

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2838 of 2003

Ashok Ranjan Mohanty.

....

Petitioner

Mr. Saurjya Kanta Padhi, Sr. Advocate

-versus-

State of Odisha (Vigilance).

....

Opposite Party

Mr. P.K. Pani, Standing Counsel – For O.P.-State

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
13.09.2022**

**Order
No.**

36. **1.** This is an application filed under Section 482 of the Code of Criminal Procedure, 1973 (for short “Cr.P.C.”) seeking for quashing of the order dated 14.11.2003 passed by the learned Special Judge (Vigilance), Bhubaneswar in T.R. No.123 of 1999, vide which the petition filed by the present petitioner seeking for an order of discharge, has been rejected.
- 2.** Heard the learned counsel for both the sides and perused the relevant papers on record vis-à-vis the contentions raised on behalf of the petitioner.

3. The petitioner was serving as Chief Engineer, Electrical and the Member of T.D. of Orissa State Electricity Board as on the relevant date and he took retirement from the said service on attaining the age of superannuation on 31.05.1996. As on the date of submission of the charge-sheet in the case referred to above, the petitioner was working as Member of Orissa Electricity Regulatory Commission (OERC), constituted under the Orissa Electricity Reforms Act, 1995. It is the case of the prosecution that M/s. Metal Scrap Trading Corporation (MSTC) had invited tenders for sale of hard bare copper conductor scrap available at the O.S.E.B. Stores, Burla and M/s. Silpa Udyog, Buxibazar, Cuttack, had quoted Rs.95/- per Kg., as the highest bidder and the same was approved by the Scrap Disposal Committee, of which the then Chief Engineer was a member. Since the aforesaid highest bidder failed to lift the consignment within the stipulated period of sixty days, the File was processed by the then Junior Engineer and Assistant Engineer in-charge of the Stores for re-tender of the

scrap materials, and the present petitioner had passed order for sending the proposal to M/s. MSTC for floating tender by 31.03.1995. It is alleged that the aforesaid noting was removed from the File and a D.O. letter dated 22.03.1995 was issued to M/s. MSTC for issuance of sale order in favour of the second highest bidder – M/s. Jeypore Small Scale Industry, and the present accused without obtaining the approval of the Chairman and other members of the Scrap Disposal Committee approved the proposal on 06.04.1995, and the scrap materials were sold to M/s. Jeypore Small Scale Industry at the old tender rate of Rs.95/- per Kg., although by the date of approval the rate had been increased to Rs.132.28 paise per Kg., and thereby a loss of Rs.13 lac was caused to O.S.E.B. It is further alleged that the present petitioner in connivance with other public servants and the Proprietor of M/s. Jeypore Small Scale Industry obtained pecuniary benefit to the tune of Rs.13 lac by manipulation of public records etc. and thereby caused a loss of the equal amount to the

Electricity Board. The Investigating Agency submitted charge-sheet against the petitioner and the co-accused persons under Section 13(2) read with Section 13(1)(d) of the P.C. Act, 1988 and also under Sections 120-B and 420 of IPC. It may be mentioned here that no sanction under Section 19 of the P.C. Act was sought for by the Investigating Agency for prosecution of the present petitioner for the apparent reason that by then he was no more in service of the O.S.E.B. or the State Government. No separate sanction under Section 197 of Cr.P.C. was also obtained, in so far as the offences under the Indian Penal Code were concerned, although vide the charge-sheet the petitioner was also alleged to have committed those offences.

4. In course of the hearing, the learned senior counsel appearing for the petitioner contended, inter-alia, that the materials as produced by the prosecution do not make out any case either under the P.C. Act or under the I.P.C., inasmuch as there is

no cogent or acceptable material on record to show that the rate of copper metal scrap had been increased much less to Rs.138/- per Kg. as on the date of approval of the tender. According to him, the observation to the above effect by the learned trial Court vide the impugned order is not based on record. It is further contended by him that there was no illegality or impropriety on the part of the petitioner as the then Chief Engineer to accord approval to the proposal as recommended by the S.E., Stores, inasmuch as the said price had already been approved by the Scrap Disposal Committee on the earlier occasion, and the allegation of manipulation of record cannot be attributed to the petitioner, for the reason that the concerned File was required to be routed through and dealt with by many other subordinate officials / sections.

5. The learned senior counsel appearing for the petitioner argued with vehemence that since the action taken by the petitioner was in discharge of his

official duty as a public servant at the relevant time, no prosecution for the offences under the I.P.C. could have been launched against him without prior sanction under Section 197 of Cr.P.C. He further argued that since as on the date of the charge-sheet, the petitioner was serving as a Member in O.E.R.C., a statutory body, absence of sanction under Section 19 of the P.C. Act is also a major lacuna in the prosecution set-up. Citing some authoritative pronouncements, the learned senior counsel for the petitioner submitted that the impugned order needs interference by this Court, so as to quash the proceeding against the petitioner.

6. Per contra, the learned Standing counsel appearing for the Vigilance Department submitted that where a criminal act was performed under the colour of authority, but in reality the same was for the own pleasure or benefit of the public servant, such an indulgence cannot be sought to be protected under the doctrine of State immunity. Relying on some

decisions of the Apex Court, he submits that in the case at hand, especially when the petitioner was no more in Government service as on the date of the charge-sheet, the question of sanction did not arise. In specific, he submits that the question raised by the petitioner before this Court regarding the sanction under Section 197 of Cr.P.C. had not been raised by him before the Court below while moving the application for discharge, and hence the contention of the petitioner in that regard needs no consideration. He would further submit that since the impugned order is not indicative of involvement of the petitioner in any offence under the I.P.C., the issue regarding sanction under Section 197 of Cr.P.C. raised at present is premature to be looked into. He alternatively submits that since at the relevant time the petitioner was employed in the erstwhile O.S.E.B. Organization, and the affairs of the said Organization had no connection with the State Government, the question of sanction under Section 197 of Cr.P.C. is a non-issue.

7. It would appear from the impugned order that the accused-petitioner had not raised before the Court below the question of absence of sanction under Section 197 of Cr.P.C. while moving his application for discharge. As regards the sanction under the P.C. Act, the contention raised by him did not find favour with the learned Special Judge (Vigilance), Bhubaneswar who observed that a member of the Electricity Regulatory Commission being not an employee in connection with the affairs of the Union Government or State Government, there was no necessity of sanction under the P.C. Act. The learned trial Court at the same time left that question to be decided while the case progressed further. Taking note of the nature of accusation vis-à-vis the impugned order, this Court hardly finds any merit in the contention of the petitioner on the issue relating to sanction for his prosecution either for the offences under the P.C. Act or for any offence under the I.P.C. Needless to mention that since the crux of the prosecution case is that the petitioner while being a

public servant indulged in misconduct incurring liability of prosecution and punishment under the P.C. Act, even if for sake of argument it is assumed that there was need of sanction under Section 197 of Cr.P.C. for prosecution of the petitioner for any offence under the I.P.C., the trial Court may deal with the said question in right perspective while pronouncing the final judgment in the case. It needs no mention that no sanction is necessary in so far as the prosecution of the petitioner under the P.C. Act is concerned, inasmuch he was no more an employee of the Government as on the date of the charge-sheet or taking of cognizance. सन्ध्या नमो

8. On having gone through the materials on record, this Court also does not find any reason to interfere with the impugned order, inasmuch as even a strong suspicion regarding involvement of the accused-petitioner with the offences alleged can suffice framing of charge. At this stage, the Court is not required to give any strict scrutiny to the

materials produced by the prosecution for finding out any case beyond reasonable doubt against the accused, and what all that is necessary at this stage is, whether the materials on record warrant a presumption of guilt against the accused. For the whole discussion made hereinbefore, this Court does not find any merit in the CRLMC.

9. In the result, the CRLMC stands dismissed.

10. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS