

AFR



THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 647 of 2024

(In the matter of an application under Section 397 read with Section 401 of the Criminal Procedure Code, 1973)

Ashok Kumar Das

.....

Petitioner

-Versus-

State of Odisha (Vigilance)

.....

Opposite Party

For the Petitioner

: Mr. D.P. Dhal,
Senior Advocate

For the Opp. Party

: Mr. Sangram Das,
Standing Counsel (Vigilance)

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 27.11.2024 & 03.03.2025 :: Date of Judgment: 05.05.2025

S.S. Mishra, J. The present Criminal Revision Petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, assailing the order dated 04.09.2024 passed by the learned Special Judge (Vigilance), Baripada in VGR Case No. 29 of 2003, arising out of Balasore Vigilance P.S.



Case No. 29 of 2003. By the impugned order, the learned Special Judge rejected the petitioner's prayer for discharging him from offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (as it stood prior to amendment) read with Section 120-B of the Indian Penal Code, 1860.

2. Heard Mr. D.P. Dhal, learned Senior Advocate, appearing for the petitioner and Mr. Sangram Das, learned Standing Counsel (Vigilance) appearing for the opposite party-State.

3. The present revision petition arises out of VGR Case No. 29 of 2003, which emanates from the allegations of irregularities in the tendering and execution of a government contract related to the construction of the “Jambhira Earth Dam from RD 4200 Mtr. to 4500 Mtr. (Reach-IV) with stepped Spillway” under the Subarnarekha Irrigation Project, Baripada. The Vigilance Department, Odisha, initiated an inquiry into the matter, following complaints regarding procedural lapses, financial irregularities,



and unauthorized modifications in contract terms. The inquiry revealed that certain tenders had been approved at inflated rates, deviations were made from the original agreement terms without obtaining necessary sanctions, and payments were released in excess of the permissible limits, allegedly causing undue financial loss to the government exchequer.

4. The petitioner, a former government official who was involved in the administrative process of the project, was not named in the initial First Information Report (FIR) filed by the Vigilance Department. However, upon completion of the investigation, a charge sheet was filed implicating him under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (as it stood prior to amendment), along with Section 120-B of the Indian Penal Code, 1860.

5. Following the investigation, the prosecution initially submitted a Final Report (FRT) on 08.08.2006, recommending departmental action instead of criminal prosecution against the petitioner. However, no further action was taken against the



petitioner for over a decade by the court of learned C.J.M., Baripada. In obedience to the Hon'ble Court's letter no. 5181, dtd. 26.06.2013, the case record is transferred to the Court of Addl. District and Sessions Judge-cum-Special Judge (Vigilance), Baripada for disposal of the case in accordance with law. The learned Special Judge (Vigilance), Baripada, took cognizance of the offences on 02.09.2017 on the final closure report of the I.O. The petitioner had already retired from government service in 2009, and at no stage during his tenure of service sanction was sought from the competent authority for his prosecution.

6. The petitioner filed an application before the learned Special Judge (Vigilance), Baripada, seeking discharge on multiple grounds, including the absence of sanction under Section 19 of the Prevention of Corruption Act, the inordinate delay in taking cognizance, and the lack of any evidence demonstrating criminal intent. However, the learned Special Judge, by order dated 04.09.2024, rejected the discharge application, holding that a prima facie case has been made out against the petitioner.



Aggrieved by the said order, the petitioner has approached this Court invoking revisional jurisdiction of this Court.

7. Mr. Dhal, learned Senior Advocate appearing for the petitioner, has vehemently argued that the impugned order suffers from legal and procedural infirmities and has resulted in grave injustice to the petitioner. It is submitted that the petitioner was merely an administrative officer carrying out official duties in accordance with the directives of his superior officers, and there is no independent material to suggest that he had acted with dishonest intent. The entire case is based on alleged procedural lapses in the execution of a government contract, which, even if assumed to be true, do not constitute an offence under the Prevention of Corruption Act in the absence of any evidence of personal gain, quid pro quo, or corrupt motive.

8. Additionally, it is contended that the learned Special Judge (Vigilance) erred in rejecting the discharge petition without applying judicial mind to the ingredients of the alleged offence. The offence under Section 13(1)(d) of the Prevention of



Corruption Act requires proof that the accused obtained pecuniary advantage for himself or another through corrupt means. However, the charge sheet fails to establish any such benefit derived by the petitioner. The entire case rests on administrative irregularities, which may warrant disciplinary action but do not meet the threshold of criminal misconduct under the Prevention of Corruption Act.

9. It is further contended that the prosecution has been launched without obtaining prior sanction from the competent authority, as required under Section 19 of the Prevention of Corruption Act, 1988. The petitioner was a public servant at the time of the alleged incident, and no sanction was obtained during his tenure of service. Even after his retirement, the prosecution proceeded without any formal approval from the government. The petitioner argued that in the absence of sanction, the entire prosecution is vitiated and cannot be sustained, relying upon the decisions of the Hon'ble Supreme Court in *Mahendra Lal Das vs.*



State of Bihar & Ors.. (2002) 1 SCC 149, and State of Punjab vs Labh Singh, (2015) 60 OCR (SC) 398.

10. The petitioner also challenges the inordinate delay in the initiation of prosecution. It is submitted that the FIR was registered in 2003, the investigation was concluded in 2007 with the submission of an FRT, yet cognizance was taken only in 2017, nearly 14 years after the alleged offence. Such an extraordinary delay, without any plausible explanation, has caused serious prejudice to the petitioner and violates his fundamental right to a fair and speedy trial.

11. Despite the grant of additional time, the opposite party has not filed its written note of submission. The Court proceeds to decide the matter based on the oral arguments advanced by the parties and the materials available on record.

12. I have carefully gone through the materials placed before this Court and the judgments cited by the learned counsels for the parties at the Bar.



13. It is relevant to note the following dates of events to appreciate the facts in the subject. The present case emanating from the F.I.R. in Balasore Vigilance P.S. Case No.29 of 2003 registered on 10.07.2003 registered the alleged commission of the offences punishable under Sections 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 120-B of the IPC.

14. The investigating agency took three years to complete the investigation and on 08.08.2006, filed the closure report, *inter alia*, stating that the alleged excess amount sanctioned and approved to the contractors either could be adjusted in the final bill as per contract condition or could be recovered from them. The Investigating Officer has suggested to proceed departmentally, as no criminal case is made out against the petitioner.

15. The offence alleged to have committed prior to the year 2003. The investigation took about three years. Three years after



filing the charge sheet, on 30.12.2009, the petitioner retired from the service on attaining the age of superannuation.

16. The certified copy of the proceedings of the learned Court below has been placed on record as Annexure-5. Reading of the proceeding reveals that on 06.07.2007, the Court of the C.J.M. accepted the closure report filed by the prosecution and issued the notice to the complainant/informant to file the protest petition, if any. Thereafter, the matter got listed for about 54 times ranging from 2007 to 2017, i.e. for ten years. The protest petition was never filed.

17. Suddenly, at the 55th hearing, i.e. on 02.09.2017, the learned Special Judge, Vigilance, by a detailed order, has taken the cognizance of the offences against the petitioner and the other co-accused persons on the basis of the material placed by the investigating agency by way of the Final Form.

18. On 06.08.2024, the petitioner moved an application seeking discharge from the offences. The learned Court below, vide order dated 04.09.2024, rejected the application of the petitioner



seeking discharge. The petitioner is aggrieved by the said order. Hence, he has filed the present petition.

19. The learned trial Court, relying upon the judgment of the Hon'ble Supreme Court in the case of *Maharashtra and another vs. Som Nath Thappa & another*, reported in *1996 4 SCC 659*, came to the conclusion that at the time of framing of charges, only test is to see the existence of the *prima facie*. If there is ground of presuming that the accused has committed the offence, the probative value of the material placed on record cannot be gone into.

20. It reveals from the investigation report that during the course of the enquiry it transpired that the estimate of the work, namely "Construction of Jambhira Earth Dam" from RD 4200 mtrs. to 4500 mtrs. (Reach-V)" was framed by the Executive Engineer, Subarnarekha Irrigation Division No. III, Deuli (Er. B.M. Das) on 5.7.1995 which was sanctioned by the Chief Engineer, SIP (Er. P.K. Mishra) on 20.11.1995 amounting to Rs.3,05,49,800/- vide drawing No.32 "C" for 15 nos. of items.



The tender schedule was approved by Chief Engineer, SIP (Er. P.K. Mishra) on 09.09.1995 amounting to Rs.2,98,85,723/- for 11 nos. of items. Accordingly, the tender for work was called by the Ex. Engineer, SI Division No. III, Deuli vide Tender Call Notice No.4/95-96 dtd.15.06.1995. The 1st corrigendum was published in 'The Samaj' on 1.9.1995. Accordingly, only 5 sets of tenders were received by 10.10.1995 out of sale of 38 nos. of tender papers and the same were opened on 13.10.1995.

The Government in Department of Water Resources letter No.29654 dtd.28.11.1995 approved L-1 bidder M/s.O.C.C. Ltd. limiting to value to Rs.3,85,52,582.67 only which is 29% excess over the amount of estimated cost. The General Manager, M/s. OCC Ltd., furnished their negotiation at 29% excess to CE, SIP in their letter No. 16382 dtd.1.12.1995. The CE instructed the EE in his letter No.18213 dtd. 11.12.1995 for drawing agreement in favour of M/s. O.C.C. Ltd. In response to EE's letter No.89 dtd.3.1.1996 M/s.O.C.C. Ltd., deposited the balance amount of EMD Rs. 4,71,050/-. The EE has drawn agreement in favour of



M/s. O.C.C. Ltd. on 19.02.1996 vide Agt.No.16/95-96 dd.19.02.1996 with date of commencement and completion as 19.02.1996 and 18.02.1998 respectively.

21. It is relevant that two cases were registered on the self-same allegations, being VGR No.29 of 2003 and VGR No.35 of 2003. The present case germinates from VGR No.29 of 2003 regarding the execution of the construction of “Jambhira Earth Dam” from **RD 4200 mtrs. to 4500 mtrs.** The second case in VGR No.35 of 2003 is regarding the same project of construction of “Jambhira Earth Dam” from **RD 4500 mtrs. to 4950 mtrs.** In both cases, the closure report has been filed by the investigating agency after the investigation.

22. In the instant case, the matter remained pending for ten years before the Court below, whereas in VGR No.35 of 2003, the learned Special Judge (Vigilance), Balasore, vide its order dated 01.07.2010, accepted the closure report and put the case to the quietus. The petitioner, being one of the co-accused in both cases, could not have been treated separately as the allegations are



verbatim same. Two standards cannot be adopted by the prosecution.

23. Besides, the point, the important issue here is the inordinate delay on the part of the prosecution to kick start the trial particularly after the investigating agency had filed the closure report stating that no case as such is made out against the petitioner and the other co-accused persons.

24. Mr. D.P. Dhal, learned Senior Advocate appearing on behalf of the petitioner, has rightly placed reliance on ***Mahendra Lal*** (*supra*) wherein the Hon'ble Supreme Court has held as under:

“6. In this case the prosecution has miserably failed to explain the delay of more than 13 years by now, in granting the sanction for prosecution of the appellant-accused of possessing disproportionate wealth of about Rs 50,600. The authorities of the respondent State also appear to be not satisfied about the merits of the case and were convinced that despite granting of sanction the trial would be a mere formality and an exercise in futility.

7. In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the appropriate authorities



concerned are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived of the love, affection and the society of his children who were residing in a foreign country as on account of the pendency of the investigation he could not afford to leave the country."

25. The delay on the part of the prosecution has also multiplied for the reason that the prosecution waited for six years to complete the investigation. The cognizance has been taken by the learned Court below oblivious of the fact that the prosecution has deliberately waited for the retirement of the petitioner to prosecute him so as to avoid the rigors of obtaining the sanction for prosecution. It would be apt to rely on the judgment of the Hon'ble Supreme Court in the case of ***State of Punjab vs. Labh Singh***, reported in (2014) 16 SCC 807 in that context the Hon'ble



Supreme Court has held in paragraphs 10, 11 & 12 which read as under:

“10. However as regards charges for the offences punishable under the Penal Code, the High Court was absolutely right in setting aside the order of the Special Judge. Unlike Section 19 of the PC Act, the protection under Section 197 CrPC is available to the public servant concerned even after retirement. Therefore, if the matter was considered by the sanctioning authority and the sanction to prosecute was rejected first on 13-9-2000 and secondly on 24-9-2003, the Court could not have taken cognizance insofar as the offences punishable under the Penal Code are concerned. As laid down by this Court in State of H.P. v. Nishant Sareen [State of H.P. v. Nishant Sareen, (2010) 14 SCC 527 : (2011) 3 SCC (Cri) 836] , the recourse in such cases is either to challenge the order of the sanctioning authority or to approach it again if there is any fresh material.

11. In the circumstances, in our view the order under appeal passed by the High Court is correct insofar as charges under IPC are concerned but must be set aside as regards charge under the PC Act is concerned.

12. Before we part, we must record that we do not approve the stand taken by the appellant in the petition. The prosecution cannot keep waiting till a public servant retires and then choose to file charge-sheet against him after his retirement, thereby setting at naught the protection available to him under Section 19 of the PC Act. The appeal, thus, stands allowed partly. No order as to costs.”

26. The Hon’ble Supreme Court has castigated the prosecution for having adopted the method, which directly affects the constitutional right of the accused. In that case, the prosecution



has waited till the retirement of the delinquent for filing the charge sheet.

27. The Hon'ble Supreme Court has also held that after the retirement, although the sanction under Section 19 of the P.C. Act is not required vis-à-vis the offence under Sections 13(2) r/w Section 13(1)(d) of the Prevention of Corruption Act, 1988 r/w Section 120-B of the IPC, but for the other penal offences, sanction under Section 197 of the Cr. P.C. is a must even for a retired accused.

28. In the present case, the learned trial Court has taken cognizance of the offence under Section 120-B of the IPC without there being a sanction under Section 197 of the Cr. P.C.

29. Apparently, this is a case wherein the accused persons have committed dereliction in their duty by excess sanction of the amount. As per the contract condition amount excess paid through the running bill could be adjusted in the payment of the final bill. Therefore, there was an option for the Department to adjust the excess payment while granting the final bill, even otherwise if



excess amount is paid, the same is also recoverable. Therefore, the investigating agency has rightly concluded that there is no criminal offence made out against the petitioner.

30. That apart, the inordinate delay of 14 years for taking the cognizance of the offence without there being an iota of explanation vitiates the entire proceeding.

31. The Hon'ble Supreme Court, in the case of *A.R. Antulay vs. R.S. Nayak*, reported in *(1992) 1 SCC 225*, while interpreting the scope of Article 21 of the Constitution of India, has held that every citizen has right to speedy trial of the case pending against him. The speedy trial was considered also in the public interest as it serves the social interest as well. It is in the case of all concerned that guilt or innocence of the accused is determined as quickly as possible in the circumstances. The right to speedy trial encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. While determining the alleged delay the Court has to decide each case on its facts having regard to all the attending circumstances including the nature of



the offence, number of accused and witnesses. The work load of the Court concerned prevailing the local conditions etc.

32. The record reveals in the instant case that the investigating agency took three years to complete the investigation and filed the closure report. But the cognizance taking Court has taken 11 years to take the cognizance. 54 adjournments have been given to the prosecution/informant to file the protest petition. Eventually, no protest petition was filed. After 11 years, the Court below has taken the cognizance for the offence punishable under Section 13(2) r/w 13(1)(d) of the P.C. Act and Section 420/120-B of the IPC on the police report.

33. It is no more *res integra* that the sanction under Section 197 of the Cr. P.C. is mandatory for taking the cognizance of the penal offence against a public servant even after retirement from the service. The learned Court below has taken the cognizance by not following the required procedural safeguard. The Court below has also not taken into consideration that the closure report filed in the connected case has also been accepted, and the case is put to a



quietus. It has also escaped from the notice of the Court that this is a case whereby no inference could be drawn regarding the loss to the exchequer, as there exists sufficient cause for recovery of the alleged excess payment, which has been allegedly claimed to be the loss to the exchequer.

34. In view of the foregoing discussions, I am inclined to allow the present petition and set aside the impugned order dated 04.09.2024 passed by the learned Special Judge (Vigilance), Baripada in VGR Case No.29 of 2003 arising out of Balasore Vigilance P.S. Case No.29 of 2003.

35. The CRLREV is accordingly allowed.

S.S. Mishra
(Judge)

The High Court of Orissa, Cuttack
Dated the 5th May, 2025/ Subhasis Mohanty