

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.223 of 2022

Debaraj Meher

....

Petitioner

Mr. G. Mohanty, Advocate

-versus-

State of Odisha

....

Opp. Party

Mr. Rajesh Tripathy

Addl. Standing Counsel

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

**ORDER
13.09.2022**

Order No.

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

This revision petition has been filed by the petitioner Debaraj Meher challenging the order dated 06.04.2022 passed by the learned J.M.F.C., Binka in G.R. Case No. 264 of 2010 in framing charges under sections 468, 477-A, 409/34 of the Indian Penal Code.

It appears that a petition for discharge was filed by the petitioner in the learned trial Court and after considering the same, the petition was rejected and charges were framed as aforesaid.

The prosecution case, as per the first information report submitted by Jyotirmayee Nayak, Tahasildar of Binka Tahasil before the Inspector in-charge of Binka

police station on 02.10.2010 to the effect that two cheques were presented in the State Bank of India, Sonapur Branch, which were alleged to have been issued by her and cheque amounts of Rs.27,500/- (rupees twenty seven thousand five hundred) and Rs.25,000/- (rupees twenty five thousand), as per the aforesaid two cheques were withdrawn. It is the case of the informant that the signatures appearing in those two cheques were forged and when she further verified the cheque books, it was found that number of cheques were missing and those cheques were utilized for withdrawal of cash from the account of the Tahasildar under false signatures.

On the basis of the F.I.R. presented, the case was instituted against accused Budhram Meher and Daityadev Bhue, Ex-Nazirs of Binka Tahasil and it is stated that they are responsible for committing forgery and misappropriation of government money along with other accused persons. During course of investigation, the disputed cheques and the connected registers were seized from the bank and the statement of the Branch Manager was recorded regarding withdrawal of the cash through the disputed cheques, the specimen signature and handwriting of the accused persons were collected and it was sent to the handwriting expert, SFSL, Rasulgarh for comparison and opinion. During the course of

investigation, the petitioner was arrested and finding prima facie evidence against him and other accused persons, charge sheet was submitted under sections 468, 477-A, 409/34 of the Indian Penal Code.

Learned counsel for the petitioner submitted that as per the prosecution case, one cheque bearing No.224096 issued on 27.04.2010 in the name of the petitioner with a sum of Rs.4,500/- (rupees four thousand five hundred) was encashed from the State Bank of India, Binka Branch and there is no other material that the petitioner was hand in glove with the co-accused persons and therefore, he should not have been charge sheeted. It is further submitted that on a plain reading of sections 477-A and 409 of the Indian Penal Code, it would appear that the ingredients of the offences are not attracted and therefore, the learned trial Court was not justified in rejecting the discharge petition filed by the petitioner and in framing charges against the petitioner.

Learned counsel for the State, on the other hand, submitted that even though in the F.I.R., the name of the petitioner does not find place, but the documentary evidence indicate that one cheque of the Tahasil Office, Binka under the forged signature of the Tahasildar (informant) was presented in the account of the petitioner for encashment and accordingly, Rs.4,500/- (rupees four thousand five hundred) has

been encashed and it is for the petitioner to explain at the appropriate stage as to how and under what circumstances the cheque of the Tahasildar came into his possession, which he has deposited in his own account and encashed Rs.4500/- (rupees four thousand five hundred). It is further submitted that from the available materials on record, it appears that the petitioner had got common intention with the co-accused persons and merely because he is not one of the employees of the Tahasil Office, Binka, it cannot be said that the ingredients of the offences are not attracted and therefore, the learned trial Court rightly framed the charges.

In the act of committing forgery and misappropriation of government money, there is no dispute that for attracting the ingredients of the offence under section 477-A of the Indian Penal Code, which deals with falsification of accounts, the person concerned must be a clerk, officer or servant, or acting in the capacity of a clerk, officer or servant and there is no dispute that the petitioner was neither a clerk, officer or servant of Tahasil Office, Binka.

Similarly, for attracting the ingredients of the offence under section 409 of the Indian Penal Code, the accused must to be a public servant and he must have been entrusted with property in such capacity and he must have committed breach of trust in

respect of the property entrusted. In this case, the petitioner is not a public servant.

However, charge sheet has been submitted and charges have been framed for such offences with the aid of section 34 of the Indian Penal Code, which states that when criminal act is done by several persons in furtherance of common intention, each of such persons is liable for that act in the same manner as if the act was done by him alone. Section 34 has been enacted in the principle of joint liability in the doing of a criminal act and it does not create substantive evidence. The direct proof of common intention is seldom available and such intention can be inferred from the facts and circumstances and it is not necessary that acts of several persons charged with commission of offence jointly must be same or identical. Similarly, the act may be different in character, but must have been actuated by one and with same common intention in order to attract the provision. The essence of the provision under section 34 of the Indian Penal Code is to find existence of common intention animating the accused leading to the doing of a criminal act in furtherance of such intention.

When the prosecution has brought materials on record in the charge sheet that the cheques were found missing from the office of the Tahasildar, Binka

and the cheque books were in the custody of Ex-Nazirs and those cheques were presented in the account of different accused persons including the petitioner and Rs.4,500/- (rupees four thousand five thousand) was encashed in presenting one of such cheques in the account of the petitioner, it is the petitioner, who is to explain as to how he came into the possession of the cheque of the office of the Tahasildar, Binka and particularly, when the signature appearing in the cheque was forged signature of the Tahasildar, Binka. It cannot be lost sight of the fact that huge government money has been misappropriated. Law is well settled that even on strong suspicion, charge can be framed on the basis of clinching materials on record. In my humble view, it cannot be said that the learned trial Court has committed any illegality in framing the charges against the petitioner.

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

The interim order of stay dated 30.06.2022 stands vacated.

Since the case is of the year 2010, 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 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.

Issue urgent certified copy as per Rules.

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

(S.K. Sahoo)
Judge

PKSahoo

