

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.227 of 2020

Prasanta Kumar Ghosal.

....

Petitioner

*M/s. Bishnu Prasad Pradhan, B.R. Sahu,
S. Rath, R. Satapathy, Advocates*

-versus-

State of Odisha (Vigilance).

....

Opposite Party

*Mr. Sangram Das,
Standing Counsel (Vigilance)*

**CORAM:
JUSTICE S. PUJAHARI**

**ORDER
23.08.2022**

**Order
No.**

07. **1.** The petitioner has filed this application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") seeking for quashing of the order dated 09.01.2020 passed by the learned Special Judge (Vigilance), Jeypore in G.R. Case No.41 of 2001 (V), vide which the application of the petitioner filed under Section 227 of Cr.P.C. having rejected, charge has been framed against him and the co-accused persons under Section 13(1)(d) of

the Prevention of Corruption Act (for short the “P.C. Act”) and Section 120-B of the Indian Penal Code.

2. Heard Mr. Bishnu Prasad Pradhan, learned counsel for the petitioner and Mr. Sangram Das, learned Standing counsel appearing for the Vigilance Department. Perused the relevant papers on record vis-à-vis the grounds taken by the petitioner.

3. It is alleged, inter-alia, that the petitioner while working as the Chief Engineer, Upper Indravati Irrigation Project, Khatiguda during the period from 03.09.1993 to 04.07.1995 hatched a criminal conspiracy with the contractor – Dambarudhar Agrawal and other co-accused persons awarded the work of excavation of Right Main Canal in favour of the said contractor at the rate quoted by him, ignoring the rate quoted by M/s. OCC Ltd., a Government of Odisha undertaking, which was entitled for a price preference of 3% as per Government Circular, and also made excess payment

to the said contractor for the additional work beyond of the scope of the agreement in violation of the OPWD Code and thereby availed pecuniary advantage to the tune of Rs.1,66,41,798/- and caused equal amount of loss to the Government. Upon the charge-sheet being filed, the learned trial Court took cognizance of the offences aforesaid, and at the stage of framing of charge, although the petitioner sought for an order of discharge by filing an application under Section 227 of Cr.P.C., the learned trial Court on rejecting the said application has framed charge against him and the co-accused persons for the said offences vide the impugned order, with an observation that there are materials on record to pressurize the accused persons to have committed the offences.

4. In course of hearing, the learned counsel appearing for the petitioner, while arguing that there is no material on record, either direct or circumstantial, indicating the petitioner to have shown any favour to the Contractor, questioned

legality of the very institution of the proceeding against the petitioner, citing the bar under Rule-7 of the Odisha Civil Service (Pension) Rules, 1992, inasmuch as the present prosecution has been launched, admittedly, more than four years after the retirement of the petitioner from Government service on attaining the age of superannuation. The learned counsel has placed reliance on a Single Bench decision of this Court in the case of **Laxman Prusty vs. State of Orissa**, reported in 2013 (1) OLR 671.

5. While resisting the move, the learned Standing counsel for the Vigilance Department submits that the aforesaid decision of this Court has no application to the present case, inasmuch as in the said case neither the accused was facing any charge under the P.C. Act nor the overriding provision under Section 28 of the P.C. Act which has relevance to the present case, was required to be considered. According to him, the materials produced by the prosecution in the present case are sufficient to draw a presumption of

guilt under the P.C. Act and Section 120-B of IPC, and in view of the provision under Section 28 of the P.C. Act which has overriding effect, the bar as contemplated under the State Pension Rules does not operate upon the present prosecution. In support of his contention, he has placed reliance on a Division Bench decision of the High Court of Madhya Pradesh in the case of **Suresh Kumar vrs. State of Madhya Pradesh**, reported in (2020) 1 CGLT 1 (MP), so also a decision of this Court in the case of **Jitendra Nath Patnaik vrs. State of Odisha (Vigilance)**, reported in 2020 (II) OLR 641.

6. Admittedly, in the case of **Laxman Prusty** (supra), the accused was facing charge for certain offences under the I.P.C., and the learned Single Bench of this Court held that in view of the bar under Clause (C) of Sub-rule (2) of Rule-7 of Orissa Civil Service (Pension) Rules, 1992, the institution of the criminal proceeding against the accused was not maintainable. To put in other words, there was no

proceeding or prosecution under the P.C. Act, and no occasion to consider the effect of Section 28 of the said Act vis-à-vis such a prosecution. Rule-7(2)(c) of the Orissa Civil Service (Pension) Rules, 1992 is in *pari materia* with Rule-9(3) of the Madhya Pradesh Civil Service (Pension) Rules, 1976. The learned Division Bench of the High Court of Madhya Pradesh in the case of **Suresh Kumar** (supra) while referring to sub-section (3) of Section 468 of Cr.P.C. and Section 28 of the P.C. Act, overruled two earlier Single Bench decisions of the said Court holding the same to have been rendered per-incuriam, and held that the bar contemplated under the State Pension Rules have no effect on the cases under the P.C. Act or the cases under the Indian Penal Code.

7. The decision rendered in the case of **Suresh Kumar** (supra) has no binding effect on this Court nor it has persuasive value in view of the decision rendered on this point supporting the contention raised by the counsel for the petitioner in the case of

Laxman Prusty (supra). But, subsequently, this Court in the case of **Jitendra Nath Patnaik** (supra) placing reliance on the decision of the Apex Court in the case of **State of Maharashtra vrs. Keshav Ramchandra Pangare and another**, reported in (1999) 9 SCC 479, have refused to accept such contention. In the case of **State of Maharashtra** (supra) the Apex Court have held as follows:-

“9. Similarly, in the present case, Rule 27 (1) provides right of Government to withhold or withdraw a pension and in that context the said rule is to be interpreted. Under the said rule, the Government may inter alia order withholding or withdrawing a pension or any part thereof, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service. It also empowers the government to order the recovery from such pension of the whole or part of any pecuniary loss caused to the government if, in any departmental or judicial proceedings the pensioner is found guilty of grave misconduct or negligence during the period of his service. In the context of the second part of sub rule (1), sub rule (3) is to be read and interpreted. If something is to be recovered from the pension payable to the employee then the judicial proceeding or departmental inquiry is required to be started within the period prescribed under the sub-rule (2) or (3) but that would not debar the prosecuting agency from launching the prosecution for the offence of grave misconduct. This rule is to be read with the previous Rule 26 which provides that future good conduct shall be an implied condition of every grant of pension and Government may withhold or

withdraw a pension or part thereof, if the pensioner is convicted of a serious crime or is found guilty of grave misconduct. But the Pension Rules 26 and 27 do not lay down any period of limitation for prosecution or could not supersede the period of limitation prescribed under the Cr.P.C. Rule 27 is only meant for the purpose of granting, withholding or withdrawing the pension and hence its operation would be in the limited field of granting or withholding pension to the government employees.”

The aforesaid proposition of law has also been accepted by this Court in the case of **Fani Bhusan Das and another vrs. State of Odisha**, reported in 2018 (Supp.I) OLR 674, as revealed from the case of **Jitendra Nath Patnaik** (supra) wherein it has been held as follows:-

“This Court also by relying the said decision of the Supreme Court, in the case of Fani Bhusan Das & Anr. Vrs. State of Odisha (CRLMC Nos.258 & 686 of 2004, 2626 of 2007), reported in 2018 SCC Online 310 : 2018 (Supp.I) OLR 674, has observed that the provision of the Cr.P.C. shall have an obveriding effect and shall prevail notwithstanding any provision in the Pension Rules, and therefore, the provisions of OCS (Pension) Rules, 1992 would not give any relief to the petitioners.”

8. Rule-7 of the Odisha Civil Service (Pension) Rules, 1992 lays down the power or right of the

Government to withhold or withdraw pension of a retired Government employee. On the other hand, Section 28 of the P.C. Act renders the Act effective in addition to any other law. The said Section is quoted here below;

“28. Act to be in addition to any other law.—The provisions of this Act shall be in addition to, and not in derogation of, any other law for the time being in force, and nothing contained herein shall exempt any public servant from any proceeding which might, apart from this Act, be instituted against him.”

Thus, the provisions of the P.C. Act are having overriding effect, and the bar under the State Pension Rules can not come in the way of institution or maintainability of a criminal case under the P.C. Act. In view of the aforesaid, the contention of the petitioner challenging the prosecution to be incompetent one, is not accepted.

9. Here in this case, no doubt, the Contractor - Mr. D.D. Agarwal had quoted Rs.5,26,05,552/-, who is a contractor, but at the same time, M/s. O.C.C. Ltd., a Government of Odisha Undertaking had

quoted a rate of Rs.5,33,61,477/-. There was a Government Circular within the knowledge of the Tender Committee that Government Organization was entitled for a price preference of 3% and if the said price preference was given to M/s. O.C.C. Ltd., then the rate quoted was to scale down to Rs.5,17,60,633/-, to become the lowest amount compared to the rates quoted by other bidders. The members of the Tender Committee having not considered the same and the Tender Committee headed by the Petitioner, having declared Mr. D.D. Agrawal as L1 bidder and having given him the tender work for execution, a prima-facie case of undue favour being shown to Mr. D.D. Agarwal, is made out.

10. Furthermore, though it was a case of excavation and there was provision in the agreement for execution of 229.84 Cum of AKS (All Kinds of Soils) at the rate of Rs.27/- per cum, but the officials have shown execution of 28,969.125 Cum of AKS in between 5th RA to 17th RA bill, and even though the

work executed was 2,08,050 cum of DI (Disintegrated), but payment was made @ Rs.81/- per cum against the agreemental quantity of 21,967.25 Cum. All these have been done on the finger of the Petitioner. Therefore, there being sufficient materials to proceed against the Petitioner, the refusal of his prayer for discharge can not be said to be groundless.

11. After hearing the learned counsel for the parties and going through the materials on record, prima facie it appears that the members of the Tender Committee as well as the field staff have given undue favour to a private firm in execution of the work.

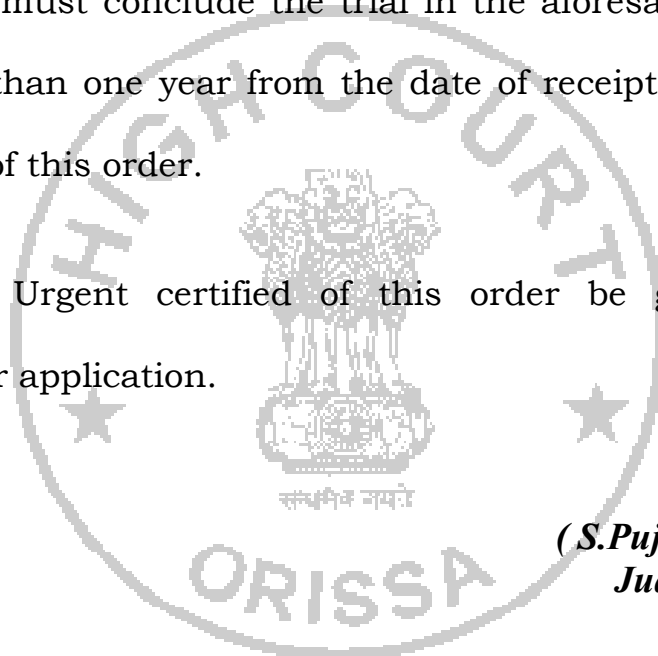
12. It is redundant to mention that at the stage of framing charge, no threadbare analysis of the facts or materials on record is necessary. A strong suspicion capable of drawing a presumption of guilt of the accused is sufficient for framing charge. Having regard to the materials as placed by the prosecution,

this Court hardly finds any illegality in the impugned order.

13. Hence, Criminal Revision is devoid of merit and, as such, the same stands dismissed.

14. However, the case being year old one, the trial court must conclude the trial in the aforesaid case not later than one year from the date of receipt of certified copy of this order.

15. Urgent certified of this order be granted on proper application.



(S.Pujahari)
Judge

DA/MRS