

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMP No. 1488 of 2022

Gangadhar Routray

.....

Petitioner

Mr. D.P. Dhal, Sr. Advocate
assisted by Mr. A. Ray, Advocate

-versus-

State of Odisha (Vigilance)

.....

Opposite Party

Mr. S. Das, Sr. Standing Counsel (Vig.)

CORAM:

JUSTICE S. TALAPATRA

JUSTICE SAVITRI RATHO

ORDER

22.11.2022

Order No.

09.

1. This matter is taken up through hybrid mode.
2. Heard Mr. D.P. Dhal, learned Senior Counsel assisted by Mr. A. Ray, learned counsel appearing for the Petitioner and also heard Mr. S. Das, learned Senior Standing Counsel appearing for the Vigilance Department.
3. By means of this petition, filed under Article 227 of the Constitution of India, the Petitioner has challenged the order dated 20.05.2022 delivered in T.R. Case No.06 of 2012 by the Special Judge, Special Court, Cuttack. By the said order, the Special Judge has rejected the prayer for discharge at the stage of Section 227 of the Code of Criminal Procedure by observing that without presuming relevancy, some weightage has to be given on the records. It has been expressly observed that the accused has taken the plea in his petition that his income from other sources should be considered and added

to the salary income to decide whether the assets acquired by him is disproportionate to his known sources of income. Such an exercise at this stage, as observed by the Special Judge is neither required nor backed by law.

4. Mr. D.P. Dhal, learned Senior Counsel assisted by Mr. A. Ray, learned counsel has referred extensively to the said order of the Special Judge in order to demonstrate that by the order dated 16.04.2022, as delivered in T.R. No.06 of 2012, the prayer for adjournment has been further allowed for production of the documents which were asked to be produced directed by the Special Court. The said prayer was accompanied by a letter of the Superintendent of Police, Vigilance, Cuttack Division, Cuttack. In the face of the objection raised by the accused it is apparent that the vital records of the case have neither been produced before the Court, nor copies of the same have been supplied to the accused person. It is an admitted position that the original records, based on which prosecution report have been submitted are still not available with the Court.

5. Section 207 of the Cr.P.C. mandates that in a case where the proceeding has been instituted on a police report, the Magistrate shall, without delay, furnish to the accused, free of cost, the copy of each of the following document/record:

- (i) the police report
- (ii) the first information report.

(iii) the statements recorded under sub-section (3) of Section 161 of all persons whom the prosecution proposes to examine as their witnesses, excluding those part, in respect of which a request for exclusion has been made by the police officer under sub-section (6) of section 173 of the Cr.P.C.

(iv) the confessions and statements, if any, recorded under Section 164 and **any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-section (5) of section 173.**

In the police report reference of a few records has been made, but those documents or the records have not been produced before the Special Court. Situated thus, the Petitioner filed an application for discharge under Section 227 of the Cr.P.C. The prosecution opposed such prayer and finally, the impugned order has been passed. Mr.Dhal, learned Senior Counsel has further contended that Section 173 (5) of the Cr.P.C., clearly postulates that all documents or relevant extracts thereof on which the prosecution proposes to rely, other than those already sent to the Magistrate during investigation, shall be supplied to the accused person or allowed to be inspected by the accused person, if such documents are of the nature, that the copying of those is almost impossible.

6. It has been also pointed out that on 18.06.2015, the Special Judge had directed for production of the original

documents but, till date, the said order has not been complied with by the prosecution. On 30.01.2019 the said application for discharge was made by the Petitioner. But without considering the aforestated legal aspects that the accused person has a right to have copies of the documents or the right to inspect the documents before the charges are framed, the said impugned order rejecting the prayer for discharge has been passed. Section 227 of the Cr.P.C. clearly lays down that, if, upon consideration of the records of the case and the documents submitted therewith, and on consideration of the submissions of the accused and the prosecution, the trial Judge finds that there is no sufficient materials for proceeding against the accused, he shall discharge the accused and record his reasons for so doing. Mr. Dhal, learned Senior Counsel reiterates that the basic requirement of such consideration is that the records of the case or the documents that will be relied by the prosecution, are available before the trial Judge.

7. According to Mr. Dhal, learned Senior Counsel, the petitioner has made out a clear case of discharge and in this regard, he has referred the following decisions of the Apex Court where the consequence of non-supply of the documents to the accused have been discussed:

A. Manu Sharma v. State (NCT of Delhi), (2010) 2 SCC (Cri) 1385

B. V.K. Sasikala v. State (2013) 1 SCC (Cri) 1010

C. P. Gopalkrishnan v. State of Kerala

(2020) 9 SCC 161

D. Tarun Tyagi v. CBI (Tarun Tyagi v. CBI, (2017) 2 SCC (Cri) 428

E. Nelson Motis v. Union of India (1992) 4 SCC 71

F. Jahid Shaikh v. State of Gujarat, (2011) 3 SCC (Cri) 287

8. Mr. Das, learned Senior Standing Counsel appearing for the Vigilance Department has fairly submitted that for dislocation the documents [in original] could not be produced before the Court of the Special Judge, Special Court. But, in the police report, the description and purpose of documents have been recorded. As such, for ends of justice, the extension of time, as asked, was granted by the order dated 16.04.2022, that cannot be questioned. The Court has to do substantive justice and not technical justice. Mr. Das, learned Senior Standing Counsel for the Vigilance Department has further asserted that, if a reasonable time, as a last opportunity, is afforded to the prosecution, they will be able to produce the documents as relied in the prosecution report.

9. Having appreciated the submissions of the counsel for the parties, we have no hesitation to hold that the impugned order dated 20.05.2022, Annexure-6 to this petition, is liable to be set aside and quashed, in as much as, the entire records/documents based on which the charge are sought to be framed are not available in the Special Court and to the accused, no copy thereof has been supplied. As such, it can be

safely inferred that there was no consideration at all in terms of the provision of Section 227 of the Cr.P.C. As consequence, the said order dated 20.05.2022 is set aside. We are of the further view that, the prosecution should get a last opportunity for production of the documents or any other records which come within the ambit of Section 207 of the Cr.P.C. For that purpose, six weeks time from today is provided to the prosecution for filing all records in original or documents. It is needless to say that the Petitioner shall be provided with copies of those documents or where the copies cannot be made, the Petitioner shall be allowed to inspect those documents. The said exercise of supply of copies or affording inspection shall be completed within seven days from the date of filing of the documents, meaning within seven weeks from today. Thereafter, the Special Judge, Special Court, Cuttack shall hear the parties afresh for deciding whether the Petitioner is entitled to discharge from the accusation as made in the police report.

10. It is made absolutely clear that, it is really disappointing to note that the trial case has been pending for last 12 years only for the said reason. Hence, the time frame, as provided by us, is inflexible. If the documents are not filed within the time as stipulated, the Special Judge, Special Court shall hear the plea of the Petitioner for discharge, as consequence of non-filing of those documents.

11. In terms of the above, this petition is allowed.

12. A copy of this order be supplied to Mr. Das, learned Senior Standing Counsel for the Vigilance Department, free of cost.

(S. Talapatra)
Judge

(Savitri Ratho)
Judge

Murmu

