

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.4948 of 2011

Debendra Nath Nanda.

....

Petitioner

-versus-

State of Orissa (Vigilance)

....

Opposite Party

CORAM: JUSTICE S.PUJAHARI

ORDER

28.07.2022

Order No.

- 11.
1. This matter is taken up through Hybrid mode.
 2. The petitioner in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) has prayed for quashing of the order dated 13.09.2011 passed by the learned Special Judge (Vigilance), Sambalpur in C.T.R. No.54 of 2005 rejecting his petition for discharge, so also the entire proceeding.
 3. Heard the learned counsel for the petitioner and Mr. P.K. Pani, the learned Standing counsel appearing for the Vigilance Department.
 4. Learned counsel for the petitioner submits that since the petitioner is not coming under the public servant and the Cooperative Society is neither financed nor aided by the

Government, the impugned order as well as the entire proceeding against the petitioner may be quashed.

5. Mr. Pani, the learned standing counsel appearing for the Vigilance Department would submit that such a ground was never raised before the trial Court. Furthermore, the materials on record clearly indicate that the petitioner to have been involved in committing the offence under the Prevention of Corruption Act and the said contention cannot be raised at the time of charge as the same is subject to prove by adducing evidence in view of the law laid down in the case of *State of Maharashtra and others vrs. Brijlal Sadasukh Modani*, reported in 2016 CRI.L.J. 2031.

6. In the case of *Brijlal Sadasukh Modani (supra)* the Apex Court in a similar facts and situation while not approving the order of the High Court dealing with the preliminary stage whether a person was a public servant and coming under Clause 2(c) of the Prevention of Corruption Act, have held as follows:-

“We share the said perception, and reiterate with agony. The ingemination has to be realized with sanctity. Therefore, we are of the convinced opinion that it was entirely unnecessary on the part of the High Court to enter into elaborate deliberation to arrive at the conclusion that the respondent was not a public servant. Regard being had to the facts of the case, we think it would be apposite that it is left to be dealt with in the course of trial whether the society concerned has ever been granted any kind of aid or not.”

7. Considering the aforesaid facts and circumstances of the case, so also the law laid down in the aforesaid case, this Court is not inclined to interfere with the impugned order.

8. It is stated that the trial in the aforesaid case is being progressed, as such, liberty may be given to the petitioner to raise the aforesaid question at the time of trial and the trial Court be directed to dispose of the matter expeditiously.

9. In view of such submission, it is hope and trust that the trial Court shall decide the matter as expeditiously as possible preferably within a period of six months of receipt of the certified copy of this order, addressing the aforesaid contention, if raised and taking note of the law on the same. The prosecution shall cause production of the witnesses and the accused-petitioner shall also cooperate with the trial.

10. With the aforesaid order, this CRLMC stands disposed of being dismissed.

11. A free copy of this order be handed over to Mr. Pani, the learned standing counsel for the Vigilance Department.

(S. Pujahari)
Judge

MRS