IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV NO.273 OF 2019

(From the order dated 19th August, 2017 passed by learned Special Judge, Vigilance, Cuttack in T.R. Case No.35/2017)

Pravakar Nayak ... **Petitioner**

-versus-

State of Odisha(Vigilance) ... **Opposite Party**

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr.Devasis Panda, Advocate

-versus-

For Opp.Paty : Mr.Sangram Das Standing Counsel (Vigilance)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
25.11.2022.

Sashikanta Mishra,J. The Petitioner challenges the order date 19th August, 2017 passed by learned Special Judge (Vigilance),Cuttack in T.R. Case No.35/2017 arising out of V.G.R. No.37/2010 in taking cognizance of the offences under Sections 468/420/471/120-B of I.P.C. and in issuing process against the Petitioner.

2. The facts of the case are that on an allegation of corruption relating to misuse of linkage coal allotted by Government having surfaced, an inquiry was conducted by the Inspector, Vigilance (Special Cell), Bhubaneswar. It was revealed that as per the coal distribution policy formulated by the Ministry of Coal, Government of India by resolution dated 18th October, 2007, the small and tiny consumers in non-coal sectors whose annual consumption was less than 4200 M.T. were eligible to get coal through State nominated agencies at the base price of Rs.850/- per M.T. as against the average auction rate of Rs.1400/- per M.T. and market rate of Rs.2500/- per M.T. The Odisha Small Industries Corporation (OSIC) and Odisha Consumers Cooperative Federation Ltd. (OCCF) were declared as the Nodal Agency of the State Government for distribution of such coal. It further came to light during inquiry that the linkage coal weighing 12257.696 M.T. of the value of Rs.1,09.39.871.09 was sold to 5 firms on the recommendation of G.M. DIC to OCCF. The Petitioner being the Manager of OCCF, Malgodown branch issued delivery orders in favour of the said firms by requesting the MCL authority accordingly. The Petitioner further issued bills in favour of the firms and credited the sale amount and thereafter intimated the G.M., DIC of such delivery. But it was found that the said firms are fictitious and non-existent and therefore, on such allegations the Inspector, Vigilance (Spl. Cell), Bhubaneswar lodged F.I.R. before the S.P., Vigilance, Cuttack Division on 2nd June, 2010 alleging that by such fraudulent sales, the Petitioner and other persons associated in the process had derived pecuniary advantage of Rs.62,20,903/-. On such report being lodged, Cuttack Vigilance P.S. case No.37/2010 was registered under Section 13(2) read with Section 13(1)(d) and Sections 420/468/471/120-B of I.P.C. and investigation was taken up.

3. Upon completion of investigation sanction was received to prosecute the Petitioner. Significantly, sanction was refused by the Government in respect of one Banambar Das, the Industrial Supervisor and Sitikanta Sarangi, Ex. General Manager, DIC, Jagatpur. Another person namely, Debendra Kumar Panda was also charge sheeted as a private person.

4. The trial court after perusing the F.I.R, charge sheet, the statement of witnesses recorded under Section 161 of Cr.P.C. and other material documents available on record, being satisfied that there is sufficient incriminating material to proceed with the case, took cognizance of the offences and issued process against the accused persons. It is to be noted that process was also issued against the co-accused persons in respect of whom the Government had refused sanction to prosecute namely, Sitikanta Sarangi and Banamber Das. As already stated, the said order is impugned in the present revision.

5. Heard Mr. Devasis Panda, learned counsel for the Petitioner and Mr. Sangram Das, learned Standing counsel for the Vigilance Department.

6. Mr. D. Panda, after drawing attention of the Court to the F.I.R. and the charge sheet in detail contends that no case is made out to launch prosecution against the Petitioner inasmuch as, even as per the admitted case of prosecution, he had no role whatsoever to play in identification, selection and recommendation of the firms and had only discharged duties as a consequence upon recommendation of the firms in question by the General Manager of DIC. Mr. Panda further submits that even in case of the officials of DIC, the Government had refused to accord sanction for prosecution evidently for absence of any criminality. Though the trial court issued process against them despite absence of sanction, this Court in Crl. Revision No.364/2018 quashed the said order. Mr. Panda further refers to the judgment of this Court passed in respect of co-accused (Debendra Kumar Panda) in

CRLREV No.596/2018. Mr. Panda contends that the Petitioner stands on the same or even better footing than Debendra Kumar Panda.

7. Mr. Sangram Das, on other hand, has supported the impugned order by submitting that the culpability of the accused-petitioner is well made out from the materials produced by the prosecution and that the explanation submitted by him to wriggle out from the case cannot be considered at this stage as the same is a matter to be appreciated during trial.

8. There is no dispute as regards the proposition that at the stage of taking cognizance of the alleged offences, the court is required to only consider the materials produced by the prosecution so as to be prima facie satisfied that the offence as alleged is made out. If, according to the Court, the materials prima facie make out a case of commission of the offences, it is open to it to issue process against the accused persons. On the contrary, if no such materials are present taking cognizance and issuing process would amount to an abuse of the process of Court.

9. The facts of the case, now need to be examined keeping the above principle in mind.

10. Reference to the F.I.R. reveals that 5 firms was shown to have been registered as E-M-I in the records of DIC, Jagatpur by the co-accused Sitikanta Sarangi and others. The said Sitikanta Sarangi being the G.M. of DIC, Jagatpur issued recommendation letters to the OCCF as per spot verification report of Nihar Ranjan Panda and Prasanta Kumar Parija, IPOs. The Petitioner being the Manager of OCCF came to the picture only after recommendation of the name of such firms. At this stage, it would be useful to refer to the charge sheet which contains the detailed procedure in the matter of application of linkage coal to small industries.

11. A reading of the charge sheet reveals that as per the guidelines issued by the Government of Odisha in

Industries Department, OCCF was declared as the State Nodal Agency for Distribution of coal to the Medium and Small Medium Enterprises (MSMEs). It is further provided that OCCF shall distribute coal to the MSMEs on recommendation of the G.M./Project Manager of DIC. The GM of DICs are responsible for identification of the coal consuming MSMEs having valid permanent/entrepreneur memorandum-II and for realistic assessment of other equipment and utilization of coal by the MSMEs. Certain parameters have been prescribed for identification of the eligible MSMEs. The procedure of distribution of coal is dealt with in the Odisha Coal Distribution Policy in which it is stated that the DICs will assess the coal requirement of the MSMEs scrupulously and furnish the list of coal consuming MSMEs units to the OCCF/OSIC indicating their annual requirement with grade of coal. OCCF engaged a marketing agent namely, M/s.Vinayak Minerals to take responsibility on its behalf for the coal business. Co-accused Debendra Kumar Panda is the Proprietor of the said firm. The Petitioner being appointed as Manager of Malgodown branch was authorized to sign agreement and other related documents with MCL, Sambalpur as all sales and purchases were to be made at such Branch.

12. It is the prosecution case that during a joint physical verification it was found that the five MSME units in question were not in existence which proved that the DIC officials falsely and dishonestly recommended the names of such units for supply of coal by OCCF. In so far as the Petitioner is concerned, save and except the finding that he had placed booking orders from time to time with MCL authority by submission of application form of different MSMEs, list of MSMEs, the requirement of coal and issuing the purchase price through DD/cheque to MCL authority, there is no allegation as such against him of having any role to play in selection of the so called fictitious firms. OCCF supplied the coal to the fictitious firms through the marketing agent, M/s.Vinayak Minerals, while the Petitioner issued the sale invoices containing his signatures. The authorized persons of the marketing agent received the coal from the MCL and distributed accordingly to the listed MSMEs as made by OCCF. Thus, the entire transaction appears to have commenced with the identification of MSMEs and recommendation of their names by the DIC particularly, the General Manager of DIC, Sitikanta Sarangi to the OCCF. It is alleged that the said firms recommended by DIC are fictitious. But it is not the case of the prosecution that the Petitioner was in knowledge of such fact or had any reason to believe that the firms recommended by the competent authority namely, DICs were fictitious. Except for placing the orders with MCL and making the payment for the required coal (as paid by the MSMEs) and signing the said invoices, the Petitioner does not appear to have any involvement in the process. The coal was physically received by its marketing agent M/s. Vinayak Minerals and also distributed to the so called MSMEs. It is also not the case of the prosecution that the Petitioner had entered into any conspiracy with M/s. Vinayak Minerals to engage in any fraudulent prosecution. On the other hand, this Court in CRLREV No.596/2018 held that there being no evidence to show that the Petitioner (Debendra Kumar Panda) had any association with the MSMEs cannot be entangled in the case on the charge of conspiracy. This Court also held that since the persons who prepared the list of MSMEs mainly, officials of DIC are not within the arena of the criminal trial in view of quashment of the proceedings, against them by this Court, there is no reason to treat the Petitioner as having conspired with them. After going through the order passed by the co-ordinate bench in the aforesaid case, this Court is in respectful agreement with the reasoning adopted therein to hold that the same principle would also apply in full force to the present case. To reiterate, the basic allegation being supply of coal to fictitious firms on the recommendation of officials of DIC, there is no way by which the Petitioner can be brought within the purview of the case when the officials of the DIC themselves are no longer available to be prosecuted. Moreover, there is not an iota of material to show any linkage between the Petitioner and the so-called fictitious firms independent of the officials of DIC.

13. For the foregoing reasons therefore, this court holds that continuance of the proceeding against the Petitioner on the available materials on record would be a travesty of justice. Resultantly, the CRLREV is allowed. The impugned order in issuing process against the Petitioner is hereby quashed.

....
(Sashikanta Mishra)
Judge

Ashok Kumar Behera