

IN THE HIGH COURT OF ORISSA, CUTTACK

CRLMC No. 1587 of 2022

An application under section 482 of the Code of Criminal Procedure, 1973 in connection with G.R. Case No.2141 of 2020 pending on the file of S.D.J.M., Sambalpur.

Satyashri @
Satyashree Mohapatra Petitioner

-Versus-

State of Odisha Opposite party

For Petitioner: - Mr. Rudra Narayan Parija

For Opp. Party: - Mrs. Susamarani Sahoo
Addl. Standing Counsel

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Hearing and Order: 23.08.2022

S. K. SAHOO, J. This is an application under section 482 of the Code of Criminal Procedure filed by the petitioner Satyashri @ Satyashree Mohapatra with a prayer to quash the criminal proceeding in G.R. Case No.2141 of 2020 which arises out of Hirakud P.S. Case No.145 of 2020 pending in the Court of S.D.J.M., Sambalpur so also the order of taking cognizance dated

13.04.2021 for the offence under section 409 of the Indian Penal Code.

2. On 13.06.2020 on the first information report submitted by one Birendra Kumar Nayak before the Inspector in-charge of Hirakud police station, the aforesaid Hirakud P.S. Case No.145 of 2020 was registered under section 409 of the Indian Penal Code against the petitioner and one Lalit Kumar Dandsena. It is stated in the first information report that the petitioner, who was a Graduate Engineer (Mechanical) in the office of the Superintending Engineer, Mechanical Circle (MED.I.P), Hirakud was in additional charge of the Stores Sub-Division Nos. I & II and Workshop Sub-division of the office of the Executive Engineer, Mechanical Division, Hirakud for the period from 22.08.2011 to 24.10.2014. A petition dated 01.09.2015 was filed by nine numbers of employees of Mechanical Division, Hirakud containing allegations of misappropriation of 928 meter 10mm dia copper wire from the mechanical store premises and basing on such petition, enquiry was conducted by the Superintending Engineer, Mechanical Circle (MIP), Hirakud and findings were given that the petitioner dismantled the copper wire through the co-accused Lalit Kumar Dandsena, Chowkidar of the stores and taken away the same. It is further stated in the first information report that as per the instruction of the Engineer-in-Chief, Water

Resources, Odisha, another enquiry was conducted by the Chief Engineer & Basin Manager, Upper Mahanadi Basin, Burla and in his report, it was recommended for fixation of responsibility on the petitioner and to impose penalty for misappropriation of Government property with recovery of the cost for 650 kg. of copper. The Chief Engineer & Basin Manager, Upper Mahanadi Basin, Burla also ascertained the cost of copper wire, which came to Rs.2,88,600/- (rupees two lakhs eighty eight thousand six hundred).

After registration of the F.I.R., investigation was carried out and during the course of investigation, statements were recorded, documents were seized and it was found to be a true case under section 409 of the Indian Penal Code against the petitioner. As prima facie evidence under section 409 of the Indian Penal Code was found against the petitioner, charge sheet was submitted under the said offence against him on 31.03.2021 and on the basis of such charge sheet, the learned S.D.J.M., Sambalpur took cognizance of the offence under section 409 of the Indian Penal Code against the petitioner as per the impugned order dated 13.04.2021.

3. Learned counsel for the petitioner contended that for the self-same accusation, the petitioner faced departmental proceeding and the Enquiry Officer as per his report dated

09.07.2021 opined that the very existence of copper wire turns out to be doubtful and the allegations appear to be an act of revenge to malign the image of the delinquent officer (petitioner) and concluded that the charges are not established against the petitioner and recommended that he should be exonerated of all the charges. After careful consideration of the written statement of defence, representation of the delinquent officer (petitioner), findings of the Enquiry Officer, the views of the Engineer-in-Chief -cum- Special Secretary to the Government, Internal Vigilance, Department of Water Resources and the documents, the disciplinary authority also exonerated the petitioner from all the charges framed against him. It is further contended by the learned counsel for the petitioner that since the finding arrived at by the Enquiry Officer is on merit and the petitioner has been exonerated in the disciplinary proceeding on the self-same set of facts and circumstances, continuance of the criminal proceeding would be an abuse of the process of the Court and therefore, the order of taking cognizance so also the entire criminal proceeding should be quashed. Reliance is placed on the decision of this Court in the case of **Dr. Minaketan Pani -Vrs.- State of Orissa reported in 2022 (II) Orissa Law Reviews 104.**

Mrs. Susamarani Sahoo, learned Addl. Standing Counsel, on the other hand, contended that the disciplinary

proceeding and the criminal prosecution can be launched simultaneously and they are independent to each other and the findings given in the disciplinary proceeding are not binding on the proceeding for criminal prosecution and therefore, merely because the petitioner has been exonerated in the disciplinary proceeding, the same cannot be a ground to quash the criminal proceeding or the order taking cognizance of offence under section 409 of the Indian Penal Code.

4. Adverting to the contentions raised by the learned counsel for the respective parties and after going through the articles of charges so also the statement of allegation against the petitioner, which are annexed to the CRLMC application, it appears that the allegations are same. The views of the Enquiry Officer are quoted herein below:

- "1. The said wire was not in stock/store/surplus/site account of any Sectional Officer or any Sub-divisional officer.
2. It sounds impractical that such heavy duty copper wire was laid in layers for just illumination purpose.
3. The incident was reported after about one year of actual date of occurrence, that too after the deparature of the delinquent officer from Hirakud.

4. Sri Ashok Kumar Nayak, the then S.E.(Mech.) deposes that the delinquent officer was a strict officer and hence may be a victim of false allegations to defame him.
5. As reported by Sri Ramanarayan Mohanty, C.E. (Mech.) and the then E.E. (Mech.) of the said division, that during his tenure neither his Junior Engineer, Asst. Engineer, Asst. Executive Engineer or Deputy Executive Engineer in-charge of the Store & Workshop nor any Security in-charge ever informed him about such incident.

It is apparent that, the very existence of the copper wire turns out to be doubtful. The allegations appear to be an act of revenge to malign the image of the delinquent officer. So, it is concluded that the charges are not established against the delinquent officer Sri Satyashree Mohapatra and hence may be exonerated." सत्यमेव जयते

It appears that the Enquiry Officer has examined the witnesses, verified the documents and after thorough analysis has arrived at the above conclusion. Thus, there is no dispute that the articles of charges against the petitioner so also the accusation against the petitioner as per the charge sheet are on the same set of facts and circumstances.

In **Radheyshyam Kejriwal -Vrs.- State of West Bengal** reported in **(2011) 3 Supreme Court Cases 581**, it has been held as follows:

"38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceeding and criminals proceeding are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20 (2) of the Constitution or Section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceeding is on technical

ground and not on merit, prosecution may continue; and

- (vii) In case of exoneration, however, on merits where allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceeding is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court."

The aforesaid decision was relied upon by the three-Judge Bench of the Hon'ble Supreme Court in **Ashoo Surendranath Tewari -Vrs.- Deputy Superintendent of Police, EOW, CBI reported in (2020) 9 Supreme Court Cases 636** and the view taken in **Radheyshyam Kejriwal** (supra) was unanimously accepted.

In the case of **Dr. Minaketan Pani** (supra) the Hon'ble Chief Justice Dr. Justice S.Muralidhar discussing all the aforesaid citations has been pleased to held as follows :

"26. For all of the aforementioned reasons, in the facts and circumstances of the present case where on the same charges on which the petitioner is facing criminal trial, he has been honourably exonerated in the departmental proceedings, the Court adopts the reasoning of the decisions in **Radheyshyam Kejriwal v. State of West Bengal** (supra) and **Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI** (supra) and sets aside the impugned order dated 15th January 2009, passed by the Sub-Divisional Judicial Magistrate (S), Cuttack in G.R. Case No.1057 of 2007."

Considering the submissions made by the learned counsel for the respective parties and the fact that the petitioner has been exonerated in the disciplinary proceeding on merit, which was on the self-same set of facts and circumstances like the criminal proceeding in G.R. Case No.2141 of 2020 pending on the file of learned S.D.J.M., Sambalpur, keeping in view the ratio laid down in the cases of **Radheyshyam Kejriwal** (supra), **Ashoo Surendranath Tewari** (supra) and **Dr. Minaketan Pani** (supra), I am of the humble view that the continuance of the criminal proceeding against the petitioner would be an abuse of

the process of law and accordingly, the impugned order dated 13.04.2021 so also the entire criminal proceeding in G.R. Case No.2141 of 2020 pending on the file of S.D.J.M., Sambalpur stands quashed.

Accordingly, the CRLMC application is allowed.

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S. K. Sahoo, J.

Orissa High Court, Cuttack
The 23rd August 2022/PKSahoo

