

**ORISSA HIGH COURT
CUTTACK**

CRLREV NO. 119 OF 2007

From the order dated 06.01.2007 passed by the S.D.J.(S), Cuttack in I.C.C. Case No.251 of 2002.

Tarini Polytex Pvt. Ltd.
and another

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Petitioners

Versus

M/s Gopal and Co.

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Opp. Party

For petitioners : M/s S.K. Mishra, M.R. Dash,
S.Samantry, A.Kajriwal
and O.K. Sahu.

For Opp. party : M/s A.K. Mishra, T.Mishra
and B.D. Mohanty.

PRESENT :

THE HONOURABLE SHRI JUSTICE PRADIP MOHANTY

Date of judgment : 05.11.2008

PRADIP MOHANTY, J. This revision arises out of the order dated 06.01.2007 passed by the S.D.J.M.(S), Cuttack in I.C.C. Case No.251 of 2002 rejecting an application under Section 245 Cr.P.C.

2. The complainant-opposite party, which is a partnership firm, filed I.C.C. Case No.251 of 2002 under Section 138 of the N.I. Act (hereinafter referred to as "the Act") in the court of the S.D.J.M. (S), Cuttack against accused-petitioner no.1, a private limited company, and accused-petitioner no.2, its Director. It is alleged that accused-petitioners issued a cheque bearing no.0762683 dated

06.04.2002 for Rs.8,14,140/- in favour of the complainant. On presentation, the said cheque was dishonoured by the bank. Notice under Section 138(b) of the Act was duly served on the petitioners. On receipt of notice, the petitioners in their reply stated that the cheque was issued for the purpose of security and not towards the dues. The S.D.J.M. took cognizance and issued notice to the petitioners, who on receipt of the same appeared before him. After examination of one of the witnesses by the complainant-opposite party, the petitioners filed an application under Section 245 Cr.P.C. with a prayer to discharge them and to drop the proceeding initiated under Section 138 of the Act on the ground that the cheque in question had been the subject-matter of dispute between the complainant and the accused-petitioners in T.S. No.1532 of 2002 before the 5th City Civil Court, Calcutta, who by his judgment held that the notice under Section 138(b) of the Act was fraudulent, illegal and null and void. The complainant-opposite party filed its objection to the said petition. Learned S.D.J.M. after hearing the parties rejected the said application on the ground that since the trial has already commenced and one of the witnesses has been examined, the court is to pass an order of acquittal or conviction under Section 255 Cr.P.C.

3. Mr. Mishra, learned counsel for the opposite party submitted that Sections 40 to 44 in Chapter-II of the Indian Evidence Act, which is titled as “Judgments of Courts of justice, when relevant” are to be read together. None of these sections can be read in isolation. Therefore, the judgment and decree in T.S. No.153 of 2002 passed ex parte by the City Civil Court No.5 against the opposite party is not relevant so far it relates to the issue pending in the present proceeding. That apart, the said judgment and decree have been obtained by fraud.

4. Perused the records and carefully considered the submissions made by the parties. The core question that arises for consideration in this revision is, whether the criminal court in a

summons trial can entertain an application under Section 245 Cr.P.C. and pass an order dropping the proceeding in the midst of the hearing. In the instant case, the S.D.J.M. took cognizance on 30th September, 2002. The accused-petitioners appeared on 13.10.2002. On the same day, the particulars of the offence for which they are accused were read over and explained to them. That means, on the same day the trial commenced. The proceeding is governed under Chapter-XX of the Cr.P.C. When the case was posted for hearing and the complainant had already examined himself, there was no scope to file an application for discharge by filing the judgment of the civil court. Only after compliance of Section 254, the trial court can pass an order under Section 255(1) Cr.P.C. In the midst of the trial, the trial court has no jurisdiction to entertain an application for dropping the proceeding. Moreover, Section 245 Cr.P.C. is not applicable to summons trial. This Court is of the view that the effect of the judgment of the civil court on the selfsame subject matter can be considered under Section 40 of the Indian Evidence Act at the final stage of trial. Expressing any opinion in this case is for the disposal of the revision only.

5. In view of the above, this Court does not find any reason to interfere with the impugned order. The criminal revision is accordingly dismissed.

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PRADIP MOHANTY, J.

High Court of Orissa, Cuttack,
 November 05, 2008/*G.D.Samal*