

S.K.MISHRA, J.

CRLREV NO.102 OF 2007 (Decided on 27.01.2011)

M/S. S.G.S. INDIA PVT. LTD.

..... Petitioner.

.Vrs.

FRIMEX FOODS PVT. LTD. & ORS.

..... Opp.Parties.

CRIMINAL PROCEDURE CODE, 1973 (ACT NO.2 OF 1974) – S.249.

For Petitioner - M/s. C.Choudhury, D.Chotray, B.Mohanty,
S.Mohanty, B.Moharana & D.R.Das.

For Opp.Parties - M/s. B.Biswal, B.N.Mishra, D.K.Biswal,
S.Samal, B.R.Biswal, S.Baral & R.Pradhan.

S.K.MISHRA, J. The petitioner assails the order dated 06.12.2006 passed by the learned J.M.F.C., Bhubaneswar in I C.C. No.85 of 2005 dismissing the case for default of the complainant.

2. The facts leading to filing of the Revision can be succinctly stated as follows:-

The complainant M/s. S.G.S. India Pvt. Ltd., hereinafter referred as the “complainant company”, is a Company, incorporated under the Companies Act, 1956. Accused no.1, Frimex Foods Pvt. Ltd. carries on business in import and export of food materials. Accused Nos. 2 and 3 are its Director and Managing Director respectively and are directly responsible for carrying on day-to-day business and the affairs of the accused-company. On or about 17.10.2000, the accused exported raw cashew nut to Florida, United States of America to an overseas entity i.e. Ambrosia International. In connection with the said shipment made by the accused-company to the overseas entity, the accused persons provided a forged certificate purported to have been issued by the complainant company bearing no. ADRIDIV/SGS/CH 203 dated 17.10.2002.

3. The complainant received information that when the containers sent by the accused-Company was opened by Ambrosia International inc., Florida, U.S.A., the importer, the quality of the goods was neither as per the order nor having the weight as per the order. Because for the certificate of inspection, purported to have been issued by the complainant company, the said Importer- Ambrosia International inc., Florida, U.S.A. complained before the complainant company about such certificate relating to the quality and weight of the goods exported by the accused. On discharge of the cargo at the Port, the deception could be revealed. Thereafter, the complainant-company enquired into the matter and came to know that the accused dishonestly and fraudulently prepared and made false documents of certificate of inspection purported to have been issued by the complainant company with the intention of causing it to be believed that such document/certificate of inspection was made, signed, executed and transmitted to the authority by the complainant knowing fully well that such document had never been signed, executed, made or transmitted under the authority of the

complainant company. Therefore, it initiated a complaint case before the learned S.D.J.M., Bhubaneswar, which was numbered as I C.C. Case No. 89 of 2005. The learned S.D.J.M. took cognizance of the offences on 08.08.2005 and the case was made over to the J.M.F.C., Bhubaneswar. The case was then posted to 5.12.2006. On that day, the case was again adjourned to 6.12.2006. On that date the complainant was absent and, therefore, the learned J.M.F.C., Bhubaneswar dismissed the complaint case for default of the complainant. At this stage, it is undisputed that the learned Magistrate had taken cognizance of the offence under Sections 420, 468 and 471 of the Indian Penal Code, 1860, hereinafter referred as the "Penal Code" for brevity.

4. In course of hearing of the criminal revision, the learned counsel for the petitioner raised two points; firstly it was contended that the case was not posted to 06.12.2006 and there has been manipulation in the order-sheet; secondly it is contended that under section 249 of the Code of Criminal Procedure, 1973, hereinafter referred as the "Code" for brevity, the learned Magistrate is not justified to dismiss the complaint for non-prosecution as the offence alleged are all cognizable and only section 420 of the Penal Code is compoundable with the leave of the court.

5. Since the offences under sections 420, 468 and 471 of the Penal Code are punishable with the imprisonment for more than two years, the offences are to be tried as warrant trial cases. Clause (x) of Section 2 of the Code defines "warrant-case" as a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years". Thus, all the offences are warrant trial offences and the trial of the case has to be conducted under Chapter XIX of the Code, which prescribes the procedure for trial of warrant case by Magistrates. Section 249 of the Code provides for the consequence of absence of the complainant. It is profitable to re-produce the provision, which reads as follows:

"249. Absence of complainant.- When the proceedings have been instituted upon complaint, and on any day fixed for hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.

So, a Magistrate can dismiss a complaint for absence of the complainant, before framing of the charges, if the following conditions are satisfied viz.

- (1) A proceeding must have been instituted upon a complaint;
- (2) The complainant has failed to appear on the date fixed; and
- (3) That the offence to which the complainant alleged can be ordinarily compounded or is not cognizable by police.

6. It is seen that in this case, the first two requirements are fulfilled in the sense that the case has been instituted upon a private complaint and the complainant has failed to appear on the date fixed. The court could have dismissed the complaint for non-prosecution and discharge the accused if the offences can be lawfully compounded and is not cognizable by police. However, it is seen that out of the offences, for which cognizance has been taken by the learned Magistrate, only the offence under section 420 of the Penal Code is compoundable with the leave of the court and all the offences under Sections 420, 468 and 471 of the Penal Code are cognizable offences. It is clear from the bare reading of the provision that a case instituted under a private complaint

can be dismissed for non-prosecution, if the offences are compoundable and not cognizable. Since the third requirement is not satisfied in this case, the order passed by the learned Magistrate is held without jurisdiction and illegal, and, therefore, required to be set aside.

7. In view of the aforesaid settled legal principle, it is not necessary in this case to consider the other points canvassed regarding the alleged manipulation of the date. In the result, the revision application is allowed. The order dated 06.12.2006 is hereby set aside. The complaint case be taken up for hearing by the learned Magistrate. The petitioners and the opposite parties are directed to appear before the learned J.M.F.C., Bhubaneswar on 28.2.2011. The learned Magistrate shall provide adequate and reasonable opportunity to the complainant to produce its witnesses and, thereafter, dispose of the complaint case on merit.

The Criminal Revision is accordingly disposed of.

Revision disposed of.