IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.989 of 2018

Ratikanta Swain .... Petitioner
Mr.D.P. Nanda, Sr. Advocate

-Versus-

State of Odisha and another .... Opposite Parties
Mr. P.K. Mohanty, ASC
Mr. Chandrakanta Pradhan, Sr. Panel Counsel

CORAM:
JUSTICE R.K. PATTANAIK

DATE OF HEARING :23.11.2021 DATE OF ORDER : 04.01.2022

1. The petitioner moved the instant application under Section 482 Criminal Procedure Code, 1973 (herein after referred to as 'the Code') invoking the inherent jurisdiction of this Court assailing the order of cognizance dated 02.09.2016 of offences punishable under Section(s) 420, 409, 411, 120B read with 34 IPC passed in G.R. Case No.971 of 2016 by the learned S.D.J.M.(S), Cuttack on the grounds, inter alia, that there is absence of any iota of evidence in proof of dishonest intention; want of sanction from the authority concerned before initiation of prosecution as required in view of the General Regulations of the Postal Manual and furthermore, being an act while discharging regular official duty and function; an action actuated with malafide and instituted maliciously; and that apart, the allegations being absurd and inherently improbable on the face of the materials, which should, therefore, be the basis to quash the criminal proceeding as a whole and pass appropriate orders in respect thereof.

2. According to the petitioner, he initially entered into postal service in 1992 and then cleared departmental examination in 2003 and selected in the Grade post and joined as Sub-Post Master and after having completed five years of service appeared Group-B Officers Examination in 2011 and successfully got through and joined as Superintendent, Postal Store Depot (PSD) at Ranchi and after various postings, joined as Senior Post Master in GPO, Buxi Bazar, Cuttack in 2013 and worked till October, 2015 and the career has all along been unblemished.

3. It is contended that the F.I.R. was lodged in 2016 with the allegation that two of the accused named opened Savings Bank Accounts with insufficient funds and tendered cheques which have been cleared without verification and the amounts stood debited from the Post Office account and credited in their accounts, as a result thereby, causing the department a loss of Rs.42,05,000/-. A copy of the F.I.R., while being enclosed as Annexure-1, it is further contended that the petitioner did not have any role to play as his job was not to clear the cheques, which was being looked after by the Assistant Post Master (SB), Treasurer-II and Deputy Post Master-I, who in normal course are authorized to compare and pass the signatures and sign the instruments of withdrawal in token of having done so, which could well be revealed from the Memo of Distribution of Work of GPO, Cuttack as at Annexure-6. Thus, in view of the petitioner, with the allegations on record, the criminal proceeding initiated against him is not at all tenable in law and therefore, it is liable to be quashed.

4. It is made to reveal from the record that the final charge sheet was laid before the learned court below in the year 2016, whereupon, cognizance was taken of the alleged offences. In fact,

the learned court below took cognizance of the offences vis-à-vis the petitioner after receiving the supplementary charge sheet by impugned order dated 02.09.2016 vide Annexure-4 which is presently under challenge before this Court.

5. Learned counsel for the petitioner referred to the relevant clauses of Annexure-6 and contended that the accused was in-charge of GPO and was exercising general administration and supervision over the working of all branches. The learned counsel appearing for the opposite parities contended that it was a collective responsibility which can be ascertained from the distribution of work vis-à-vis all the officers and that apart, the entire transaction had taken place in GPO leading to withdrawal of an amount of Rs.42,05,000/- between 09.12.2014 to December, 2015. It is being contended by the learned counsel for the opposite parties that taking advantage of the provisions of RBI on CTS cheque clearance, the petitioner and other accused persons deliberately delayed the time period regularly in connivance with the main accused, namely, Partha Sarathi Behera and therefore, by referring to Annexure-6, the petitioner cannot escape criminal liability. It has also been contended that the petitioner being the Senior Post Master of the GPO was to ensure tally of the transactions each day but then he deliberately omitted to do so with the criminal intent. So, therefore, according to the State on such aspects of business and individual responsibilities vis-à-vis the alleged transactions, this Court cannot allow itself to examine so as to take a decision, whether, the criminal proceeding to be maintainable or not, which can only be a subject of adjudication during trial.

6. As per Annexure-6, individual duties have been assigned to the postal officials and in so far as Senior Post Master Group-B is

concerned, he would be in-charge of GPO and exercise over all administration and supervisory powers in the working of the branches and also perform certain personal duties of First Class Post Master prescribed in various Postal Manuals. From the above, it is made to understand that the petitioner was the in-charge of GPO and at the relevant point of time was apparently having the overall administrative responsibilities. It is contended that the alleged transactions as to clearing the cheques were being managed and looked after by the other officials and not the petitioner.

7. It is argued that a disciplinary proceeding was initiated against the petitioner which ended in exoneration of all the charges and in support of such a claim, a copy of the enquiry report along with an affidavit has been made available to the Court. It is contended that the disciplinary proceeding was dropped after the above enquiry by the orders of the Chief Post Master General in the year 2020. On a bare perusal of the findings of the enquiry report, it is made to understand that the articles of charges have either been held not proved or disproved. The above enquiry was conducted for a period between 06.03.2013 to 30.10.2015 and admittedly by then, the petitioner was the Senior Post Master, Cuttack GPO and the allegation was about irregular clearance of inward cheques.

8. One more point is raised by the learned senior counsel for the petitioner that Rule 172-A (VI) of Postal Manual demands sanction to be obtained from the Director General before initiation of criminal proceeding which has not been complied with and therefore, the impugned order under Annexure-4 is out rightly illegal and unsustainable in law. In response to the above, the learned counsel for the opposite parties contend that no such sanction was necessary since because the alleged actions so perpetrated by the accused persons was no part and parcel of the official duty assigned

to them. In the instant case, the F.I.R. was lodged by the Assistant Superintendent of Post Offices (I/C), Cuttack East Sub-Division, Cuttack. There is no material on record to suggest that before the criminal action was set into motion against the petitioner, any permission of the authority concerned was obtained. As per Rule 172-A of General Regulation of Postal Manual, when the offender is an officer appointed by the Director General or higher authority, criminal proceeding against him should, in no circumstances, be instituted without prior sanction of the designated authority and in the instant case, it is claimed that the petitioner to be an appointee by the Director General, Posts by extracting a copy of the Schedule of CCS (CCA) Rules. The learned senior counsel for the petitioner, in support of contentions raised and opposing the criminal prosecution, cited couple of recent decisions, such as, *Indra Devi and others Vrs. State of Rajasthan and others*: MANU/SC/0472/2021; and *D. Devaraja Vrs. Owais Sabeer Hussain* decided on 18.06.2020 in Criminal Appeal No.458 of 2020, which are based on sanction required under Section 197 Cr.P.C.

9. In the case at hand, the petitioner during the period under reference was posted as Senior Post Master, GPO, Cuttack. On a bare reading of Annexure-6, it is revealed that individual responsibilities are assigned to all the officials and prima facie, the duty to clear the cheques is upon others and obviously not the petitioner. In so far as the overall administration and supervision is concerned, there is no denial to the fact that it was the petitioner's responsibility. The alleged transactions were accomplished during the daily business of GPO. In other words, there can be no escape from the conclusion that the transactions did take place during the regular business at GPO. A question would then arise, when the petitioner was not directly related to clearance of cheques but was looking

after overall administration at GPO, whether, before being prosecuted, any sanction of the authority was required or not? As per Rule 172-A of General Regulation of Postal Manual, which is cited to the Court, sanction was necessary before proceeding against the petitioner, which is not contradicted by the learned counsel appearing for the opposite parties except by claiming that for the alleged acts, it was not necessary. It has not been brought to the notice of this Court, as to if, any such sanction was obtained before lodging of the FIR or proceeding against the petitioner. It is not disputed that the petitioner to be an appointee by the Director General, Posts. Under the above circumstances, the Court is of the humble view that the sanction was a requirement before a criminal action vis-à-vis the petitioner. It cannot be avoided on the ground that no sanction was necessary for such fraudulent acts especially when the transactions remained within the domain of regular postal business. Either when an illegal act is being done while performing official duty or in the guise of discharging public functions, in the humble opinion of the Court, sanction is indispensable and in the present case, it was obligatory before proceeding against the petitioner in view of Rule 172-A of General Regulation of Postal Manual and of course, by virtue of Section 197 of the Code. The decisions of the Supreme Court (supra) may be referred to for an authority on Section 197 of the Code. The subtle distinction is that a sanction under the aforesaid provision would be required, even when an illegality which is an offence punishable under law is being committed, while discharging official functions. If a Government servant does something, which by no stretch of imagination could be said as a part of an official duty, he would not be allowed to claim protection under Section 197 of the Code. But, having been in duty and performing official duty, even assuming for the sake of argument to have committed the illegality, then also, sanction was a legal requirement vis-à-vis the petitioner. The law on sanction has been lucidly explained in the decisions of the Supreme Court referred to above being relied upon from the side of the petitioner. In course of argument, further development regarding recovery of the alleged amount, etc. was apprised to this Court. Any ways, irrespective of any such recovery made, it is to be concluded that sanction as per the relevant clause under Annexure-6 and also in view of Section 197 of the Code was a mandatory compliance which was not adhered to and insisted upon before proceeding against the petitioner and initiating a criminal action against him and eventually taking cognizance of the offences by the learned court below.

10. Hence, it is ordered.

11. In the result, application under Section 482 Cr.P.C. stands allowed to the extent indicated herein below. As a logical corollary, the order of cognizance dated 02.09.2016 passed in G.R. Case No.971 of 2016 vis-à-vis the petitioner is hereby set aside. Consequently, it is directed that the learned S.D.J.M.(S), Cuttack shall await for the decision of the sanctioning authority and thereafter to decide further course of action in the matter as per and in accordance with law.

(R.K. Pattanaik)
Judge

Dated 4th January, 2022/KC Bisoi/Secretary