IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 402 of 2022

An application under Section 401 and read with Section 397 of Cr.P.C.

Baijayanti Sinha ...... **Petitioner**

-Versus-

State of Odisha (Vigilance) .... **Opp. Party**

Advocate(s) appeared in this case:-

For Petitioner	:	M/s. S. Mohanty, S.K. Routray P. Nayak, S. Pattnaik, L. Mohapatra, B.P. Routray & A. Dash, Advocates.
For Opp. Party	:	Mr. Sangram Das, Standing Counsel (Vig.)

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
17th November, 2022

SASHIKANTA MISHRA, J.

The petitioner challenges the order dated 09.08.2022 passed by learned Special Judge (Vigilance), Angul in T.R. Case No. 09 of 2016 whereby her application filed under Section 239 of Cr.P.C. for discharging her from the case was rejected.

2. The facts, relevant only for deciding the present revision are as follows:-

Consequent upon a house search, the petitioner's husband was prima facie found to have possessed assets grossly disproportionate to his known sources of income tentatively calculated at Rs.83,11,391/-. Accordingly, an FIR was lodged against the husband of the petitioner by the D.S.P., Vigilance, Angul on 23.06.2009. Upon completion of investigation charge sheet was submitted alleging that the value of disproportionate assets is Rs.46,37,515.52/- equivalent to 120%. Along with the husband of the petitioner, she was also charge sheeted under Section 13(2) read with Section 13(1)(e) of the PC Act and Section 109 of IPC. The petitioner filed an application under Section 239 of Cr.P.C. before the learned Court below on 18.03.2022 inter alia contending that she not being a public servant, could not have been charge sheeted for the offence under Section 13(2) read with Section 13(1)(e) of the P.C. Act. On merits, it was claimed that the petitioner, being an income tax assessee was regularly filing her income tax returns but prosecution considered her IT return only for two assessment years thereby ignoring her income in the previous years. The petitioner had sufficient income in the year 2009 having acquired property from independent sources and therefore, the allegation of abetment is not sustainable.

3. Learned court below after considering the rival submissions and the settled position of law held that from the documents on record, it is found that there are grounds for presuming that there are properties which were acquired by both the accused persons and not accounted for. The accused persons also did not produce any documents before the investigating agency during investigation. Though not a public servant, the petitioner acquired properties getting pecuniary benefits from her husband. On such reasoning, the petition for discharge was rejected.

4. Heard Mr. Sidheswar Mohanty, learned counsel for the petitioner and Mr. Sangram Das, learned Standing Counsel for Vigilance.

HIGH COURT ORISSA

5. Mr. Mohanty has argued that the petitioner being admittedly not a public servant, the offence under Section 13(2) read with Section 13(1)(e) of the P.C. Act is not applicable to her. Further, the petitioner had filed her income tax returns from the financial year 1989-90 to 2008-2009, but the prosecution considered only the I.T. returns for the year 2007-08 and 2008-09 whereby the income of the petitioner out of which she validly acquired the immovable/movable properties referred to in the charge sheet were not considered. According to Mr. Mohanty, had such materials been considered no case would have been made out against the petitioner.

6. Mr. S. Das, on the other hand, has supported the impugned order by submitting that as per the settled position of law, the petitioner being an abettor is liable to be prosecuted along with the principal offender. Secondly, mere filing of income tax return does not disclose the real income of a person, particularly in the absence of any valid proof regarding the source of such income. The petitioner, according to Mr. Das has not been able to justify as to from which source she had acquired money to

be able to create the immovable/movable assets referred to in the charge sheet.

7. In view of the position of law laid down by the Apex court in the case of ***P. Nallalmmal vs. State***, reported in (1999) 6 SCC 559 that the kith and kin of the public servant are also liable to be prosecuted along with him for abetting the offences under the P.C. Act, the contention of the petitioner in this regard is not tenable.

8. Coming to the merits of the case, it is seen that in the charge sheet under the heading 'Description of assets' some immovable properties have been listed and so also under the heading 'Bank deposits'. The petitioner has shown two I.T. returns under the head income from house property to the extent of Rs.5,68,573/-for the years 2007-08 and 2008-09. The same has been taken into account while calculating the income. The petitioner claims to have been filing I.T. returns since the year 1993. In the petition under Section 239 of Cr.P.C enclosed as Ansnexure-3 to the revision petition, a total sum of Rs.19,12,005/- is shown as income as per I.T. returns filed for the years 1993 to 2009. It is stated that the double storey building

HIGH COURT ORISSA

was constructed out of such income. Surprisingly, the petitioner does not disclose the source of such income. There is no material on record nor is it claimed by the petitioner that she was employed in any manner. There is also nothing to show that she was engaged in any business. Of course, it has been stated that she was getting some rent from the rooms of the building let out to different persons, but the details thereof are wanting. In her statement recorded under Section 161 of Cr.P.C., she also stated that she was doing dairy farm business. All these pleas have been taken in general terms without specifying the actual sources and the particulars thereof. It is well settled that at the stage of framing charge, the court is not required to delve deep into the matter or to sift the evidence to find whether the accused can be held guilty or not as at this stage, the Court is only required to see whether it can be reasonably presumed that the accused has committed the offence as alleged. As has already been discussed hereinbefore, in the absence of any evidence/material to show a lawful source of income of the petitioner, the prosecution allegation that the assets in the name of the petitioner were actually acquired from out of the ill-gotten wealth of her husband cannot prima facie, be disbelieved. Whether the petitioner had any source of income to account for the assets created by her is a matter to be decided during trial. The petitioner is not precluded from proving her lawful source of income, if any, during trial. But at this stage, it is suffice to hold that there are prima facie materials on record to draw a presumptive opinion regarding commission of the alleged offences by the petitioner.

9. Therefore, this Court finds no reason to interfere with the impugned order which must be held to have been rightly passed. Resultantly, the revision petition is held to be devoid of merit and is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 17th November, 2022/ B.C. Tudu