

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.5247 of 2015

AFR

Brahmananda Sahu

....

Petitioner

Mr. Hemanta Ku. Mund, Advocate

Miss. A.K.Dei, Advocate

-Versus-

State of Orissa (Vigilance)

....

Opposite Party

Mr. P.K. Pani, SC &

Mr. Niranjana Moharana, ASC for the Vigilance Department

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:16.12.2022

1. A petition under Section 482 is moved at the behest of the petitioner invoking jurisdiction of this Court under Section 482 Cr.P.C. for quashing of the criminal proceeding in connection with G.R. Case No.29 of 2011 corresponding to Berhampur Vigilance P.S. Case No.29 of 2011 pending in the file of the learned Special Judge (Vigilance), Berhampur on the stated grounds.

2. The Vigilance case was instituted on the basis of a written report lodged before the DSP (Vigilance), Phulbani Unit on 23rd June, 2011 with the allegation made therein regarding the illegal demand of Rs.23,000/- as bribe by the petitioner from the informant towards new electricity connection for a welding shop and in that regard, a trap was laid by the Vigilance team and allegedly the said amount was recovered from the petitioner and the same was seized. After completion of investigation, the petitioner was chargesheeted under Sections 13(2) read with 13(1)(d) besides Section 7 of the Prevention of Corruption Act, 1988(in short 'the P.C. Act').

3. The challenge in the present case is that the informant did not support the alleged trap and recovery of the bribe amount from the petitioner while being examined during investigation and therefore, the entire prosecution would now have to depend on the evidence of the over-hearing witness but the same is not sufficient to prove and establish the fact of illegal demand of bribe and its acceptance which are the essential ingredients to be satisfied. According to the petitioner, after such hostile testimony of the informant not supporting the trap, no cogent and credible evidence left to criminally prosecute the petitioner with regard to the demand and acceptance of illegal gratification.

4. Heard Mr. Mund, learned counsel for the petitioner and Mr. Pani, learned counsel for the Vigilance Department.

5. Mr. Mund, while advancing an argument refers to the statement of the over-hearing witness recorded under Section 161 Cr.P.C. as at Annexure-3 to contend that by such testimony, it would not be possible for the prosecution to prove the demand and acceptance of bribe by the petitioner as he was not present at the spot but at a distance along with the members of the Vigilance unit. It is further contended that when the informant has not supported the alleged trap and since the testimony of the over-hearing witness is of no use and of any value to prove the demand and acceptance, the continuation of the vigilance proceeding would become an abuse of process of law and therefore, it should be quashed by exercising the Court's inherent jurisdiction. In fact, Mr. Mund apprised the Court that the informant was also prosecuted as an accused after having turned hostile which was challenged in Criminal Revision No.1021 of 2017 and this Court by judgment dated 25th July, 2018 quashed the proceeding and discharged him.

6. Mr. Pani, learned counsel for the Vigilance Department on the other hand submitted that on such a ground, the prosecution

against the petitioner cannot be quashed even though the informant did not support the trap, inasmuch as, there is other evidence on record to prove the demand and acceptance of bribe by the petitioner. While contending so, Mr. Pani placed reliance on a decision of the Supreme Court in **Vinod Kumar Vrs. State of Punjab** reported in (2015) 3 SSC 220.

7. Mr. Mund, learned counsel for the petitioner relied on the decision in **State through CBI Vrs. Anup Kumar Srivastava AIR 2017 SC 3698**. It is further contended that in order to prove an offence of criminal misconduct punishable under Section 13(1)(b) of the PC Act, it must be proved that the person alleged of has obtained pecuniary advantage including a valuable thing either for himself or for any other person by corrupt or illegal means or by abusing his official position as a public servant or without any public interest and none of the above ingredients are available in the present case even on a reading of the FIR and chargesheet and therefore, the initiation of the prosecution is grossly illegal.

8. No doubt the informant has been discharged by this Court judgment in Criminal Revision No.1021 of 2017. It is also not in denial that the informant offered a testimony not supportive of the claim of demand and acceptance. In fact, during investigation while the statement of the informant was recorded, he turned hostile. But the question is, whether, the prosecution against the petitioner should be quashed when the informant has not corroborated the alleged trap in connection with demand of bribe?

9. In **Anup Kumar Srivastava** (supra), the Apex Court concluded that evidence regarding demand and acceptance of bribe if leaves room for doubt and does not displace wholly the presumption of innocence, the charge cannot be said to have been established, inasmuch as, the proof of demand is always held to be an

indispensable essentiality and of permeating mandate for an offence under Sections 7 & 13 PC Act. While referring to a decision in **P. Satyanarayan Murthy Vrs. District Inspector of Police, State of AP (2015) 10 SCC 152**, it has been held in the decision (supra) that mere acceptance of any amount allegedly by way of illegal gratification or recovery thereof dehors the proof of demand, ipso facto, would not be sufficient to bring home the charge under Sections 7 and 13 of the PC Act. In the above decision, it was held and observed that axiomatically in absence of proof of demand, legal presumption under Section 20 of the PC Act would also not arise. Mr. Mund, learned counsel for the petitioner submits that in view of the law laid down by the Supreme Court in **Dr. Anup Kumar Srivastava** (supra) reiterated the settled law as enunciated in **P. Satyanaran Murthy** ibid and in **CBI, Hyderabad Vrs. K. Narayana Rao** reported in **(2012) 9 SCC 512** and in absence of any credible evidence left after the informant turned hostile with no direct or circumstantial evidence on record even by considering the testimony of the over-hearing witness, the criminal prosecution vis-à-vis the petitioner would be a futile exercise and hence, it is required to be quashed. सत्यमेव जयते

10. No doubt the essential ingredients of demand and acceptance shall have to be established to bring home the charge but even when a material witness does not support the prosecution after being a part of the alleged trap at whose instance it was laid, the Court is of the considered view that notwithstanding his hostile testimony during investigation, the whole of the evidence cannot be discarded. The demand and acceptance may be proved from other materials during the trial connected to the alleged trap and also by subjecting the informant to examination in terms of Section 154 of Indian Evidence Act. Whether there was a demand and acceptance of illegal gratification by an accused can still be proved by incriminating evidence even when the prosecution case does not

CRLMC No.5247 of 2015 Page 4 of 5

receive any support from a witness like the informant. Mr. Pani, learned counsel for the Vigilance Department rightly therefore submits that the informant's testimony though has in the meantime become inconsistent with the prosecution claim cannot be a ground to quash the entire proceeding. While contending so, Mr. Pani refers to a decision of **Deepak Mohapatra Vrs. State of Orissa 2002 (23) OCR 369** to contend that contradictions and discrepancies in the statements of the witnesses cannot be a ground for quashing of a criminal proceeding. The decision in **Vinod Kumar** (supra) strongly favours the contention of Mr. Pani wherein it has been held and observed that the earlier decisions in **B. Jayaraj Vrs. State of AP (2014) 4 SCALE 81** and **M.R. Purushotham Vrs. State of Karnataka (2014) 11 SCALE 467** do not lay down a proposition that when the complainant turned hostile and does not support the case, the prosecution cannot prove its case otherwise and the Court cannot legitimately draw the presumption under Section 20 PC Act and therefore, the contention in that regard that whole of the prosecution would collapse on such account is not acceptable. In view of the settled position of law, the conclusion is inevitable that the vigilance proceeding before the learned court below cannot be quashed even after the informant's hostile testimony during investigation as the demand and acceptance of illegal gratification by the petitioner would still depend on the probative value of other evidence including that of the over-hearing witness.

11. Accordingly, it is ordered.

12. In the result, the CRLMC stands dismissed.

(R.K. Pattanaik)
Judge