

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 412 of 2018

An application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 against the order dated 14.03.2018 passed by learned CJM-cum-Asst. Sessions Judge, Angul in G.R. Case No. 1452 of 2015.

AFR **Niranjan Singh** **Petitioner**

-Versus-

State of Odisha **Opp. Party**

Advocate(s) appeared in this case:-

For Petitioner : Mr. Subir Palit, Sr. Advocate
along with Mr. S.J. Mohanty,
Advocate.

For Opp. Party : Mr. P. Tripathy,
Addl. Standing Counsel

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT

23rd December, 2022

SASHIKANTA MISHRA, J.

The petitioner seeks to challenge the order dated 14.03.2018 passed by the learned CJM-cum-Asst. Sessions Judge, Angul in G.R. Case No. 1452 of 2015 in

rejecting the application filed by him for discharge from the case.

2. The brief facts, relevant only to decide the present revision are as follows:

An FIR was lodged on 08.11.2015 by one Harmohan Sahoo before the IIC of Angul Police Station alleging therein that on being motivated by Basanta Kumar Sahoo and Lokanath Behera, who are the functionaries of Lakshmi Swayam Sahayak Samiti, he and several other persons deposited huge amounts of money under different schemes. The said Basanta Kumar Sahoo was the Chief Executive of Lakshmi Self Help Cooperative Ltd. Kalinga Bazar, Choudwar, Cuttack and Lokanath Behera was the Branch Manager of the said Lakshmi Swayam Sahayak Samiti, Angul. Though the deposits matured in February, 2015 and May, 2015, the promised amount was not returned. When the informant approached the Branch Manager, he avoided on some pretext or the other. The informant thereafter met the Chief Executive at Cuttack but was told that the loan

amount could not be recovered and that the Directors had taken away heavy cash and were not returning the same, for which they were facing difficulties in returning the maturity value to the investors. According to the informant, cash of Rs.2,23,500/- was taken from him by motivating him to deposit under different Schemes and by handing over forged fixed deposit certificates, money receipts and bonds etc. It is also alleged that crores of rupees were similarly taken away from different persons. When the informant asked Basanta Kumar Sahoo to return the maturity value, he was abused and threatened to be killed by engaging antisocials. He was also threatened that the president- Sunil Pradhan, vice-president-Prasanta Kumar Nayak and legal advisor-Niranjan Singh (petitioner) are very influential persons and would not hesitate to kill them. On such report, Angul P.S. Case No.530 of 2015 was registered under Sections 420/467/468/471/ 294/506/120-B IPC and Section 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act, 1978. Upon completion of investigation,

charge sheet was submitted against five accused persons including the present petitioner- Niranjana Singh under the aforementioned sections.

3. The petitioner filed an application under Section 227 of Cr.P.C in the court below with prayer to discharge him from the offence on the ground that he, being an advocate was only the legal advisor of Lakshmi Self Help Cooperative Society Ltd. and therefore, had no role to play in the alleged occurrence. Learned court below however, held that being the legal advisor, the petitioner cannot plead that he had no knowledge regarding the illegal collection of funds by Lakshmi Cooperative Society and further, as his name finds place in the FIR as well as in the statement recorded under Section 161 Cr.P.C., there is prima facie evidence against him. On such reasoning, learned court below rejected the petition for discharge. The said order of rejection is impugned in the present revision.

4. Heard Mr. Subit Palit, learned Senior Counsel along with Mr. S.J. Mohanty, learned counsel appearing

for the petitioner and Mr. P. Tripathy, learned Addl. Standing Counsel for the State.

5. Assailing the impugned order, Mr. Palit argues that an advocate cannot be made liable for any act done by his client. There is no legal bar for an advocate to act as legal advisor to an organization and to render advice as may be required in such professional capacity. Even otherwise, there is absolutely no evidence against the petitioner that he had collected money or had advised anyone to invest in the Schemes floated by the Cooperative Society. In so far as the allegation in the FIR is concerned, the same is based on hearsay and hence, not legally admissible to be taken note of judicially.

6. Per contra, Mr. Priyabrata Tripathy has argued that there is clear evidence of the petitioner being involved in the activities of the Company in the form of statement of some witnesses who have stated that the petitioner was also involved in motivating the depositors to invest in the Schemes floated by the Society. According to Mr. Tripathy, this, prima facie shows his involvement in

the alleged occurrence and therefore, no case for discharge is made out.

7. Before proceeding to examine the merits of the rival contentions, it would be apt to first keep in mind the law relating to discharge. Section 227 of Cr.P.C. reads as under:

“227. Discharge.—If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.”

From a bare reading of the provision it is clear that to exercise power under the provision to discharge an accused the judge must be satisfied that there is not sufficient ground for proceeding against the accused. The expression “not sufficient ground for proceeding against the accused” has been interpreted by the Apex Court in the case of **Union of India vs. Prafulla Kumar Samal and others** reported in (1079) 3 SCC 4 in the following manner.

“The words “not sufficient ground for proceeding against the accused” clearly show that the Judge is not a mere post office to frame the

charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court to enter into the pros and cons of the matter or into a weighing and balancing of evidence and probabilities which is really his function after the trial starts. At the stage of Section 227, the Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. The sufficiency of ground would take within its fold the nature of the evidence recorded by the police or the documents produced before the court which ex facie disclose that there are suspicious circumstances against the accused so as to frame a charge against him.”

8. The Apex Court further made a distinction between ‘simple suspicion’ and ‘grave suspicion’ in the case of ***State of Bihar vs. Ramesh Singh***, reported in (1977) Cr1 LJ 1606 and ***Dilawar Balu Kurane vs. State of Maharashtra***, reported in (2202) 2 SCC 135. Thus, the position that emanates from the decisions quoted above is, where the materials placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while

giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Cr.P.C. and for such purpose, he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before him without making a roving enquiry into the pros and cons of the matter. This Court also had the occasion of relying on the above cited judgments in a similar case being **Santanu @ Priyabrata Senapati vs. State of Orissa**, reported in 2022 (II) ILR-CUT-226. In the said case this Court held as follows:

10. From the above narration it is evident that only a grave suspicion can justify framing of charge against an accused. To further explain, suspicion per se may be entirely in the realm of speculation or imagination and may also be without any basis, whereas grave suspicion is something which arises on the basis of some acceptable material or evidence. Only because there is no other explanation for the alleged occurrence, the needle of suspicion should point at the accused cannot be a reasonable basis to proceed with the trial against him. But to do so, there must be some nexus or link between him and the occurrence which is ex facie available to be seen or inferred from the materials placed before the Court. Only then will the statutory requirement of "sufficient ground" as per Section 227 Cr.P.C. be said to have been satisfied.

9. Another aspect also needs to be considered in view of the fact that admittedly, the petitioner is an advocate and functioned as the legal advisor of Lakshmi Cooperative Society Ltd. It would be proper in this context to refer to the decision of the Apex Court in the case of **Central Bureau of Investigation, Hyderabad vs. K. Narayana Rao**, reported in (2012) 9 SCC 512. In the said case a lawyer was charged for giving false legal opinion to his client, a bank. After observing the facts and law, the Apex Court reiterating the principle that only a strong suspicion would justify framing of charge had the following observations to make.

“27. In the banking sector in particular, rendering of legal opinion for granting of loans has become an important component of an advocate's work. In the law of negligence, professionals such as lawyers, doctors, architects and others are included in the category of persons professing some special skills. A lawyer does not tell his client that he shall win the case in all circumstances. Likewise, a physician would not assure the patient of full recovery in every case. A surgeon cannot and does not guarantee that the result of surgery would invariably be beneficial, much less to the extent of 100% for the person operated on. The only assurance which such a professional can give or can be given by implication is that he is possessed of the requisite skill in that branch of profession which

he is practising and while undertaking the performance of the task entrusted to him, he would be exercising his skill with reasonable competence. This is what the person approaching the professional can expect. Judged by this standard, a professional may be held liable for negligence on one of the two findings viz. either he was not possessed of the requisite skill which he professed to have possessed, or, he did not exercise, with reasonable competence in the given case, the skill which he did possess.

30. Therefore, the liability against an opining advocate arises only when the lawyer was an active participant in a plan to defraud the Bank. In the given case, there is no evidence to prove that A-6 was abetting or aiding the original conspirators.

31. However, it is beyond doubt that a lawyer owes an "unremitting loyalty" to the interests of the client and it is the lawyer's responsibility to act in a manner that would best advance the interest of the client. Merely because his opinion may not be acceptable, he cannot be mulcted with the criminal prosecution, particularly, in the absence of tangible evidence that he associated with other conspirators. At the most, he may be liable for gross negligence or professional misconduct if it is established by acceptable evidence and cannot be charged for the offence under Sections 420 and 109 IPC along with other conspirators without proper and acceptable link between them. It is further made clear that if there is a link or evidence to connect him with the other conspirators for causing loss to the institution, undoubtedly, the prosecuting authorities are entitled to proceed under criminal prosecution. Such tangible materials are lacking in the case of the respondent herein.

10. The facts of the case shall now be considered in the light of the above principles.

11. Admittedly, the name of the petitioner finds place in the FIR, but there is no direct allegation against him as such, inasmuch as it is alleged that Basanta Kumar Sahoo reportedly said that the president-Sunil Pradhan, vice- president- Prasanta Kumar Pradhan and legal advisor- Niranjana Singh (petitioner) are very influential persons and they will not hesitate to kill them in life. Evidently, there is no allegation as such that the petitioner himself had threatened to kill or cause any harm to the accused. In the charge sheet also, the only thing available against the petitioner is what was stated in the FIR. There is not a whisper of allegation made either in the FIR or in the charge sheet that the petitioner had induced or motivated the informant or any other person for that matter to invest in the schemes floated by the Society or had any role to play in the alleged refusal of the Society's functionaries to pay back the promised returns to the depositors.

12. A perusal of the case diary reveals that witnesses- Durga Charan Majhi, Suryakanta Majhi, Parau

Chandra Besra have referred to the petitioner in their statements. Durga Charan Majhi stated that the petitioner and the other functionaries of the Company induced him and others at Jagannath Temple Complex, Angul to deposit money and also that subsequently they also threatened to kill him and others by engaging antisocials. Suryakanta Majhi also stated the same thing. Parau Chandra Besra stated about the alleged threat held out by the petitioner along with others. Significantly, the above facts have not been taken note of by the I.O. in the charge sheet at all which leads to a reasonable supposition that he did not consider these statements significant enough to do so. Be that as it may, fact remains that the petitioner was the advocate of the Society. Under the constitutional Scheme of this country an accused of crime of any magnitude is entitled to proper defence. Legal representation is the valuable right afforded to an accused, notwithstanding the severity of the offence committed by him. It would be apt at this stage to refer to

the relevant provisions of the Bar Council of India Rules, 1975, namely, Rules 12 and 15 which are quoted herein below:

“12. An advocate shall not ordinarily withdraw from engagements, once accepted, without sufficient cause and unless reasonable and sufficient notice is given to the client. Upon his withdrawal from a case, he shall refund such part of the fee as has not earned.

15. It shall be the duty of an advocate fearlessly to uphold the interests of his client by all fair and honourable means without regard to any unpleasant consequences to himself or any other. He shall defend a person accused of a crime regardless of his personal opinion as to the guilt of the accused, bearing in mind that his loyalty is to the law which requires that no man should be convicted without adequate evidence.”

13. Thus, in his professional capacity it is open to the advocate to defend his client accused of crime but he cannot be hauled up for doing so. Otherwise, it would be akin to putting the advocate to trial along with the accused only because he has taken up his client's case to defend him in the court of law. It would obviously be a preposterous probability.

14. Reading of the impugned order reveals that the learned court below appears to have proceeded on the absurd premise that the petitioner being the advocate of the other accused persons cannot plead that he has no

knowledge regarding the illegal collection of funds by the Cooperative Society. This is all the more surprising because neither the FIR nor the charge sheet, which learned court below has so heavily relied upon, contains even a word that the petitioner was himself engaged in so called illegal collection of funds. That apart, even if the statements of the witnesses referred above are taken in to account it would only raise a feeble suspicion that the petitioner, apart from being the legal advisor was also involved to some extent in collection of deposits. But then, had there been any definite proof of such involvement, the I.O. would obviously have mentioned the same in the charge sheet. Therefore, the suspicion if at all, that arises would not be a grave suspicion so as to prompt the court to form a presumptive opinion that the petitioner may have committed the offence. In so far as the mentioning of the name of the petitioner in the FIR is concerned, the same as already stated, is not a direct allegation, but entirely based on hearsay and therefore, if at all accepted, would be in the realm of mere suspicion only and not

grave suspicion as required under law to frame charge against the petitioner. The reasoning of learned court below must therefore, be held to be erroneous for which the impugned order is rendered vulnerable to interference.

15. For the foregoing reasons therefore, the revision is allowed. The impugned order is set aside. Learned court below is directed to pass necessary orders to discharge the petitioner from the case.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 23rd December, 2022/ A.K. Rana.

