

IN THE HIGH COURT OF ORISSA AT CUTTACK
CRLMC No.771 of 2022

Birabara Kumbhar

....

Petitioner

Mr. Biswajit Mohapatra, Advocate

-versus-

State of Odisha (Vigilance)

....

Opp. Party

Mr. D. Moharana, Additional Standing Counsel (Vigilance)

CORAM:

SHRI JUSTICE B. P. ROUTRAY

ORDER

7.4.2022

Order No.

01. 1. Heard Mr. B. Mohapatra, learned counsel for the Petitioner and Mr. D. Moharana, learned Additional Standing Counsel (Vigilance).
2. The impugned order dated 14th March, 2022 is challenged by the present Petitioner who is accused in CTR No.4 of 2013 pending before the court of learned Special Judge (Vigilance), Balangir concerning offences under Section 409/468/477-A of the I.P.C. and Section 13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988.
3. In the impugned order the prayer of the Petitioner to alter the charge in respect of offence under Section 409 I.P.C. and recall of P.W.5 for his further cross-examination has been rejected.

4. Mr. Mohapatra learned counsel for the Petitioner contends on behalf of the Petitioner that the charge in respect of commission of offences are for the period from 5th May, 2008 to 17th February, 2010 and the I.O. (P.W.24) in his evidence has confirmed the same. As the said period is exceeding 12 months, the charge needs alteration being defective in terms of Section 219 of the Cr.P.C.

5. On the other hand Mr. Moharana, learned Vigilance counsel submits that the period so mentioned in the charge from 5th May, 2008 to 17th February, 2010 is the period of incumbency of the Petitioner as cashier of Agalpur Block Office which does not mean the period of commission of offence. Therefore, the Petitioner is under misconception that the period of offences exceeded 12 months, which is not correct.

6. The charge, as seen from Annexure-1 is as follows:-

“Firstly – That, you being the Cashier of Agalpur Block from 5.5.2008 to 17.2.2010 being a public servant mis-conducted yourself and dishonestly/fraudulently misappropriated a sum of Rs.5,98,997/- by manipulating the official records and showing false deposit in Bank account of Agalpur block maintained at S.B.I. Duduka and thereby committed an offence punishable U/s.13(2) read with Section 13(1)(c) of the Prevention of Corruption Act, 1988 and within my cognizance.

Secondly- That you in the said period being Cashier of the Agalpur Block were entrusted Rs.5,98,997/- and you committed criminal breach of trust in respect of the same and thereby committed an offence punishable U/s.409 of the I.P.C. and within my cognizance.

XXXXX XXXXXX XXXXXX”

7. But as per the charge-sheet the period of commission of offence is from 18th August, 2008 to 26th February, 2009. The charge-sheet which was submitted on 15th December, 2012 is with specification that the Petitioner as an accused has misappropriated a sum of Rs.4,12,720/- in six occasions extending from the period of 18th August, 2008 to 26th February, 2009 including twice on 17th February, 2009. The amount for each occasion has been specified that makes the total sum to Rs.5,98,997/-. For the reason that the incumbency of the Petitioner as Cashier continued for the period from 5th May, 2008 to 17th February, 2010, it cannot mean to say that the period of commission of offence also extended for entire such period of incumbency and therefore, no prima facie illegality is seen in the charge to warrant any alteration. Moreover, Section 215 Cr.P.C. read with Section 464 stipulates that no error in the charge unless it has occasioned a failure of justice or the accused was in fact misled by the same, shall be regarded as material requiring any alteration or modification in charge.

8. Coming to the next submission of the Petitioner for recall of P.W.5, this has been answered by the learned trial judge at paragraph 12 of the impugned order. Relevant portion of the same is reproduced below:-

“12. xxxx. Perused the entire case record and it is ascertained that in sum and substance the body of the present petition is coinciding with the facts and circumstances available in the previous petition of dt.17.3.2021 which entailed this court to pass an order on dt.18.3.2021 in respect of P.W.24 allowing 33 questions which were necessary to put to the I.O. during further cross examination by the learned defence counsel. Accordingly

the I.O. was further cross examined by the defence on 29.11.2021. Thereafter, on 5th March, 2021 another I.O. was examined and cross examined by the defence and the statement of the accused was recorded on dt.17.12.2021 and the case was posted for adducing defence evidence by the learned counsel to 3.1.2022. After taking two adjournments, on 7.1.2022 the learned counsel for the accused filed three documents on behalf of the accused on his defence and denied to adduce any evidence for which the matter was posted to 20.1.2022 for argument. The matter lingered till 23.2.2022 and on the said day, the present petitions are filed. On further perusal of the record, it is seen that P.W.5, the District Auditor was examined by prosecution and cross examined by the accused petitioner on 1st August, 2015 and thereafter on 3rd August, 2015, 9th September, 2015, 2nd December, 2015, 3rd December, 2015, 14th January, 2016, 28th January, 2016, 17th February, 2016, 5th April, 2016, 17th October, 2016, 30th November, 2016, 5th December, 2016, 17th October, 2016, 30th November, 2016, 5th December, 2016 and on 5th March, 2021 all total 25 witnesses were examined at length with thorough cross examination by the defence counsel. The accused petitioner remained silent till 23.2.2022 till the case is posted for argument. The present petition U/s.311 Cr.P.C. is exactly the same which was filed in respect of P.W.24. The questionnaire submitted by the learned counsel for the petitioner has already been asked to the other auditor as well as to the I.O., P.W.24 of this case.

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9. The aforesaid reasons given by the trial court makes it clear the dilatory tactics adopted by the Petitioner to linger the trial and I do not find any fault in such reasoning of the trial court to have any necessity for recalling P.W.5 for just decision of the case by further cross-examination.

10. Accordingly, the CRLMC is dismissed.
11. However, the cost imposed in the impugned order on the accused-Petitioner is waived.
12. An urgent certified copy of this order be issued as per rules.

(B.P. Routray)
Judge

M.K.Panda

