IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 13 of 2021

An application under Sections 397 & 401 of the Code of Criminal Procedure, 1973.

AFR	**Pradeep Kumar Naik**	**……**	**Petitioner**

-Versus-

State of Odisha (Vigilance)	**…….**	**Opp. Party**

Advocate(s) appeared in this case :-

For Petitioner	:	M/s.Chittaranjan Swain, P.K. Kuanr & M.S. Sahoo, Advocates
For Opp. Party	:	Mr. Sangram Das, Standing Counsel for Vigilance Department.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
25th November, 2022

SASHIKANTA MISHRA, J.

The petitioner challenges the order dated 18.11.2020 passed by the learned Special Judge, Vigilance, Sundargarh in CTR No. 27/172 of 2013-16, whereby his application filed under Section 239 Cr.P.C.

for discharge was rejected.

2. The petitioner along with another person are facing trial in the aforenoted vigilance case registered under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 120-B of Indian Penal Code. It is alleged that while working as B.D.O., Kutra Block from 09.03.2009 to 22.06.2011, the petitioner showed undue official favour to the co-accused, Kundan Kumar Agarwal, who is the proprietor of M/s. Baba Dharsu Traders, Ujjalpur, Sundargarh in the matter of purchase of huge quantity of cement against Government norms. It is alleged that the petitioner in violation of official directives purchased 28900 bags of Konark cement thereby ensuring pecuniary gain of Rs.3,17,180/- to the co-accused.

3. Basing on a report submitted by the Inspector of Police, Vigilance, Rourkela Unit, Sambalpur Vigilance P.S. Case No. 43 of 2012 was registered, followed by investigation. Upon completion of investigation and receipt of sanction for prosecution by the competent authority charge sheet was submitted against the petitioner and the

co-accused under the aforementioned offences. After his appearance, the petitioner filed an application under Section 239 of Cr.P.C. seeking discharge from the case on several grounds. The said petition was rejected by the trial court vide order dated 18.11.2020, which is impugned in the present revision.

4. Heard Mr. C. Swain, learned counsel for the petitioner and Mr. S. Das, learned Standing Counsel for the Vigilance.

5. Mr. Swain has assailed the impugned order by submitting that the learned court below has not considered the fact that charge sheet was submitted in absence of materials on which the allegation is based and therefore, there is no prima facie case. It is further argued that the petitioner has acted as per instructions of the District Purchase Committee and had not abused his official power as alleged. It is further argued that the calculation of pecuniary gain is based on the purchase price instead of the retail sale price of cement, which is misleading.

6. Per contra, Mr. S. Das, learned Standing Counsel for Vigilance contends that learned court below recorded his prima facie satisfaction regarding the likelihood of the commission of the offence by the accused and that the contentions raised by the accused can only be examined during trial but not at the stage of framing charge. Mr. Das further argues that the materials on record prima facie reveal that the petitioner had acted in connivance with the co-accused to purchase huge quantity of cement at a price higher than the market rate and therefore, there is no illegality in the impugned order.

7. Reference to the FIR reveals that the petitioner being the BDO, Kutra Block purchased 28900 bags of Konark Cement between 28.08.2010 to 17.02.2011. Ten such purchases have been shown in the FIR in a tabular form. It is seen that such cement was purchased @ Rs.248/- on seven occasions and @ Rs.240/- on three occasions while the price thereof ranged between Rs.207/- to Rs.247/- per bag. It is also alleged that the firm owned by the co-accused sold Konark brand of cement to public at a rate ranging from Rs.190/- to Rs.245/- per bag

during the said period. It was precisely because of the decreasing trend of cement price in the market that it was decided in the meeting on 14.01.2011 by the DRDA, Sundargarh and pursuant thereto, all B.D.Os. were instructed to invite sealed quotations from authorized agents of different cement companies but the petitioner acted in violation of such decision by directly placing order on the firm of the co-accused that too, on a request letter submitted by the latter. These are allegations based on materials procured by the prosecution during investigation such as, the invoices, written invoices, sale register etc. In course of investigation, the statement of the petitioner was recorded by the I.O. in question-answer form in which he has offered detailed explanation. This Court has perused the statement of the petitioner carefully. According to him, the price of cement was finalized by the District Tender Committee in the tender for purchase of cement for the year 2010-11 for a period of 12 months @ Rs.249/- per bag. Since the cement in question was admittedly procured @ Rs.248/- i.e., one rupee less than the approved rate, it cannot be said that he had caused any pecuniary loss to the Government. Significantly, the petitioner does not say anything as regards the decrease in price of cement during the relevant period save and except that when it was observed that cement rate has decreased in the open market he cancelled the existing order of supply and ordered for fresh negotiation within the approved rate of DRDA and issued supply order @ Rs.240/-, which is Rs.9/- below the approved rate.

8. As already discussed hereinbefore, the cement price had fallen drastically during the relevant period and ranged between Rs.202/- to Rs.240/-. It is therefore, not understood how the interest of the Government was protected by placing the order of cement initially @ Rs.248/- and subsequently @Rs.240/- per bag. In any event, these are matters that can be proved and appreciated only through evidence during regular trial but not at the stage of framing of charge.

9. Learned counsel for both the parties have relied upon several case laws in support of their respective contentions. This Court does not deem it necessary to

refer to each of the said case laws for the reason that it is the fundamental principle of law that at the time of framing charge, the Court is not required to see whether the materials on record are such as to result in an order of conviction but at that stage the court is required to form only an opinion that the accused may have committed the offence. It is also well settled that at that stage the court is not expected to delve into the evidence but only to sift the evidence and materials on record to see whether a presumptive opinion can be formed. It is also the settled position of law that if there are materials that give rise to a grave suspicion that the accused has committed the offence, it would suffice to frame charge against him. Similarly, if, on the face of the materials produced by the prosecution, no case is made out against the accused, an order of discharge can be passed. In other words, if, all such materials are accepted on their face value and it is found that the basic ingredients to constitute the alleged offence are absent, the court can discharge the accused.

10. In the instant case, there are enough materials on

record to at least prima facie show that the accused had acted upon a written request made by the co-accused and placed order to him directly without adhering to the process of inviting sealed quotations from the open market. Further, the cement in question was procured at a rate higher than the prevailing market rate. These observations are clearly discernible from the materials produced by the prosecution without having to make any deep rooted enquiry. Perusal of the impugned order reveals that the learned court below has also considered the said materials to be prima facie satisfied that the accused had acted in collusion with the co-accused in the matter of purchase of cement causing thereby wrongful loss to the Government and wrongful gain to the co-accused. This Court finds nothing wrong with such finding so as to be persuaded to interfere therewith.

11. In the result, the revision is found to be without any merit and is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 25th November, 2022/ A.K. Rana, P.A.