

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2518 of 2010

Amarnath Mishra

....

Petitioner

-versus-

State of Orissa (G.A.)

....

Opposite Party

CORAM: JUSTICE S. PUJAHARI

ORDER

02.08.2022

Order

No.

23.

1. This matter is taken up through hybrid mode.
2. This application under Section 482 of Cr.P.C. has been filed by the Petitioner with a prayer to quash the order dated 20th April, 2010 passed by the learned Special Judge (Vigilance), Balasore in T.R. No.48 of 2002 wherein cognizance of the offence under Section 13(2) read with 13(1)(c)(d) of the P.C. Act and Sections 409/468/477-A/201, 120-B of the I.P.C. has been taken.
3. Heard the learned counsel appearing for the Petitioner and Mr. P.K. Pani, learned Standing Counsel appearing for the Vigilance Department.

4. Petitioner has sought for quashment of the order of cognizance on the ground no material is there whatsoever to take cognizance and proceed against him.

5. Admittedly, the alleged misappropriation stated to have been made by the co-accused persons. The Petitioner was then not an incumbent of his office. But the Petitioner succeeded to the persons committed the offence and thereafter in order to save them from legal punishment manage to have entries which to save them.

6. Learned counsel for the Petitioner would submit that except the confession of the co-accused before the vigilance police, no material is there against the Petitioner. Hence, there being no legal evidence to proceed against the Petitioner, the prosecution is liable to be quashed.

7. However, Mr. P.K. Pani, learned Standing Counsel appearing for the Vigilance Department submits that during the time of investigation, it came to light that the Petitioner made a statement before the Vigilance Police that at his instance to cover up the earlier misappropriation and also the audit objection, manipulation and interpolation was done on the relevant register. No doubt, the same is a statement before the police of a co-accused persons and cannot be translated to legal evidence, but interpolation on entries in the register

having been done during the incumbency of the Petitioner, prima facie case is there against the Petitioner.

8. The same is disputed by the learned counsel appearing for the Petitioner

9. However, no convincing material has been produced before the trial court to proceed against the Petitioner indicating a prima facie case there. Therefore, this Court is of the view that there is no evidence against the Petitioner.

10. Accordingly, this Court allow the Criminal Misc. Case. Consequently, quash the impugned order cognizance and the proceeding qua the Petitioner in T.R. No.48 of 2002. The learned Special Judge (Vigilance), Balasore or the Court in seisin over the matter shall on receipt of this order/production of the certified copy of this order, close the proceeding in the aforesaid case in compliance to this order. But the said order shall not preclude the trial court to proceed against the Petitioner, if during trial any incriminating material is brought to record.

(S. Pujahari)
Judge

DA