

CRIMINAL REVISION NO. 700 OF 2006

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Versus

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THE HON'BLE SHRI JUSTICE PRADIP MOHANTY

2. The complainant is the proprietor of M/s Mohanty Traders, who was appointed as the super stockist for the entire State of Orissa by M/s Emerald Laboratories Limited. The said firm entered into an agreement with the present petitioner on 28.01.2005 for

which the petitioner paid Rs.1,80,000/- by way of different drafts and also by cash. As per clause-6 of the agreement, the petitioner is entitled to commission on sale of goods and collection of money made by the staff of the company directly from the market. The company and its staff committed deliberate criminal breach of trust and caused wrongful loss to the petitioner by avoiding to pay the commission to the petitioner with an intention to cheat him. The petitioner filed a complaint case being I.C.C. Case No.324 of 2006 under sections 409, 418 and 420 IPC before the S.D.J.M., Sadar, Cuttack. After filing of the complaint petition, the learned S.D.J.M. recorded the initial statement of the complainant and directed to conduct an enquiry under section 202 Cr.P.C. in course of which two witnesses were examined by the complainant. After the enquiry, a memo was filed by the petitioner to convert the case to one under section 408, 418 and 420 IPC. But the learned Magistrate, by order dated 17.07.2006, dismissed the complaint petition with the observation that it does not make out a case under sections 408/418/420 IPC against any of the accused persons.

3. Mr. Palit appearing for the petitioner vehemently contends that the initial statement of the complainant and the statement of witnesses examined in course of 202 Cr.P.C. enquiry reveal a prima facie case under sections 408/448 IPC and all the ingredients of the above offences have been fulfilled. He also contends that in passing the impugned order, the learned Magistrate has not applied his mind and has not assigned any reason.

4. Mr. Behera, learned Addl. Standing Counsel, on the other hand, contends that the real accused persons having not been made parties to the revision petition, it should be dismissed in limine.

5. It is the settled principle of law that a person against whom a complaint is filed does not become an accused unless it is decided to issue process against him. Even if he participates in the proceeding under section 202 Cr.P.C., he does so not as an accused but as a member of the public. The object of the enquiry

under section 202 Cr.P.C. is the ascertainment of facts whether the complainant has any valid foundation calling for the issue of process to the person complained against or whether it is a baseless one on which no action need be taken. The section does not require any adjudication to be made about the guilt or otherwise of the person against whom the complaint is preferred. Such a person cannot even be legally called to participate in the proceedings under section 202 Cr.P.C. The nature of this proceeding has been fully discussed by the apex Court in **Chandra Deo Singh v. Prakash Chandra Bose alias Chabi Bose and another**, AIR 1963 SC 1430. Since section 202 of the Code of Criminal Procedure, 1973 is the exact reproduction of the old Code, this Court relies upon the previous decision. The same view has been reiterated by the apex Court in **Dr. S.S.Khanna v. Chief Secretary, Patna and another**, AIR 1983 SC 595. Therefore, it is not necessary to take notice to the accused persons since till now there is no material against them and no process has been issued to them by the learned Magistrate. In other words, it cannot be said that the revision should be dismissed in limine as the real accused persons have not been made parties to it.

6. Coming to the merits of the case, it is apparent from the impugned order that no reason has been ascribed by the learned Magistrate and the order is a cryptic one. It is the settled principle of law that while dismissing a complaint petition, a reasoned order ought to be passed. Section 203 Cr.P.C. also speaks of passing a reasoned order. For the sake of convenience, the said section is extracted below:-

“203. Dismissal of complaint.- If, after considering the statements on oath (if any) of the complainant and of the witnesses and the result of the inquiry or investigation (if any) under section 202, the Magistrate is of opinion that there is no sufficient ground for proceeding, he shall dismiss the complaint, and in every such case he shall briefly record his reasons for so doing.

7. From a bare reading of the above provision, it is crystal clear that it is the duty of the Magistrate to give reasons while

passing an order of dismissal of the complaint petition. This view has also been taken fortified in ***Maikaal Fibres Ltd. & another v. ICICI Bank Ltd. & others***, (2006) 34 OCR 374 (SC).

7. In view of the above, this Court sets aside the impugned order passed by the learned S.D.J.M. and remits the matter back to him for fresh disposal in accordance with law by passing a reasoned order after taking into consideration the materials available on record.

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PRADIP MOHANTY,J.

Orissa High Court, Cuttack
February 14, 2007 / ***Nayak***