

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC NO.1218 OF 2023

(From the order dated 9th February, 2023 passed by learned Judicial Magistrate First Class, Kendrapara in I.C.C., No.303/2020)

Chhayakant Acharya

... **Petitioner**

-versus-

Samitav Pani

...

Opposite Party

Advocates appeared in the case through hybrid mode:

For Petitioner: Mr.Suryakanta Dash,
Advocate

-versus-

For Opp.Party: None

सत्यमेव जयते

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

04.5.2023.

Sashikanta Mishra, J. The Petitioner is facing trial in I.C.C. No.303/2020 pending in the Court of learned J.M.F.C., Kendrapara instituted on the basis of a complaint filed by the present Opposite Party No.2 under Section 138

of the N.I. Act. In the present application filed under Section 482 of the Cr.P.C., he seeks to challenge the order dated 9th February, 2023 passed by the Court below in allowing the application filed by the complainant to amend his complaint petition as well as his evidence affidavit.

2. The facts, relevant only to decide the present case are that the Opposite Party has filed the aforementioned complaint in the Court below claiming therein that the accused-Petitioner had taken a sum of Rs.6,60,000/- from him with assurance to return the same within 15 days. However, he did not repay the amount and after much persuasion he issued a cheque bearing No.018496 dated 16th October, 2020 amounting to Rs.7,20,000/-. The said cheque, when presented at the Bank was dishonoured on 19th October, 2020 on the ground of insufficient funds. The complainant therefore, issued a legal notice to the accused to pay the amount, but the same not having been paid, he filed the complaint.

3. In course of hearing and after examination of the complainant and another witnesses, the complainant filed a petition purportedly under Order 6, Rule 17 of C.P.C. with prayer to amend the complaint petition as well as his evidence affidavit. It was specifically claimed that the figure Rs.7,20,000/- should be mentioned in the 5th line of Col. No.7(a) of the complaint petition and the figure Rs.6,60,000/- should be deleted. Similarly, in the evidence affidavit also the aforementioned figures were to be changed.

4. The Petitioner filed a written objection basically taking the stand that the proposed amendment would change the nature and character of the case thereby causing serious prejudice to him.

5. The Court below however, allowed the Petition.

6. Heard Mr. S., Dash, learned counsel for the Petitioner. Despite vaslid service of notice, there was no appearance from the side of the Opposite Party.

7. Mr. Dash has argued that the case of the complainant is that he had taken Rs.6,60,000/- against which the Petitioner-accused had issued a cheque of Rs.7,20,000/-. On such basis he had served legal notice and filed the complaint petition. He also laid evidence in this regard. Now, by seeking to change the amount to Rs.7,20,000/-, the complainant obviously wants to garner higher benefits.

8. Reading of the legal notice issued on 2nd November, 2020 by the complainant's Advocate reveals that the accused had taken a sum of Rs.6,60,000/- with the assurance of repaying within 15 days. Ultimately he issued a cheque for Rs.7,20,000/-, which came to be dishonoured. The complaint was filed exactly on the same facts. The complainant adduced his evidence in the form of an affidavit also stating the same facts. He was cross-examined by the accused on such basis. Thereafter, he filed the petition taking the stand that the mentioning of Rs.6,60,000/- in the complaint petition as being the

amount of loan taken by the accused was wrongly typed. This Court fails to understand as to how this can be treated as a typographical error when the legal notice itself mentions the loan amount as Rs.6,60,000/-. Moreover, the complainant in his evidence affidavit has also stated that a sum of Rs.6,60,000/- was taken by the Petitioner on 30th November, 2019. He was cross-examined on such statement on oath. Moreover, he stated in his evidence affidavit that the same was drafted as per his dictation and after understanding its contents, he had put his signature on it. Again in cross-examination he admitted to have stated that he had given Rs.6,60,000/- to the accused. Thus, it is seen that in all the materials on record including the primary document, i.e. the legal notice, the amount of loan is stated to be Rs.6,60,000/-. It is not forthcoming as to why Rs.7,20,000/- was paid by way of cheque if the loan amount was Rs.6,60,000/-. Nevertheless, facts remains that the loan amount cannot undergo a change because the same forms the very basis of the

complaint. This would certainly change the very nature and character of the case. Obviously, the complainant cannot be permitted to change the very foundation of his case midway during trial.

9. The reasoning adopted by the Court below that if the case ends in acquittal, the accused would not be liable to pay a single penny to the complainant, but if the case ends in conviction then the accused will be liable to pay the cheque amount is fallacious and hence, untenable. It cannot be believed that the so-called typographical error in the complaint petition came to the notice of the complainant only after he had adduced evidence in the case.

10. For the forgoing reasons therefore, this Court holds that the impugned order cannot be sustained in the eye of law. Resultantly, the CRLMC is allowed. The impugned order is hereby set aside.

.....
(Sashikanta Mishra)
Judge

Ashok Kumar Behera

Ashok Kumar Behera





