

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.522 of 2018

Girish Chandra Pati* *Petitioner

Mr.P.K. Sahoo, Advocate

-versus-

State of Odisha* *Opp.Party

*Mr.Rajesh Tripathy,
Addl. Standing Counsel*

**CORAM:
JUSTICE S.K. SAHOO**

**ORDER
13.09.2022**

Order No.

10. This matter is taken up through Hybrid arrangement (video conferencing/physical mode).

This revision petition has been filed by the petitioner Girish Chandra Pati challenging the order dated 18.06.2018 of the learned Assistant Sessions Judge, Baripada in S.T. No. 59 of 2018 in rejecting the petition filed by the petitioner under section 227 of Cr.P.C. for discharge and also framing the charge under sections 308, 336/34 of the Indian Penal Code.

It appears that on the basis of the first information report submitted by one Ghanashyam Mallick, S.I. of Police, Baripada Town police station on 02.11.2016 before the Inspector in-charge of Baripada Town police

Station, Baripada Town P.S. Case No. 351 of 2016 was registered under sections 308, 336/34 of the Indian Penal Code and sections 3 and 4 of Explosive Substances Act.

It is the prosecution case as per the F.I.R. that the petitioner had kept small gas cylinder tanks, steel gas Chula, iron gas stove (Chula), heater base, gas pipe, heater coil, bundle of electric wire, fan cover, charger light etc. in the rented house of one Gopinath Panda and was illegally filling the cooking gas, which is highly inflammable and explosive substance, as a result of which on 28.10.2016 explosion took place causing damage to the storage house as well as caused effect to the houses of the neighbours. The fire brigade officials arrived at the scene of occurrence after explosion took place and they extinguished the fire and the entire house was burnt due to heavy explosion, which was a godown consisting of two rooms. According to the prosecution case, the petitioner had knowledge that his act was likely to endanger human life or personal safety of others and may cause death of persons, who were engaged by him for transfer of the gas and that apart, the spot house was situated in the middle of Baripada town, which was a thickly populated area. On completion of investigation, charge sheet was submitted against the petitioner under sections 308, 336/34 of the Indian Penal Code and accordingly, cognizance of offences was taken.

At the stage of framing of charge, a petition under section 227 of Cr.P.C. was filed by the petitioner for discharge on the ground that the petitioner had no intention or knowledge to commit the act rashly or negligently and that the unfortunate incident took place due to explosion of gas cylinder but not due to the act of the petitioner.

Learned trial Court has been pleased to hold in the impugned order that the intention or knowledge in the commission of the offence is to be adjudicated during trial and not at the stage of considering the discharge petition. In view of the facts and circumstances, the learned trial Court came to the conclusion that there are sufficient grounds to presume that the petitioner has committed the offences and accordingly, dismissed the discharge petition.

Learned counsel for the petitioner contended that there was licence with the petitioner to operate such godown and to deal with the gas cylinder business and as per the report of the fire brigade officials, it was an accident due to short circuit and therefore, the ingredients of the offences under which the charges are framed, are not attracted.

Learned counsel for the State on the other hand, supported the impugned order and submitted that there is nothing to show that the petitioner is having any gas distributorship licence and that the place where the

activities were going on was verified by the authorities and illegally he was operating the business of transferring LPG gas from domestic Indene gas cylinder to small commercial cylinders and rightly on conclusion of investigation, charge sheet has been submitted and the learned trial Court has rejected the discharge petition.

At the outset, so far as licence aspect is concerned, Annexure-1 is just the registration certificate for dealers liable to pay value added tax, which indicates that M/s. Electric House under the proprietorship of the petitioner was registered under the Odisha Value Added Tax Act, 2004 and assigned with an identification number and it was issued on 02.03.2015 and under the said registration certificate, capital goods, raw materials, consumables, fuel and packing materials were permitted to be purchased or received otherwise than by way of purchase for resale or sale and such a certificate is a document that confirms that one's business is officially registered for VAT. However, there is nothing to show that any licence has been issued by the competent authority to deal with the business of transferring gas from the domestic gas cylinder to small commercial cylinders.

Section 308 of the Indian Penal Code, which deals with attempt to commit culpable homicide is attracted if the death of a human being was attempted by such act

of the accused and the act was done with the intention or knowledge and under such circumstances that if it had caused death, the act would amount to culpable homicide not amounting to murder. If an accused does not intend to cause death or any bodily injury, but he knows his act is likely to cause death or even to cause such bodily injury as is sufficient, in ordinary cause of nature to cause death, section 308 of Indian Penal Code would apply even if the case is not covered by any of the exceptions mentioned in section 300 of Indian Penal Code. An attempt may actually result in hurt or may not. It is an attempt to commit culpable homicide which attracts the offence under section 308 of Indian Penal Code.

So far as the offence under section 336 of the Indian Penal Code is concerned, it seeks to punish a person who does an act rashly or negligently endangering human life or personal safety of others. A person who acts rashly shows indifference to obvious consequences and to the rights of others, and does not mind whether a danger would result or not.

In the case in hand, when there is nothing before this Court that the petitioner was having dealership licence to deal with filling of consumer gas, which is highly inflammable and explosive in nature and those were seized from the spot house, as a result of which the explosion occurred and the same has caused not only

damages to the storage house but also it has caused effect to the houses of the neighbours, I am of the humble view that the act of the petitioner not only endangered the life and public safety of others, but it is an attempt to commit culpable homicide.

Law is well settled that at the stage of framing of charge or considering the discharge petition, it is not permissible to weigh the pros and cons of the alleged improbabilities in the prosecution case. Charge can be framed if the Court feels that there is strong suspicion based on cogent materials that the accused has committed the offence.

In view of the available materials on record, I am quite satisfied that there are prima facie materials on record for presuming that the petitioner has committed the offences and for framing charge against him and there is no illegality or perversity in the impugned order passed by the learned trial Court.

Accordingly, the revision petition being devoid of merit, stands dismissed.

The interim order of stay dated 06.07.2018 stands vacated.

Since the case is of the year 2018, the learned trial Court shall do well to expedite the trial.

It is made clear that whatever has been observed here in this order is for the adjudication whether rejection of the discharge petition and framing of charge

was proper or not and this Court has not expressed any opinion on the merits of the case, which is only to be adjudicated by the learned trial Court after considering the evidence and the documents proved during trial of the case.

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

(S.K. Sahoo)
Judge

PKSahoo

