

(2025) 07 OHC CK 1260
In the Orissa High Court
Case No : CRLMC No. 1492 Of 2023

Manoj Kumar Dash & Anr

APPELLANT

Vs

State Of Odisha & Anr Vs

RESPONDENT

Date of Decision : 04-07-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 362, 482

Indian Penal Code, 1860 — Section 34, 294, 328, 380, 420, 506

Citation : (2025) 07 OHC CK 1260

Hon'ble Judges : Sashikanta Mishra, J

Bench : Single Bench

Advocate : S.Pattanaik, C.Mishra, P.K.Nanda

Final Decision : Dismissed

Judgement

Sashikanta Mishra, J.

1. This is an application filed by M/S Wellshown Retail LLP represented through its 'Admin' Satish Jha for recall of the order dated 03.04.2023 passed in the above case. The original application under Section 482 of the Cr.P.C., was filed by Manoj Kumar Dash and Pintu @ Golak Bihari Dixit with prayer to quash the proceedings in C.T. Case No. 5993 of 2021 of the Court of learned SDJM, Bhubaneswar corresponding to Capital P.S. Case No. 687 dated 29.10.2021 for the alleged commission of offence under Sections 420/ 427/ 294/328/ 380/506/34 of IPC. Several grounds were urged to persuade this Court to exercise its power under Section 482 of Cr.P.C. to quash the proceeding. It would be apt to mention that the aforesaid case was initiated on the basis of FIR lodged by one Ashis Tiberwal who was arrayed as Opposite Party No. 2 in the CRLMC. During pendency of the case, a joint affidavit for compromise was filed by both parties stating that they have settled their dispute amicably and mutually and do not want to proceed further in the case. A deed of compromise signed by both parties was filed enclosing the terms of such compromise. This Court heard the petitioners and the Opposite Party No. 2 in person and being satisfied that no

fruitful purpose would be served by allowing continuance of the criminal proceeding, allowed the prayer of the petitioners by quashing the FIR in the aforementioned case. Such order was passed on 03.04.2023. On 21.04.2023, the present I.A. was filed seeking recall of order dated 03.04.2023 on the ground that Opposite Party No.2 was never authorised by the complainant to act on its behalf as he had been terminated from service. He was also never authorised to compromise the dispute but acting behind the back of the company, he in connivance of the accused persons, managed to obtain the order of quashment of the FIR in question.

2. Written objection has been filed by the petitioners inter alia questioning the maintainability of the petition on the ground that the same has been filed by one Satish Jha, who was never a party in the original proceeding and secondly, the order so passed cannot be recalled in view of the bar under Section 362 of Cr.P.C.

3. Heard Mr. C.Mishra, learned counsel for the petitioner of the instant I.A. and Mr. S. Pattnaik, learned counsel appearing for the original petitioners/accused persons.

4. Mr.Mishra would argue that the bar under Section 362 of Cr.P.C. is not absolute as it is the settled position of law that the Court can always recall its order, if the same is found to have been obtained by practising fraud. Mr.Mishra further submits that the Opposite Party No.2 had lodged the FIR while he was an employee of the company but subsequently he was terminated from service because of mis-conduct and as such, he was no longer authorised to act on behalf of the company.

5. Mr. Pattnaik, on the other hand would argue that unless fraud is proved the bar under Section 362 always remains. The petitioner of the instant I.A has not been able to demonstrate as to how and in what manner fraud was committed. Mr. Pattnaik further argues that the application has been filed not by the partners of the company but by the so- called 'Admin' who may also subsequently be terminated.

6. It is well settled that a criminal Court cannot ordinarily recall its order in view of the bar under Section 362 of Cr.P.C. But then it is equally well settled that if fraud is shown to have been practised, the Court is not powerless to set right the wrong by recalling its order. But the catch is, fraud must not only be alleged but proved to satisfaction to have been practiced. In the instant case, the only thing that is projected as a ground for recall of order is that Opposite Party No.2 had been terminated by the time he entered into the so-called compromise. A copy of the termination letter is enclosed to the I.A., which bears no date, though the person signing it has endorsed it with date. Further, the termination letter is addressed to Ashis Tiberwal without specifying his designation or address. It is difficult to believe that the same is an official letter.

7. Be that as it may, the present application has been filed by one Satish Jha. It is not disputed that the firm is a limited liability partnership comprised of two

partners namely, Sanjaya Sharma and Romit Sharma. The partners have not come forward to file the petition but an affidavit has been filed by Sanjaya Sharma stating therein that Satish Jha, one of the employees of the firm, has been duly authorised to appear on its behalf. Significantly, the affidavit does not mention the designation of Satish Jha. The affidavit of Satish Jha simply states that he is the 'Admin' of Wellshown Retail LLP. This Court is unable to understand as to what exactly is meant by the term 'Admin'. So, the exact identity of the person swearing the affidavit is shrouded with doubts for which it is difficult to treat him as a person validly authorised to file the instant I.A.

8. This Court is therefore, not inclined to accept the contention advanced in the I.A. so as to be persuaded to recall the order dated 03.04.2023. The I.A. is held to be devoid of merit and is therefore, dismissed.

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