

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.1513 of 2019

Patitapaban Das

....

Petitioner

Mr.B.P. Das, Advocate & Associates

-Versus-

State of Odisha and another

....

Opposite Parties

Mr. N. Maharana, ASC for Vigilance Department

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF HEARING :14.12.2021 DATE OF ORDER : 04.01.2022

1. Instant application under Section 482 Criminal Procedure Code, 1973 (herein after referred to as 'the Code') is at the behest of the petitioner with a prayer to quash the F.I.R. and the criminal proceeding initiated against him vide Cuttack Vigilance P.S. Case No.19 of 2010 corresponding to T.R. Case No.67 of 2012 pending in the court of learned Additional Special Judge (Vigilance), Cuttack under Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section(s) 409 and 120-B IPC on the grounds, inter alia, that it is expedient as continuation of the proceeding would be an abuse of process of the court, since there is a remote chance of conviction, considering the nature of materials, morefully, when the outcome of a departmental enquiry has gone the other way.

2. In fact, an F.I.R. was lodged on 29.03.2010 against the Block officials by the Vigilance Department alleging therein about misappropriation of fund in a work undertaken for repairing and up-gradation of village road in question damaged during the floods of

September, 2008. It has been alleged that the fund released under a scheme of FDR, 2008-09 was misappropriated by way of executing substandard work and at the relevant point of time, the petitioner was working as the Assistant Engineer of the Block. Subsequently, on registration of the case and completion of investigation, charge sheet was submitted. The copies of the F.I.R. and charge sheet have been enclosed as Annexure-1 and 2 respectively. Later to the filing of charge sheet, the learned court below took cognizance of offences and then proceeded to frame the charges while declining to discharge the petitioner by passing order dated 15.04.2019, a copy of which is marked as Annexure-3.

3. The contention is that the alleged work was under FDR scheme of 2008-09 and it was completed on 10.11.2008 and on the basis of a vigilance inspection, the F.I.R. was lodged on 21.11.2009 which is almost after a year and that too, after a rainy season had already passed by. A copy of vigilance report is marked as Annexure-4. It is claimed that after the vigilance case, a departmental enquiry was commenced by the WR Department, Government of Orissa on the self-same allegation and the report of such enquiry completely contradicted the claim of the Vigilance. A copy of the enquiry report stands marked as Annexure-5. In fact, the enquiry report under Annexure-5 recommended recovery of an amount and absolved the petitioner from all other charges.

4. Taking a cue from the departmental enquiry and its findings, the petitioner would contend that he is not guilty of any misconduct or negligence, which has been attributed and even not responsible for any excess payment and that apart, the checks and measurements conducted by the Vigilance authorities to be totally faulty and considering the fact that such an enquiry by the department was based

on the same material and him of having been exonerated of any serious misconduct, the continuation of the criminal proceeding in T.R. No.67 of 2012 would amount to abuse of the process of law.

5. Learned counsel for the petitioner contends that the technical inspection report of the Vigilance Department under Annexure-4 has inherent defects vis-à-vis the findings and conclusions with related observations. Referring to the departmental enquiry report under Annexure-5, it is urged that all aspects with regard to the construction of road work were considered in threadbare by the vigilance authorities. For the above reasons, it is contended that the very purpose of the proceeding with the criminal action would be a travesty of justice when the petitioner has been exonerated of the principal charges as to negligence in construction of road work and also misappropriation of fund.

6. From the side of the Vigilance Department, the learned Additional Standing Counsel challenged the contention of the petitioner by claiming that there is no full exoneration of the charges as the financial loss to the Government is well proved with a recommendation to realise the excess payment recoverable from him and he has also been censured. It is contended that merely by accepting the report i.e. Annexure-5, the criminal proceeding cannot be quashed, which is independent of the departmental enquiry and that apart, the factual aspects of the claims shall have to be considered and examined by the learned court below during trial.

7. No doubt, a departmental enquiry was conducted after the vigilance action but then, the question is, whether, its findings can affect the criminal proceeding initiated against the petitioner? Under Annexure-5, there has been a finding against the petitioner for causing financial loss to the Government in contravention of Rule 3 of OGS

Conduct Rules, 1959 although the charges of gross misconduct and failure to maintain absolute integrity could not be established. In that case, there is no complete exoneration as is claimed by the petitioner since the departmental enquiry ended with a recommendation to recover an amount, which is stated to have been recovered from his salary. The charges of gross misconduct and failure to maintain absolute integrity of course could not be substantiated. In the considered view of the Court, such an enquiry report under Annexure-5 may be a piece of evidence to defend the charges leveled by the vigilance authorities. But, at the present juncture, the Court cannot go into the details of the departmental enquiry report and its findings and to distinguish or contradict the same with the claim of the Vigilance Department as both have independently collected the materials. The factual points raised by the petitioner can only be examined and properly scrutinized by the learned court below during and in course of trial. The timing of technical inspection by the vigilance team and the nature of evidence collected after a considerable lapse of time can be a subject of debate during the criminal proceeding. The Court, therefore, is of the humble view that it cannot enter into such aspect of the claim of petitioner, which is fact based and can only be adjudicated upon by the learned court below while conducting trial. It is well established principle that in exercise of inherent jurisdiction under Section 482 Cr.P.C., this Court cannot enter into the factual aspects of matters and compare or accept the results of enquiry conducted by the departments, while considering a question on sustainability of a proceeding before a criminal court unless and until an extra-ordinary case is made out on grounds so glaringly discernible and acceptable.

8. A departmental enquiry and criminal proceeding are distinct and independent of each other. In case of exoneration of charges in a

departmental proceeding, it would not automatically result in the closure of criminal action. If there has been an enquiry by the department, the same cannot be a ground for the Court to accept the findings thereof by making a comparison with the materials collected by the Vigilance Unit at the time of technical inspection for the purpose of taking a decision regarding continuation of the criminal proceeding pending before the court below. Any comparison or debate on the nature and character of the evidence collected by the vigilance inspection team in juxtaposition to the findings of the departmental enquiry and an exercise in that respect by this Court would not be proper and justified and permissible in law and morefully when, different standards even apply for an enquiry and the criminal prosecution.

9. Having said that, the Court is of the humble opinion that by referring to the enquiry report under Annexure-5, the criminal proceeding in T.R. No.67 of 2012 cannot be brought to an abrupt end. It is reiterated that this Court cannot venture into adversarial adjudication with a departmental enquiry report on record pitted against the inspection report of the vigilance authorities or accept the findings of the department for the purpose of deciding whether to dismantle and demolish the criminal action by quashing the whole of the proceeding, which would, rather, be within the realm of trial to be an exercise carried out by the learned court below.

10. Hence, it is ordered.

11. In the result, for the reasons discussed herein above, application under Section 482 of the Code filed by the petitioner stands dismissed. However, considering the fact that the matter is subjudice since 2012, it is expected that the learned court below shall do well to expedite the proceeding and accomplish it preferably

within a period of six months from the date of receipt of a copy of the above order unless there exists any other impediment.

12. The CRLMC is accordingly disposed of.

(R.K. Pattanaik)
Judge

Dated 4th January 2022/KC Bisoi/Secretary

