IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.932 of 2016

Arun Kumar Khanda. .... ***Petitioner***
M/s. Soura Ch. Mohapatra, B.K. Das, P. Swain,
B. Muduli, S.A. Hapizi, S. Biswal, Advocates

-versus-

State of Orissa (Vigilance). .... ***Opposite Party***
Mr. Sangram Das, Standing Counsel (Vigilance)

CRLREV No.933 of 2016

Dasharath Das. .... ***Petitioner***
M/s. Sarathi Jyoti Mohanty, R.K. Mohapatra,
Advocates

-versus-

State of Orissa (Vigilance). .... ***Opposite Party***
Mr. Sangram Das, Standing Counsel (Vigilance)

CRLMC No.3392 of 2016

Amarendra Dash. .... ***Petitioner***
M/s. S.P. Sarangi, D. Mohapatra,
V. Mohapatra, T. Patnaik, Advocates

-versus-

State of Orissa (Vigilance). .... ***Opposite Party***
Mr. P.K. Pani, Standing Counsel (Vigilance)

CORAM:
JUSTICE S. PUJAHARI

ORDER
06.05.2022

Order No.	
17.	**1.** All these three matters having arisen out of T.R. Case No.7 of 2015 in the court of the learned Special Judge, Vigilance, Bhubaneswar, corresponding to Balasore Vigilance P.S. Case No.16 of 2011, registered for the offences under Sections 13(2)/13(1)(d) of the Prevention of Corruption Act (for short the "P.C. Act") read with Sections 468 and 120-B of the Indian Penal Code, are being disposed of by this common order.
	2. The respective petitioners in CRLREV Nos.932 of 2016 and 933 of 2016 challenge the order dated 01.12.2016 passed by the learned Court below, vide which their applications filed under Section 239 of Cr.P.C. have been rejected, and the petitioner in CRLMC No.3392 of 2016 has approached this Court under Section 482 of Cr.P.C. seeking for quashment of the

order of cognizance dated 17.04.2015 and the proceeding of the case against him.

3. Heard the respective learned counsel appearing for the petitioners in all these matters, and the learned Standing Counsel appearing for the Vigilance Department. Perused the relevant papers on record as well.

4. Before adverting to the contentions raised by the parties, a brief reference may be made to the factual aspect of the case. At the relevant time, the petitioner in CRLMC No.3392 of 2016 happened to be the Managing Director of M/s. Suryo Food & Industries Ltd., the petitioner in CRLREV No.932 of 2016 was working as Tahasildar, Chandbali and the petitioner in CRLREV No.933 of 2016 was the Revenue Inspector, Karanjmal under Chandbali Tahasil. In the year 1992, M/s. Suryo Food & Industries Ltd. had purchased a vast tract of land measuring Ac.166.58 decimals at village-Narendrapur under Karanjmal Revenue Circle from different vendors under 42 (forty-two) number of registered sale deeds, and after getting the same mutated in its name, the said Firm used the aforesaid land for Salt Water prawn farming. As per the order dated 30.03.1999 passed by the then Tahasildar, Chandbali in a suo-motu proceeding under Section 8-A(1)(c) of the Orissa Land Reforms Act (for short the "OLR Act") in O.L.R. Case No.4 of 1994, the Kisam of the said land was recorded as 'Jalasaya', and consequently, the revised rent and premium was realized from the owner-firm, i.e., M/s. Suryo Food & Industries Ltd. and an agreement was entered into between the State and the Firm. Subsequently, in the year 2008 the said Firm made an application before the Tahasildar, Chandbali for conversion of the land from 'Jalasaya' to 'Gharabari' kisam, and pursuant to the same, the Tahasildar, who is now the petitioner in CRLREV No.932 of 2016, initiated a proceeding bearing No.102 of 2008 under Section 8-A of the O.L.R. Act, and as per the order dated 01.10.2008 he allowed conversion of the land measuring an area of Ac.121.38 decimals from Kisam 'Jalasaya' to 'Gharabari'. While passing such order, the Accused – Tahasildar purportedly took into consideration the report of the Revenue Inspector, Karanjmal (petitioner in CRLREV No.933 of 2016). It is alleged that while allowing the conversion, the Accused – Tahasildar acted with malafides, inasmuch as he did not obtain report from the Record Keeper, and defied the guidelines issued by the Government vide Govt. of Orissa in Revenue Department letter No.7591/R dated 08.02.2002 regarding prohibition of conversion of 'Jalasaya' kissam to 'Gharabari' kissam under Section 8-A of the OLR Act. It is further alleged that the Accused-firm (owner of the land) sought conversion of the land keeping in view the upcoming Mega Dhamara Port Project so as to gain more value of the land in terms of money either in compulsory acquisition of the land by the Authority concerned or in other transactions. It is thus alleged that the Accused – Tahasildar and R.I. abused their official position and committed criminal misconduct in showing undue favour to the owner-firm, and all of them worked in tandem in a criminal conspiracy for unjust enrichment.

5. Seeking for quashment of the proceeding against the petitioner in CRLMC No.3392 of 2016, his learned counsel submitted, inter-alia, that since the petitioner made the application for conversion of the land in accordance with the procedure of law, and there being not even any allegation much less any proof that he indulged in forgery of any document or committed any other overtact in course of the OLR proceeding, the impugned order of cognizance passed against him suffers from inherent illegality and impropriety showing non-application of judicial mind, and continuous of the said proceeding against the petitioner is a sheer abuse of the process of the Court. It is further submitted by him that on a hypothetical notion that the petitioner sought for conversion keeping in view the upcoming Port Project, no prosecution could have been launched against him, in absence of any material whatsoever, to make out any prima-facie case against him.

6. It is submitted on behalf of the Accused – Revenue Inspector, i.e., the petitioner in CRLREV No.933 of 2016 that he submitted his enquiry report in due discharge of his official duty and there being nothing on record to suggest that his report was factually incorrect or that the same was tainted with any malafides much less to show any undue favour to the applicant-firm, no criminality could have been attributed to him. It is contended by his learned counsel that merely because his report went in favour of the applicant, the same by itself could not have led to an inference that he committed any misoncudct or was a conspirator.

7. Learned counsel appearing for the Accused – Tahasildar, i.e., the petitioner in CRLREV No.932 of 2016 submitted, inter-alia, that there being no material whatsoever on record to show that he forged any document or entered into any criminal conspiracy, and the order passed by him under Section 8-A of the OLR Act being appellable and revisable before the next higher forums as per the provisions of the OLR Act, launching of the criminal prosecution against him is thoroughly misconceived and unsustainable in law. The learned counsel further submitted that since the petitioner passed the order in good faith, he is immunized from any suit, prosecution or other legal proceeding in view of Section 70 of the said Act.

8. On the other hand, the learned Standing Counsel appearing for the Vigilance Department submitted that a huge tract of land of 'Jalasaya' kisam having been illegally converted to 'homestead' kisam for unjust enrichment of the applicant-firm, a prima-facie case of criminal conspiracy is made out against all the three accused persons. His further submission is that the Accused – Tahasildar abused his official position in passing the order of conversion, inasmuch as he defied the prohibitory circular issued by the Government and also he deliberately did not refer to the record available in the Record Room, vide which the kisam of the land has been recorded as 'Jalasaya'. He further argued that the illegality committed by the Accused – Tahasildar in association with the Revenue Inspector cannot be treated as a mere administrative lapse, and at the stage of framing of charge, the question of good faith cannot be gone through. The learned Standing counsel has placed reliance on a decision of the Apex Court in the case of ***State House Officer, CBI/ACB/Bangalore vrs. B.A. Srinivasan and another,*** reported in (2020) 2 SCC 153.

The cited case, however, is distinguishable from the present one, inasmuch as here the accused – public servant, i.e., the Tahasildar acted in purported exercise of his power and jurisdiction vested on him under the OLR Act, whereas in the cited case the accused being a Bank Officer had no such statutory power or authority.

9. In so far as the petitioner in CRLMC No.3392 of 2016 is concerned, there is nothing on record to show that he indulged in any forgery or committed any criminal overtact to obtain the order of conversion. He made an application for conversion of his land as per the procedure contemplated under the OLR Act, and it was the Officer/ Authority concerned who was to dispose of the same either by allowing or dismissing the same in exercise of the power and jurisdiction vested on him under the OLR Act. Even assuming for sake of argument that he applied for conversion keeping in mind the prospect of future gain, the same *ipso facto* cannot lay a foundation for launching a criminal prosecution against him in absence of any material to show his any criminal indulgence.

10. Undisputedly, the land forming subject-matter of the dispute was 'Patita' in kissam, i.e., waste land, as such, not an agricultural land as defined in Section 2(1) of the OLR Act and its status was recorded as such. The petitioner in CRLMC No.3392 of 2016 on purchase of the same was having a Salt Water Farm Pond for prawn farming. However, though the same was not coming within the ambit of the OLR Act but on a wrong premises, the prohibition imposed under the OLR Act for use of agricultural land for non-agricultural purpose without conversion, a suo-motu proceeding was initiated against the Company vide OLR Case No.4 of 1994 under Section 8-A(1)(c) of the OLR Act by the then

Tahasildar for using the land for non-agricultural purpose, and the Company was asked to pay the premium by the then Tahasildar. Accordingly, M/s. Suryo Food & Industries Ltd. paid the premium, and the Tahasildar recorded the land as 'Jalasaya'. But, the right of the petitioner as owner thereof continues notwithstanding the agreement of lease. It is pertinent to mention here that recording of the land as "Jalasaya" by the then Tahasildar was without jurisdiction, inasmuch as such a power is not vested on the Tahasildar under Section 8-A(1)(c) of the OLR Act in respect of any land other than agriculture land, and admittedly, the land in dispute was not agricultural land. It also cannot be said to be 'Jalasaya' which necessarily refers to Sweet Water ponds and not Farm ponds excavated much less a Salt Water pond on an waste land. Subsequently, M/s. Suryo Food & Industries Ltd., however, decided to re-convert the same to homestead and, as such, it made an application under the bonafide belief that as earlier it was asked to pay the penalty and imposed with the premium for using the land for non-agricultural purpose and it decided not to have Prawn Farming anymore. Accordingly, the R.I. gave a report in favour of M/s. Suryo Food & Industries Ltd. and in a conversion proceeding the land was converted to homestead.

11. It is not in dispute that the land is far away from Dhamara Port and not acquired for the purpose of Port either. Section 8-A has no application at all to such land is not disputed by the learned Standing counsel appearing for the Vigilance Department. From the very beginning M/s. Suryo Food & Industries Ltd. could not have been said to have possessed the same for agriculture purpose, as the land was possessed for Salt Water Farm Pond for prawn farming and waste land. It is also not disputed by the learned Standing counsel appearing for the Vigilance Department that the Tahasildar having no authority or jurisdiction to proceed against the Company under Section 8-A(1)(c) of the OLR Act, proceeded with the matter and passed the order dated 30.03.1999. Notwithstanding the admitted factual position as above, the learned Standing counsel for the Vigilance Department now contends that it being a 'Jalasaya', i.e., water body, could not have been converted as "homestead" as the same is prohibited, for which oblique motive is attributable to the accused – Tahasildar for his having acted in purported exercise of jurisdiction under Section 8-A of the OLR Act. However, it is fallacious to say that it was an water body / Jalasaya. It was a waste land where M/s. Suryo Food & Industries Ltd. was having Salt Water Farm Pond for prawn culture. No such executive instruction was brought to the notice of the Court that its conversion was prohibited under any Act or Rule. Furthermore, it can never be said to be 'Jalasaya' which necessarily refers to Sweet Water tanks or water body. When the Firm decided to close the same, it sought for a re-conversion under the bonafide belief that as it was earlier imposed with penalty, so without conversion it cannot use the same as house site.

12. The Accused – Tahasildar appears to have relied on the report of the Accused – Revenue Inspector and passed the order of conversion. His order does not show him to have either referred to the relevant record available in the Record Room to ascertain the recorded kisam of the land, or to have made any reference to the Government circular vide which 'Jalasaya' kisam was said to have been prohibited to be converted to 'Homestead' in a purported exercise of power under Section 8-A of the OLR Act. It is thus alleged by the prosecution that his such order is illegal and that in passing the said order he committed misconduct by abusing his official position, to do undue favour to the applicant-firm. Needless to mention that the Accused – Tahasildar passed the order in purported exercise of his power and jurisdiction under the OLR Act. As per Section 61 of the said Act, any order passed under any of the provisions of the Act shall subject to any order passed in appeal or revision, as the case may be, be final and shall not be called for question in any Court of law. Provisions of appeal and revision have been made under Sections 58 and 59 of the OLR Act. As it appears, the power of revision exercisable by the Board of Revenue under Section 59 of the OLR Act has been enlarged to revise any order passed by the Revenue Officer or by any appellate or prescribed authority. The revisional authority on being moved by the Collector of a district or by the Land Reforms Commissioner may revise any order passed by any authority under this Act within twenty-five years from the date of such order. The question of legality or propriety of any order thus can be gone through by the appellate or revisional forums. Mere suspicion or allegation that an order passed under the OLR Act is illegal cannot lay the basis of a criminal prosecution in absence of prima-facie materials regarding commission of any offence.

13. Although oblique motive has been attributed to the accused – Tahasildar (petitioner in CRLREV No.932 of 2016), no prima-facie material is forthcoming to show that while passing the order of re-conversion he was actuated by extraneous considerations. In view of Section 64 of the OLR Act, 1960, all proceedings under the Act before any prescribed authority shall be deemed to be judicial proceedings within the meaning of Sections 193 and 228 and for the purposes of Section

196 of the Indian Penal Code. Notwithstanding the above, which carries limited application vis-à-vis the provision under the Indian Penal Code, a public servant acting under the OLR Act exercises a quasi judicial authority. In the case of ***P. Sunil Kumar vrs. State of Kerala, represented by its Public Prosecutor and another,*** reported in 2021 SCC OnLine Ker. 1676 the High Court of Kerala held as follows:-

> "29. If a public servant, acting as a quasi judicial authority under a statute passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is an allegation that he was actuated by extraneous considerations or oblique motives in passing the order.
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> 30. A bare perusal of Section 13(1)(d)(ii) of the P.C. Act would reveal that a public servant can be prosecuted under that provision, only if he has abused his position as public servant and obtained for himself or for any other person any valuable thing or pecuniary advantage. There is absolutely no whisper in Annexure-I F.I.R. that the petitioner obtained any valuable thing or pecuniary advantage by abusing his position as public servant. As noticed earlier, by virtue of the quasi judicial order passed by a public servant, if a party to the proceedings before the public servant had obtained any pecuniary advantage, it cannot be found that it was obtained by him as result of abuse of the official position of the public servant. The legislative intent is not to punish a public servant for any erroneous decision; but to punish him for corruption. Thus, to fall within the four corners of sub-clause (ii) of clause (d) of sub-section (1) of Section 13 of the P.C. Act, the decision / conduct of the public servant must be dishonest amounting to corruption. Mens rea, the intention and/or knowledge of wrong doing, is an

essential condition of the offence of criminal misconduct under Section 13(1)(d)(ii) of the P.C. Act. The presumption under Section 20 of the P.C. Act does not apply to the offence under Section 13(1)(d)(ii) of that Act.

31. "Abuse" means misuse i.e. using the official position for something for which it is not intended (*See M. Narayanan Nambiar v. State of Kerala : AIR 1963 SC 1116*). An honest though erroneous exercise of power or an indecision is not an abuse of power (*See Tarlochan Dev Sharma v. State of Punjab* : (2001) 6 SCC 260 : AIR 2001 SC 2524).

32. Dishonest intention is the gist of the offence under Section 13(1)(d) of the P.C. Act. Mere conduct and action of a public servant, without dishonest intention but contrary to departmental norms, does not amount to criminal misconduct (*See Jaffer Sharief v. State :* (2013) 1 SCC 205 : AIR 2013 SC 48).

33. Therefore, even if it is accepted that the petitioner had passed Annexure-VI order without perusing the previous records or properly ascertaining the factual position of the matter, his act does not attract the offence under Section 13(1)(d)(ii) of the P.C. Act."

14. Again in the case of ***G. Santhosh Kumar vrs. State of Kerala, represented by the Public Prosecutor and others,*** reported in 2021 SCC OnLine Ker 2744, the High Court of Kerala observed as follows:-

"60. The prosecution against the petitioner is wholly based on the allegation that he did not care to verify and consider the proper documents in passing the assessment orders and granting refund of amount to the dealer. Learned Public Prosecutor has no case that the assessment orders were passed by the petitioner on extraneous considerations or that the prosecution has produced materials along with the charge-sheet to substantiate such an allegation. Learned Public Prosecutor has also no case that the prosecution has produced materials along with the charge-sheet to prove that the petitioner had obtained for himself any valuable thing or pecuniary advantage. If a public servant, acting as a quasi judicial authority under a statute, passes an order and if such order is in favour of a person other than the Government, any pecuniary advantage obtained by such person by virtue of such order, cannot be the basis for prosecution of the public servant under the PC Act, unless there is allegation that the public servant was actuated by extraneous considerations or oblique motives in passing the order.

61. In *Ramesh Chennithala v. State of Kerala :* (2018) 4 KLJ 647, this Court has held as follows:

> *"It appears that there is a misconception among the officers of the VACB and the Police that loss caused to the Government or the Public Exchequer by a public servant in the discharge of his official functions is a ground for proceeding against him under the P.C. Act. This misconception is the result of the wrong understanding of the scope and object of the Prevention of Corruption Act. …… There can be instances where some benefit or advantage is caused to a person, or such benefit or advantage is derived by a person by the wrongful acts of a public servant or due to his carelessness in the discharge of his duty or due to malfeasance. In such cases, there may be corresponding loss to the Government or the Public Exchequer also. What matters in such cases, is not whether the public servant has just caused loss to the Government or the Public Exchequer, but whether there has been any vicious link or nexus between him and the person benefited……. Just because some loss was caused to the Government or the Public Exchequer or to any public sector undertaking or corporation or public body, by the discharge of functions of a public servant, he cannot be prosecuted under the P.C. Act. In short, mere instances of malfeasance or wrong administration or wrong discharge of functions or dereliction of duty will not cause a prosecution under the P.C. Act. ….. In all cases of malfeasance or misfeasance or wrong administration, or in all cases of loss caused to the Government by the discharge of duty by public servants, a prosecution under the P.C. Act cannot be initiated. If it is only a case of dereliction of duty or wrong administration or malfeasance or misfeasance detected on enquiry,*

> *only disciplinary action can be initiated against the erring public servant."*
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> 62. The above observations also squarely apply to the facts of the present case."

15. In the facts and circumstances of the case at hand, and in view of the legal proposition as above, no prosecution could have been launched against the accused – Tahasildar under the P.C. Act.

16. The Accused – Revenue Inspector submitted his enquiry report in compliance with the order of his authority, i.e., the Tahasildar. There is no material on record to show that his report was factually erroneous. Even assuming that the same suffers from any deficiency or was faulty in any respect, in that event it was open to be dealt with appropriately by the Authority concerned within the province of his prudence. Admittedly, his report was in favour of the applicant leading to the order of conversion. That by itself also could not have led to presupposition that he committed any misconduct or abused his official position.

17. In view of the discussion made hereinabove, this Court finds merit in the contentions of the petitioners and the CRLMC No.3392 of 2016 and CRLREV Nos.932 and 933 of 2016 deserve to be allowed.

18. In the result, CRLMC No.3392 of 2016 and CRLREV Nos.932 and 933 of 2016 are allowed. The petitioners in CRLREV Nos.932 and 933 of 2016 stand discharged and the impugned order of cognizance as well as the proceeding against the petitioner in CRLMC No.3392 of 2016 stand quashed.

19. Urgent certified copy of this order be granted on proper application.

(S.Pujahari)
Judge

MRS