

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 264 of 2018

Order Reserved on : 29/07/2019

Order Delivered on : 29/08/2019

- O. P. Rajak, S/o Late Shri D.R. Rajak, Aged About 64 Years, Retired Assistant Engineer, C.S.P.D.C.L. R/o L.I.G. 398, Padmnabhpur, Durg - 491001 Tahsil & District-Durg, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Chief Secretary, Home Department, Secretariate Mahanadi Bhawan, Naya Raipur, Tahsil & District Raipur Chhattisgarh.
2. Executive Director, (H.R.) Chhattisgarh State Power Distribution Company Limited, (A Government Of Chhattisgarh Undertaking) C.S.P.D.C.L. Dangarniya, Raipur, Tahsil & District Raipur Chhattisgarh.
3. Station House Incharge, Police Station Kanker, Tahsil & District Kanker Chhattisgarh.
4. Honble Chief Judicial Magistrate, North Bastar, Kanker Chhattisgarh., District : Kanker, Chhattisgarh

---- Respondents

For petitioner	:	Mr. V.G. Tamaskar, Advocate.
For Respondent/State	:	Mr. Subhash Yadav, Dy.Govt. Advocate.
For respondent No.2	:	Mr. Abhishek Sinha, Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

CAV Order

29/8/2019

1. Petition under Article 226 of Constitution of India has been brought praying for quashment of criminal proceedings initiated against the petitioner as per FIR No.202/2009 Dated 14/06/2009 registered at P.S. Kanker Distt. North Bastar, under Section 409 & 420 of IPC and also warrant of arrest issued against the petitioner.

2. It is submitted that when the petitioner was posted as Assistant Engineer under CSPDCL, Kanker. One FIR No.202/2005 (Annexure P-4) was lodged against him, for the offences under Sections 409 & 420 of IPC, on the basis of complaint (Annexure-P3) regarding misappropriation of the payments collected from the customers by defalcation in the computer entries. It is submitted that the petitioner is a public servant, as defined under Section 21 of IPC and also under Section 81 of the Indian Electricity Act, 1948, therefore, for the purposes of his prosecution, the sanction under Section 197 of CrPC was necessary, but without obtaining any sanction, the charge-sheet has been filed against the petitioner. Therefore, the whole proceeding against the petitioner is liable to be quashed.

Reliance has been placed on the judgment of **Jayprakash Pandya vs. State of Gujrat & another** reported in **2013 CRI.L.J. 4101**, **CBI vs Ashok Kumar Agrawal** reported in **2014 CRI.L.J. 930**, **Trilochan Baral vs Bankanidhi Mahapatra & another** reported in **2014 CrLJ 1930**.

3. Learned State counsel appearing for respondent No.1 & 3 has submitted that the petition filed by the petitioner is not maintainable for the reason that the charge-sheet has been filed against the petitioner and he is still absconding. The petitioner has an option to raise objection before the trial Court itself regarding the necessity of sanction under Section 197 of CrPC before the trial commenced against him. The co-accused person in this case has been tried and convicted. The act alleged against the applicant does not come within the purview of discharge of official duty as he has defalcated the entries in the computer to misappropriate the amount of collection.

Reliance has been placed on the judgment of ***P.K. Pradhan vs. State of Sikkim*** reported in ***(2001)6 SCC 704***, ***Om Kumar Dhankar Vs. State of Haryana & another*** reported in ***(2012)11 SCC 252***, ***Inspector of Police & another vs. Battenapatla Ratnam & another*** reported in ***(2015)3 SCC 87***, ***Surguja Transport Service vs. State Transport Appellate Tribunal*** reported in ***(1987)1 SCC 5*** and the order of this Court in WPS No.5242/2014 dated 6.4.2015, hence, it is prayed that petition be dismissed.

4. I have heard both the parties and perused the documents on record.
5. Considered on the submissions made by the counsel from both the sides. No doubt the petitioner was working as a public servant as defined under Section 21 of IPC, but the provisions under Section 197 CrPC are very specific, that when a public servant is accused of any offence alleged to have been committed by him, while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction of the appropriate government. Therefore, on going through the contents of complaint, provisions of law and case laws relied from both the sides, it is very clear that where the alleged act is connected with performance of official duty, in that case only there will be necessity of sanction under Section 197 of CrPC. The act of embezzling official fund by manipulating accounts is not an act in discharge of official duty, therefore, it cannot be said that any sanction is required in this case. Hence, on the basis of this conclusion, it is found that the petition is without any substance which is liable to be dismissed and is dismissed at the motion stage itself.

Sd/-

(Rajendra Chandra Singh Samant)

Judge