

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No. 174 of 2022

Rashmita Patra* *Appellant

Mr.A.K. Das, Advocate

-versus-

State of Odisha & another* *Respondents

*Mr.J.P. Patra,
Special Counsel (OPID)*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
14.03.2022**

Order No.

02. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard Mr. A.K. Das, learned counsel for the appellant and Mr. J.P. Patra, learned Special Counsel appearing for the State of Odisha in OPID Act matters.

This appeal has been filed under section 13 of the Odisha Protection of Interests of Depositors (in Financial Establishments) Act, 2011 (hereafter, 'OPID Act') challenging the order dated 04.01.2022 passed by the Learned Presiding Officer, Designated Court under OPID Act, Cuttack (hereafter 'Designated Court') in C.T. Case No. 14 of 2018.

Application was filed by the appellant Rashmita Patra and others in the Designated Court to transfer the case to the appropriate Court having jurisdiction to try the matter, i.e. S.D.J.M., Bhubaneswar. Contentions were raised therein that the appellant Rashmita Patra challenging the criminal proceeding vide C.T. Case No. 14 of 2018 in which charge sheet has been submitted for offences punishable under sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code read with section 6 of the OPID Act filed an application under section 482 of Cr.P.C. before this Court vide CRLMC No. 1296 of 2021 and this Court vide judgment and order dated 24.09.2021 has held that the prosecution under section 6 of the OPID Act is not made out against the appellant, though confirmed the prosecution of the appellant under sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code and since all those offences are Magistrate triable offences, it should not be tried before the Designated Court rather it should be tried before the learned S.D.J.M., Bhubaneswar. The learned Presiding Officer, Designated Court considering the application filed by the appellant has been pleased to hold that it has got no jurisdiction to transfer the case to another criminal Court of another Sessions Division in another District.

Mr. A.K. Das, learned counsel for the appellant submitted that since the offence under section 6 of the

OPID Act is not there now against the appellant in view of the judgment dated 24.09.2021 passed by this Court in CRLMC No. 1296 of 2021 and the Presiding Officer, Designated Court has rejected the application filed by the appellant and others solely on the ground that it lacks jurisdiction to transfer the case, this Court may transfer the case of the appellant to the Court of learned S.D.J.M., Bhubaneswar in the interest of justice as all the offences for which the appellant will now face trial are triable by Magistrate. Learned counsel tried to impress upon this Court that in view of the judgment passed by this Court in CRLMC No. 1296 of 2021, the charge under section 6 of the OPID Act cannot be sustained against any other co-accused persons also and therefore, the impugned order passed by the Designated Court should be set aside and C.T. Case No. 14 of 2018 be transferred to the Court of learned S.D.J.M., Bhubaneswar.

Mr. J.P. Patra, learned Special Counsel appearing for the State of Odisha in OPID Act matters on the other hand argued submitted that there are other co-accused persons like Prasanna Kumar Patra, the husband of the petitioner and Soumendra Narayan Dalabehera etc. who are facing trial in the Designated Court, inter alia, for offence punishable under section 6 of the OPID Act. Since offence under section 6 of the OPID Act is exclusively triable by the Designated Court and such Court can also try

Magistrate triable offences in view of section 8 of the OPID Act and the offences alleged against the appellant so also the co-accused persons were committed in the course of the same transaction, therefore, the appellant should face the trial before the learned Designated Court along with the co-accused persons. It is further argued that the appellant is trying tricks to get the case off the Designated Court, therefore, the appeal should be dismissed.

Section 8 of the OPID Act states that the Designated Court while trying an offence under section 6 of the OPID Act, may also try any offence with which the accused may, under the Code of Criminal Procedure, 1973, be charged at the same trial. Section 15(2) of the OPID Act states that the provisions of Cr.P.C. shall, so far as may be, apply to the proceedings before a Designated Court and for the purposes of the said provisions, a Designated Court shall be deemed to be a Magistrate. Section 223(d) of Cr.P.C. states that the persons accused of different offences committed in the course of the same transaction may be charged and tried together.

In the case in hand, charge sheet has been submitted not only against the appellant, but also against other co-accused persons, like Prasanna Kumar Patra, Soumendra Narayan Dalabehera and M/s.Z Infra Ltd., formerly known as M/s.Z-Infra Construction Pvt. Ltd.

represented through its Managing Director Prasanna Kumar Patra under sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code read with section 6 of the OPID Act. It is also not in dispute that this Court in CRLMC No.1296 of 2021 filed by the appellant, while not deeming it appropriate to interfere with the proceeding so far as the offences under sections 420, 406, 467, 468, 471, 120-B of the Indian Penal Code, clarified that the trial Court shall proceed with a fair trial uninfluenced by any of the observations made in the said order. It is also not in dispute that the Hon'ble Supreme Court has directed the learned trial Court to complete the trial within a period of six months from 15.12.2021 in Special Leave to Appeal (Criminal) No. 8858 of 2021. It is also not in dispute that after framing of charge, three witnesses have already been examined on behalf of the prosecution.

It is not in dispute that the application filed by Prasanna Kumar Patra, the co-accused seeking to quash the proceeding in C.T. Case No. 14 of 2018 pending in the Court of learned Presiding Officer, Designated Court under OPID Act, Cuttack has been dismissed by this Court in CRLMC No. 2781 of 2019 as per order dated 20.01.2021. It is also not in dispute that the appellant and her husband co-accused Prasanna Kumar Patra moved this Court challenging the rejection order of discharge petition by the learned Designated Court from the commission of

offences under sections 420, 406, 467, 468, 471/120-B of the Indian Penal Code and section 6 of the OPID Act in CRLA No. 32 of 2020 and this Court vide judgment dated 29.06.2020 dismissed the appeal being devoid of merit.

The submission made by the learned counsel for the appellant that in view of the judgment and order dated 24.09.2021 passed in CRLMC No.1296 of 2021, charge under section 6 of the OPID Act cannot be sustained against any other co-accused persons, is not acceptable as only the appellant has challenged the proceeding in the said CRLMC before this Court under section 482 of the Code of Criminal Procedure and not the other co-accused persons.

Adverting to the contentions raised by the learned counsel for the respective parties and in view of the present scenario, since the Designated Court under the OPID Act does not lack jurisdiction to try the offences under which charges have been framed against the appellant Rashmita Patra and since the offences alleged against the co-accused persons so also against the appellant were committed in the course of the same transaction, in the interest of justice, they should be tried jointly in view of section 223(d) of Cr.P.C. Moreover, the trial has already commenced and some witnesses have already been examined and there is specific direction of the Hon'ble Supreme Court to conclude the proceeding

within a specified time period. Therefore, I am not inclined to accept the prayer made in the appeal.

Accordingly, the appeal being devoid of merit, stands dismissed.

(S.K. Sahoo)
Judge

PKSahoo

