

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CRLMP No. 754 of 2021**

An application under Article 226 of the Constitution of India arising out of Vigilance P.S. Case No.45 of 2004 corresponding to T.R. Case No.23/2011 pending in the file of learned Addl. Special Judge, Vigilance, Cuttack.

***Satyabadi Padhi***

***.... Petitioner***

***-versus-***

***State of Odisha (Vigilance)***

***.... Opp. Party***

**Advocates appeared in this case through Hybrid Mode :**

For Petitioner

: Mr. G. Mohapatra, Advocate

For Opp. Party

: Mr. Niranjana Moharana,  
Addl. Standing Counsel,  
For Vigilance Department

**CORAM:**

**JUSTICE SAVITRI RATHO**

.....  
**Date of Judgment : 18.05.2022**  
.....

**Savitri Ratho, J.**

I have heard Mr. G.N. Mohapatra, learned counsel for the petitioner and Mr. Niranjana Moharana, learned Addl. Standing Counsel for the Vigilance Department through hybrid mode.

2. In this application under Article 226 of the Constitution of India, the petitioner has prayed to quash the

charge framed under Annexure 4. Annexure 4 is the charge framed against the petitioner on 12.09.2017 under Section – 13 (1) (e ) of the PC Act which is punishable under Section – 13 (2 ) in T.R. Case No.23/2011 pending before the file of learned Addl. Special Judge, Vigilance, Cuttack which arises out of Cuttack Vigilance P.S. Case No.45 of 2004.

3. The prosecution case in brief is that consequent upon the search conducted on 29.11.2004 against the petitioner, Cuttack Vigilance P.S. Case No.45 dated 21.12.2004 was registered under Section 13(2) read with Section 13(1)(e) of the P.C. Act, 1988 against the petitioner on the allegation that being a public servant he was found to be in possession of assets disproportionate to his known sources of income during the period 01.01.1987 to 29.11.2004. After completion of the investigation and after due consideration of the explanations vis-à-vis incriminating materials/documents in respect of assets, expenditure and income of the petitioner, as a prima facie case was made out against the petitioner, charge sheet was submitted against the petitioner on 29.12.2009.

4. The learned counsel for the petitioner submits that the case had been registered on false allegations and on

17.12.2004, the petitioner had submitted a detailed representation disclosing all his legitimate sources of income, actual expenditure incurred during the check period and value of his assets. But without taking into account the said representation, the I.O. filed chargesheet against the petitioner being interested for prosecution. Wife of the petitioner was in employment since 01.04.1994 but only part of the total emoluments received by her have been taken into account. The plot of land in Bidanasi had been purchased by his wife from her own income in 1995 and before construction of a residential house on it by her, he had sought for permission from the authorities and had received approval on 22.03.2002 and his wife had raised funds for construction from different sources including a loan from the State Bank of India (in short "S.B.I.") and he had reflected all this in the representation dated 17.12.2004, but it has not been taken into account and investigation has been done perfunctorily. The investigation is tainted and charge is liable to be quashed. His further submission is that explanations had also been furnished by the petitioner subsequently to the Investigating Officer but these have also not been taken into account for which he is seriously prejudiced.

In support of his submission, learned counsel for the petitioner relies on the decisions of the Hon'ble Apex Court in case of *Meghmala and others vs. G. Narasimha Reddy and others* reported in *JT 2010 (8) SC 658*, *Ashok Tshering Bhutia vs. State of Sikkim* reported in *(2011) 4 SCC 402*, *P.L.Tatwal vs. State of M.P.* reported in *AIR 2014 SC 2369*, *Nanjappa vs. State of Karnataka* reported in *AIR 2015 SC 3060*, *Devinder Singh and others vs. State of Punjab through CBI* reported in *2016 (2) Crimes (SC) 94*, *Roopesh vs. State of Kerala* reported in *2019 (4) Crimes 238 (KER)* and *State of Haryana & Others vs. Bhajan Lal & Others* reported in *1992 (Suppl-1) SCC 335*.

5. Mr. Niranjana Maharana, learned Additional Standing Counsel has vociferously objected to the maintainability of the prayer made in this application submitting that the petitioner has been abusing the process of this Court by filing frivolous application and in the process delaying the trial. He has submitted that the petitioner had earlier filed CRLMC No. 2878 of 2017 before this Hon'ble Court to quash the order dated 12.09.2017 i.e. order of framing of charge as well as refusal to discharge the petitioner U/s-239 of the Cr.P.C. In this application he prays for quashing the charge which he could have done in

the earlier application. The petitioner had taken all the pleas in the above CRLMC, which have been taken in the present CRLMP and this Court vide Order dtd.07.03.2019 dismissed the aforesaid CRLMC holding that there is no infirmity or illegality in the same for which it was not inclined to invoke the inherent jurisdiction U/s-482 Cr. P.C. The petitioner did not challenge this order in the higher court but with intention to stall the proceedings in the trial court, the present CRLMP application has been filed with similar prayer on self same grounds i.e. seeking quashment of the same impugned order dated 12.09.2017 of framing charge. Taking various defense pleas and relying on documents which cannot be considered at the time of framing of charge. His further submission is that the present petition is liable to be dismissed in view of the aforesaid factual and legal propositions, as there is no infirmity or any illegality in the impugned order dated 12.09.2017 in the continuance of the proceeding of the T.R No. 23 of 2011 pending in the Court of learned Addl. Special Judge (Vigilance), Cuttack. He places reliance on the decision of the Supreme Court in **State of Telengana @ Managipet @ Mangipet Sarveshwar Reddy : (2019) 19 SCC 87**, stating that preliminary enquiry in disproportionate cases is not mandatory.

6. I have heard the counsels for the parties and perused the written notes filed by them. I have also perused the orders passed in the applications filed by the petitioner earlier and gone through the decisions relied on by them.

7. This is the fourth foray of the petitioner to get rid of the aforesaid case pending against him for the offences under Section 13 (1) (e) read with Section 13 (2) of the P.C Act. While earlier filing of CRLMC 2878 of 2017 and WPCRL No. 67 of 2010 have been mentioned in the certificate given in the cause title, there is no mention of filing of the third case - CRLMC 602 of 2020. The fact of prior filing and withdrawal of CRLMC No.602 of 2020 during pendency of this case was brought to my notice by the learned Additional Standing Counsel (Vigilance) on the last date i.e. 25.04.2022.

8. The records of WP(CRL) No. 67 of 2010 and CRLMC No.2878 of 2017 have been tagged to this record and the downloaded copy of order dated 25.01.2022 passed in CRLMC 602 of 2020 have been filed by the learned Additional Standing Counsel.

9. WP(CRL) No.67 of 2010 had been filed by the petitioner under Article – 226 and 227 of the Constitution of

India with a prayer to quash FIR in Cuttack Vigilance Case No. 45 of 2004 with an alternative prayer to conduct investigation taking into consideration the facts disclosed in the representation of the petitioner submitted on 17.12.2004, 20.08.2008 and 16.06.2009. On the first date i.e. 17.02.2010, this Court drew the attention of the learned counsel for the petitioner to para 19 of the decision of the Hon'ble Supreme Court in the case of ***Union of India vs. Prakash P Hinduja and another***, reported in ***AIR 2003 SC 2612*** wherein it was stated that the Court would not interfere with the investigation or during investigation, it being exclusively reserved for the investigating authority. On the next date i.e. 03.03.2010, as the learned Additional Standing Counsel for the Vigilance Department submitted that the representations of the petitioner had been received by the I.O. and he was enquiring into them, and the submission that *“whatever investment / expenditure are allowable in law shall be allowed/ considered by the I.O. and if any excess in investments/ expenditure is found to be more than the source of income only then the chargesheet will be filed and in such event the I.O shall record the statement.”* The writ application was therefore disposed of as not pressed.

It appears that chargesheet had been filed in the case on 28.12.2009 but neither the petitioner nor the counsel for the Vigilance Directorate had brought it to the notice of this Court resulting in the aforesaid order.

10. The petitioner thereafter approached this Court by filing CRLMC No. 2878 of 2017 under Section – 482 of the Code of Criminal Procedure ( in short “Cr.P.C.) challenging the order dated 12.09.2017 rejecting his prayer for discharge as well as the proceeding pending against him . The order sheet annexed to the application indicated that chargesheet dated 28.12.2009 filed under Section 13(2) read with Section 13(1) (e) of the PC Act against the petitioner had been received in the Court of the CJM, Cuttack on 07.07.2010 and by order dated 12.09.2017 his application for discharge has been dismissed by the learned Addl. Special Judge (Vigilance), Cuttack by a well reasoned order after referring to the decisions rendered by the Supreme Court in the case of *Hardeep Singh vs. State of Punjab : (2014) 3 SCC 92*, *Ajay Kumar Parmar vs. State of Rajasthan : (2012) 12 SCC 406*, *State of Bihar vs. Ramesh Singh : (1977) 4 SCC, Debendranath Padhi vs. State of Orissa : (2005) 30 OCR (S.C.) 177*, *State vs. L Munniswamy : (1977) 2 SCC 699*, *State vs.*

***Somnath : (1996) 4 SCC 659 and State vs. Mohanlal : (2009) 6 SCC 338.*** Vide order passed on the same day, summons had been directed to be issued against the chargesheet witnesses in suitable batches.

CRLMC No 2878 of 2017 was dismissed by this Court by order dated 07.03.2019 by holding as follows :

*.... “Heard learned counsel for the petitioner and learned Addl. Standing Counsel (Vigilance) Mr. Pani.*

*In this Lis U/s.482 Cr.P.C. prayer has been made to quash the order dtd.12.09.2017 of Addl. Special Judge, Vigilance, Cuttack in T.R. No.23 of 2011 refusing to discharge the accused – petitioner U/s.239 Cr.P.C. while ordering to frame charge for offence U/s.13(1)(e) of Prevention of Corruption Act (in short ‘the P.C. Act’), punishable U/s.13(2) of the P.C. Act.*

*Learned counsel for the petitioner submits that in W.P.(Crl.) No.67 of 2010, vide order dtd.03.03.2010, learned Addl. Standing Counsel Mr. Pani submitted that investigation was going on and the investigating officer had received the representation of the petitioner – accused, which would be considered regarding investment and expenditure and basing upon that submission, the case was not-pressed but from the order dtd.07.07.2010 passed in T.R. No.23 of 2011 under Annexure-1 it is found that charge-sheet was already filed on 28.12.2009.*

*In view thereof it is submitted that for such wrong submission, the accused – petitioner was prejudiced and put to face the rigour of trial by the impugned order which needs to be quashed.*

*Learned Addl. Standing Counsel Mr. Pani submits that due to communication gap, such wrong submission was made in the writ petition on 03.03.2010 but the contention that the investigating officer has not considered the grievance of the accused made in the representation, is not correct.*

*Having heard learned counsel for both the parties I am of the considered view that when wrong submission is admitted by the learned Addl. Standing Counsel to the effect that by the time of submission made in the court, chargesheet was already filed, the impugned order U/s.239 Cr.P.C. made by the Trial Court cannot be set aside. Added to that the impugned order does not show that such contention was ever made before the Lower Court at the time of consideration of discharge.*

*Having gone through the impugned order, I do not find any infirmity or illegality in the same. Hence I am not inclined to invoke the inherent jurisdiction U/s.482 Cr.P.C.*

*Accordingly the CRLMC stands dismissed.”*

11. Thereafter, the petitioner had filed CRLMC 602 of 2020, which has been withdrawn on 10.01.2022 during pendency of this CRLMP.

12. It is no longer res integra that this Court cannot hold a mini trial at this stage to consider if the I.O. has left out any

material which is available in favour of the petitioner, before submitting chargesheet. This ideally could have been done during investigation. But the said stage has gone.

13. This application has been filed under Article – 226 of the Constitution of India challenging the charge framed on 12.09.2017 against the petitioner. This charge has been framed against him for commission of offence under 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act 1988 (in short the “the P.C. Act”) pursuant to order dated 12.09.2017 refusing to discharge him and rejecting his application for discharge ; and this order dated 12.09.2017 had been assailed in CRLMC No. 2878 of 2017 by the petitioner.

14. In the case of **Anil Khadkiwala vs The State Govt. of NCT: (2019) 17 294** : the Supreme Court held that a second application under Section – 482 Cr.P.C under changed circumstances is maintainable and quashed the summons issued in cases under Section 142 Act read with Section – 138 of the Negotiable Instruments Act inter alia holding that

*“ there was a difference between the earlier application and the subsequent one, inasmuch as the statutory Form 32 did not fall for consideration by the Court earlier. The*

*factum of resignation is not in dispute between the parties. The subsequent application, strictly speaking, therefore cannot be said to a repeat application squarely on the same facts and circumstances.”*

But in the present case there is no change in circumstance . In the present application , charge framed against the petitioner on 12.09.2017 has been challenged. This charge has been framed pursuant to dismissal of the application for discharge by order dated 12.9.2017 (the same day) by the learned trial Court. The petitioner had challenged order dated 12.09.2017 in the previous application under Section – 482 CrI.P.C. which has been dismissed by this Court and the order of dismissal passed by this Court has not been challenged or set aside by the Supreme Court. In these circumstances, I find no scope or reason to examine the contentions raised by the petitioner in this CRLMP as regards the charge as it is a consequence of rejection of the application for discharge. For this reason, I do not find any necessity to examine the decisions relied on by the learned counsels as regards the charge.

15. But it is necessary to observe that even if chargesheet has been filed and charge has been framed against the petitioner after rejecting his application for discharge, the

petitioner will have ample scope to lead evidence during trial in support of the pleas taken by him in his representations and this CRLMP and otherwise available to him under law.

16. I therefore find no reason to admit the CRLMP and accordingly dismiss it.

17. As the case is stated to be pending for more than ten years and for almost five years since charge was framed, the learned trial Court is requested to take all possible steps for completing the trial within a period of six months from receipt of this order.

Copy of this order be communicated to the learned trial Court by the Registry forthwith.

.....  
(Savitri Ratho)  
Judge

Orissa High Court, Cuttack  
Dated 18/05/2022 Bichi/Sukanta