

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.412 of 2015

Bighnesh Swain & another. ***Petitioners***

-versus-

State of Orissa ***Opposite Party***

CORAM: JUSTICE S.PUJAHARI

ORDER
28.07.2022

Order No.

- 13.
1. This matter is taken up through Hybrid mode.
 2. The petitioners in this application under Section 482 of the Code of Criminal Procedure (for short “Cr.P.C.”) have prayed for quashing of the order dated 26.12.2013 passed by the learned Special Judge (Vigilance), Sambalpur, in C.T.R. No.58 of 2013 taking cognizance of the offences under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 of IPC.
 3. Heard Mr. G.K. Acharya, the learned senior counsel for the petitioners and Mr. P.K. Pani, the learned Standing counsel appearing for the Vigilance Department.
 4. As it appears, the petitioner no.1 was working as a Weighman under Biramitrapur Unified Check Gate in 2013

between the States of Jharkhand and Odisha. While in such capacity he is stated to have been involved in corruption and also to have acquired property disproportionate to his income. Some of the disproportionate assets have also been parked by the petitioner no.1 in the name of his wife, for which she has also been added as a co-accused in this case in aid of Section 109 of IPC.

5. Mr. G.K. Acharya, learned senior counsel appearing for the petitioners, placing reliance on the decisions of the Apex Court in the cases of ***R.S. Nayak vrs. A.R. Antulay***, reported in AIR 1984 SC 684 and ***G.A. Monterio vrs. State of Ajmer***, reported in AIR 1957 SC 13, would submit that since the petitioner no.1 was neither a regular employee nor he was in the pay roll of the State Government with regular salary, he is not coming within the definition of the “public servant” and, as such, initiation of a case under the Prevention of Corruption Act against him and his wife is misconceived and, as such, the impugned order of cognizance and well as the criminal prosecution launched against them may be quashed.

6. In the case of ***R.S. Nayak*** (supra) the Apex Court in paragraphs-45 and 46 have held as follows:-

“45. A person would be a public servant under cl. (12) (a) if (i) he is in the service of the Government; or (ii) he is in the pay of the Government; or (iii) he is remunerated by fees or commission for the performance of any public duty by the Government.

46. On behalf of the complainant-appellant, it was contended that in order to make a person a public servant on the ground that he is in the pay of the Government, there must exist a master-servant relationship or a command- obedience relationship, and if these elements are absent even if a person is in the pay of the Government, he would not be a public servant. On behalf of the respondent, it was countered asserting that the concept of master servant relationship or command-obedience relationship is comprehended in the first part of cl. (12) (a) which provides that every person in the service of the Government would be a public servant. It was urged that if even for being comprehended in the second part of the clause namely, a person would be a public servant if he is in the pay of the Government, their ought to be a master-servant or command-obedience relationship, the Legislature would be guilty of tautology and the disjunctive 'or' would lose all significance. The use of the expression 'or ' in the context in which it is found in cl. (12)(a) does appear to be a disjunctive. Read in this manner, there are three independent categories comprehended in cl. (12) (a) and if a person falls in any one of them, he would be a public servant. The three categories are as held by the learned special Judge; (i) a person in the service of the Government; (ii) a person in the pay of the Government; and

(iii) a person remunerated by fees or commission for the performance of any public duty the Government. One can be in the service of the Government and may be paid for the same. One can be in the pay of the Government without being in the service of the Government in the sense of manifesting master-servant or command-obedience relationship. The use of the expression 'or' does appear to us to be a disjunctive as contended on behalf of the respondent. Depending upon the context, 'or' may be read 'and' but the court would not do it unless it is so obliged because 'or' does not generally mean 'and' and 'and' does not generally mean 'or'. (See *Green v. Premier Glyrhonwy State Company Ltd.* (1) *Babu Manmohan Das & Ors. v. Bishun Das*, (2) *Ramta Prasad Aggarwal etc. Executive Engineer, Balladgarh & Anr.* (3) and several other which we consider it unnecessary to enumerate here.”

So also the Apex Court in the case of ***G.A. Monterio*** (supra) have held as follows:-

“12. The true test, therefore, in order to determine whether a person is an officer of the Government, is: (1) whether he is in the service or pay of the Government, and (2) whether he is entrusted with the performance of any public duty.

13. If both these requirements are satisfied it matters not the least what is the nature of his office, whether the duties he is performing are of an exalted character or very humble indeed. As has been stated in Bacon's Abridgment at Vol. 6, page 2, in the article headed "Of the nature of an officer and the several kinds of officers":-"The word 'officium' principally implies a duty, and in the next place, the charge of such duty; and that it is a rule that where one man 'bath to do with another's affairs against his will, and without his leave, that this is an office, and he who is in it is an officer". The next paragraph thereafter may also be referred to in this context:- "There is, a difference between an office and an employment, every office being an employment; but there are employments which do not come under the denomination of offices; such as an agreement to, make hay, herd a flock, &c; which differ widely from that of steward of a manor" &c. (Vide 12 Bombay High Court Reports at page 5).”

7. On the other hand, Mr. Pani, learned Standing counsel appearing for the Vigilance Department drawing notice of this Court to the decision rendered by the Apex Court in the case of ***M. Karunanidhi vrs. Union of India***, reported in 1979 AIR 898, submits that a regular pay within its definition also includes ‘wages’. If a person receiving the wages from Government is under misconduct, then there is no impediment to proceed against him under the Prevention of Corruption Act (for short “P.C. Act”). The aforesaid is also the view of the Karnataka High Court in a decision rendered in the case of ***State vrs. Sadashiva S. Yelagod***, reported in 2016 CRI.L.J. 4805. As such, the impugned order does not call for any interference by this Court.

8. In the case of ***M. Karunanidhi*** (supra) the 'pay' in the dictionary meaning has been defined as follows:-

“xxxx A careful analysis of the meanings assigned to the word 'pay' in the various dictionaries and the texts would clearly reveal that the expression 'in the pay of' connotes that a person is getting salary, compensation, wages or any amount of money. This by itself however does not lead to the inference that a relationship of master and servant must necessarily exist in all cases where a person is paid salary. Shorter Oxford English Dictionary; Websters Third New International Dictionary; Websters New World Dictionary: Words and Phrases, Permanent Edition Vol. 31A p. 176. Venkataramaya's Law Lexicon Vol.11 p.1122. Corpus Juris Secundum Vol.70 p.200; referred to.”

So also, in the case of ***Sadashiva S. Yelagod*** (supra) the Karnataka High Court have held that if a person in performance of the public duty mis-conducted himself, he can also be proceeded under the P.C. Act.

9. Before addressing the contention of the parties, it would be apposite to mention here that a person, who is a public servant as defined under Section 2(c) of the P.C. Act is always coming under the net of the P.C. Act. But, even if a person is not a public servant, while discharging public duty if he has mis-conducted himself, he can very well be booked under the P.C. Act as disclosed from the definition of Section 2 of the P.C. Act.

10. Therefore, keeping in mind the aforesaid, it can be said that a person to be booked under the P.C. Act for the mis-

conducting himself need not be in the regular pay of a Government in regular service. Besides, if he gets any pay from the Government for discharge of his duty or discharge of any public duty, he can also be brought within the net of the P.C. Act for his misconduct.

11. In view of the aforesaid, this Court is of the view that the submission advanced on behalf of the petitioner no.1 that he being not a public servant cannot be within the net of the P.C. Act is misconceived. So far as the petitioner no.2 is concerned, she having been booked under the Section 109 of IPC, this Court also does not interfere with the same as some of the disproportionate assets alleged to have been earned by her husband, petitioner no.1, as a public servant, have been parked in her name.

12. In the result, this CRLMC filed challenging the impugned order of cognizance being devoid of merit stands dismissed.

(S. Pujahari)
Judge

MRS