Mancheswar PS to register the complaint as FIR under Section 156 (3) Cr PC for the offence under Section 420/34 of IPC. It is stated that a charge sheet was filed against the Petitioners showing them as absconders for the offence under Section 420/34 of IPC. The said charge sheet was filed on 31st May, 2013. On 17th June 2013, the learned S.D.J.M., Bhubaneswar took cognizance of the offences against the Petitioners.

7. Just prior to filing of the charge sheet, the Police filed an application on 15th May 2013 before the S.D.J.M., Bhubaneswar showing the Petitioners to be absconders. N.B.W. was issued for appearance of the Petitioners.

8. Mr. G.K. Acharya, learned Senior Advocate appearing for the Petitioners points out that filing an FIR in 2008 for an alleged offence of 2004 was clearly barred by limitation. This aspect was not noted by the SDJM when it passed the order taking cognizance.

From the narration of facts, it was plain that the dispute is purely civil in nature and was given the colour of a criminal case.

9. Opposite Party No.2 has filed an affidavit in reply denying some of the averments. Mr. Dora, learned counsel for Opposite Party No.2 does not dispute the fact that Money Suit No.52 of 2007 was decreed in favour of the Petitioners and against Opposite Party No.2.

10. The above submissions have been considered.

11. To begin with the, the narration in the FIR lodged by Opposite Party No.2 does make it appear as if for the first time the Complainant noticed the Petitioners in 2013 the property stated to belong to the Complainant Opposite Party No.2. The FIR was made to read as if they were complete strangers when in fact there are enough materials on record to show that there was previous litigation involving these very parties and for a number of years prior to the lodging the FIR. Therefore, there was clearly suppression of material facts in the FIR for which there is no reasonable explanation offered by Opposite Party No.2.

12. Further, learned counsel appearing for Opposite Party No.2 could not explain the delay of over four years in registering the FIR in relation to alleged wrongful encashment of DDs way back in 2008 by the Petitioners. This unexplained delay is fatal to the complaint filed by Opposite Party No.2.

13. Mr. Acharya, learned Senior Advocate appearing for the Petitioners is right in his submission that the entire FIR of Opposite Party No.2 reads like a counterblast to the aforementioned proceedings between the parties in the civil court from 2009 onwards. The FIR does not a bona fide exercise of seeking redressal for a legitimate grievance. It does appear that what is essentially a civil dispute has been made to appear to be one attracting the criminal law and therefore, is a misuse of the process of law. Initiating such a process when the civil dispute between the parties is still pending in an appellate forum appears to be only to harass the Petitioners.

14. In the present case, the Court is satisfied that the SDJM mechanically passed the order taking cognizance without actually applying his mind and satisfying himself that the ingredients of the offence are made out. Consequently, the impugned order dated 17th June 2013 of the SDJM, Bhubaneswar taking cognizance and all further proceedings consequent thereto in GR Case No.2113 of 2008 arising out of Mancheswar P.S. 143 of 2008 are hereby quashed. The CRLMC is allowed. There shall be no order as to costs.

15. Issue urgent certified copy of this order as per rules.

(Dr. S. Muralidhar)
Chief Justice