

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLA No.519 of 2019

Dhirendra Kumar ***Appellant***
Khandelwal

Mr.Manas Mohapatra,
Senior Advocate

-versus-

State of Odisha (EOW) ***Respondent***

Mr.Bibekananda Bhuyan,
Special Counsel (OPID)

CORAM:
JUSTICE S.K. SAHOO

ORDER
25.07.2022

Order No.

03. This matter is taken up through Hybrid Arrangement (Video Conferencing/Physical Mode).

Heard Mr. Manas Mohapatra, learned Senior Advocate appearing for the appellant and Mr. Bibekananda Bhuyan, learned Special Counsel appearing for the State of Odisha (OPID) Act matters.

In this appeal under section 13 of the OPID Act, the appellant Dhirendre Kumar Khandelwal has challenged the order dated 28.06.2019 and 21.11.2019 of the learned Presiding Officer, Designated Court, OPID Act, Cuttack in C.T. No.15 of 2015 vide Annexure-6 and 10 series in deciding to reframe the charge against the appellant for commission of offence under section 120-

B of the Indian Penal Code.

Mr. Manas Mohapatra, learned Senior Advocate submitted that the petitioner was not named as an accused in the F.I.R. but during course of investigation, it was found out on verification of bank statements collected from the concerned bank that on 18.02.2011 an amount of Rs.50,00,000/- (rupees fifty lakhs) was credited to the Axis Bank account of M/s. E. Square System and Technologies Pvt. Ltd. from the account of Vista Infra Home Limited through RTGS and the petitioner who is the proprietor of M/s. E. Square System and Technologies Pvt. Ltd. admitted to have received the said amount from Vista Group of companies but failed to explain for keeping such an huge amount of public deposits for years together.

Learned counsel further submitted that in order to purchase I.T. products, the Vista Group had sent a sum of Rs.50,00,000/- (rupees fifty lakhs) in 3 phases in the year 2011 and the petitioner's company had supplied materials of Rs.5,19,025 (rupees five lakh nineteen thousand twenty five3) and since 30% balance amount as per quotation was not paid, the company of the appellant did not deliver the goods and kept the balance amount of Rs.44,80,975/- in his account and shown in the balance sheet of the company and also intimated to the income tax authority as well as R.O.C. regarding the correspondence made between appellant

and Vista Infra Homes Ltd. Some documents have been annexed to the appeal memo as Annexure-7 series.

It is contended by the learned counsel for the appellant that since the money was received by the company during business transaction, it cannot be said that the petitioner has entered into criminal conspiracy with Vista Pvt. Ltd. and therefore, the charge under section 120-B of the Indian Penal Code should be quashed.

The submission which has been made regarding the business transaction between the parties and deposit of the amount by Vista Pvt. Ltd. in the account of appellant's company is nothing but the defence plea which can be adjudicated by the learned trial Court at the appropriate stage, if proper oral as well as documentary evidence are produced in that respect in the said Court.

In the case of **Onkar Nath Mishra and Ors. -Vrs.- State (NCT of Delhi) and Ors., reported in 2008(2) Supreme Court Cases 561**, the Hon'ble Supreme Court while dealing with the nature of evaluation by the Court at the stage of framing of charge held as follows :

"11. It is trite that at the stage of framing of charge, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom, taken at their face value, disclosed the

existence of all the ingredients constituting the alleged offence. At that stage, the Court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the Court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence."

In the case of **State of Orissa -Vrs.- Debendra Nath Padhi, reported in 2005(I) OLR (SC) -357,** reads as follows :

"18.....Further, at the stage of framing of charge roving and fishing inquiry is impermissible. If the contention of the accused is accepted, there would be a mini trial at the stage of framing of charge. That would defeat the object of the Code. It is well-settled that at the stage of framing of charge the defence of the accused cannot be put forth. The acceptance of the contention of the learned counsel for the accused would mean permitting the accused to adduce his defence at the stage

of framing of charge and for examination thereof at that stage which is against the criminal jurisprudence. By way of illustration, it may be noted that the plea of alibi taken by the accused may have to be examined at the stage of framing of charge if the contention of the accused is accepted despite the well settled proposition that it is for the accused to lead evidence at the trial to sustain such a plea. The accused would be entitled to produce materials and documents in proof of such a plea at the stage of framing of the charge, in case we accept the contention put forth on behalf of the accused. That has never been the intention of the law well settled for over one hundred years now. It is in this light that the provision about hearing the submissions of the accused as postulated by Section 227 is to be understood. It only means hearing the submissions of the accused on the record of the case as filed by the prosecution and documents submitted therewith and nothing more. The expression 'hearing the submissions of the accused' cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law. At the state of framing of charge hearing the submissions of the accused has to be confined to the material produced by the

police”.

It is stated by Mr. Manas Mohapatra, learned Senior Advocate that in the meantime, trial has commenced and seventeen witnesses have been examined.

In view of the stage of trial, I am not inclined to interfere with the order of framing of charge.

Accordingly, the CRLA stands dismissed.

(S.K. Sahoo)
Judge



P