IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No. 899 of 2018

An application under Section 401 read with Section 397 of the Code of Criminal Procedure, 1973 against the order dated 02.08.2018 passed by learned Special Judge, Vigilance, Cuttack in T.R. No. 36 of arising out of Cuttack Vigilance P.S. Case No. 24 of 2006.

AFR **Sushama Barik** ...... **Petitioner**

-Versus-

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

Advocate(s) appeared in this case:-

For Petitioner	:	Mr. Lalit Kumar Mishra
For Opp. Party	:	Mr. Sangram Das, Standing Counsel for Vigilance.

CORAM:

JUSTICE SASHIKANTA MISHRA

JUDGMENT
23rd December, 2022

SASHIKANTA MISHRA, J.

The petitioner in the present Revision seeks to challenge the order dated 02.08.2018 passed by learned Additional Special Judge, Vigilance, Cuttack in TR No. 36

of 2010, whereby the application filed by her for discharge under Section 239 of Cr.P.C was rejected.

2. The facts of the case, briefly stated, are as follows:

The Deputy Superintendent of Police, Vigilance, Angul lodged FIR before the S.P., Vigilance, Cuttack Division stating that the petitioner, who was working as a Revenue Officer in the office of Sub-Collector, Talcher allowed registration of a sale deed in respect of a plot of land in favour of her mother Nirmala Barik alias Sunamani Barik executed by a person impersonating as Syed Mohd. Isaq, the title-holder of the plot. At the relevant time, the petitioner was in-charge of the office of Sub-Registrar, Talcher. Her mother, Sunamani Barik purportedly purchased a plot of land being Plot number 410/1508 under Khata No. 127 measuring an area of Ac.0.40 decimals in Mouza Handidhua at a cost of Rs.45,000/- from Syed Mohd. Isaq on 18.12.2004 vide RSD No. 2210/2004. The photographs of the seller and the purchaser were affixed to the said document. The sale deed was registered by the petitioner in the capacity of Sub- Registrar, Talcher and she signed on the document on 18.12.2004 as the Registering Officer, Talcher. On enquiry, it came to light that the land stands in the name of Syed Mohd. Isaq but actually he was absent from his village for about 20 years and his whereabouts were not known. The photograph purporting to be his and affixed to the document did not belong to him but was of one Bismilla Khan of Talcher. As such, it was, prima facie, proved that the said Bismilla Khan had forged the signature of Syed Mohd. Isaq as also his photograph and executed the sale deed fraudulently. The petitioner being the Registering Authority, while allowing execution of the sale deed intentionally omitted to verify the actual identity of the seller by not asking for the voter identity card and thereby allowed a fake person to execute the sale deed in the name of the actual owner. Moreover, the land in question was purchased by her mother, which shows that the sale transaction was done in connivance of the petitioner with the said Bismilla Khan, her mother and the witnesses. Such report led to registration of Vigilance P.S. Case No. 24 dated 30.6.2006 under Sections 13(2) read with Section 13(1)(d) of the P.C. Act and Sections 468/471/420/120-B of IPC. Upon completion of investigation and receipt of sanction for prosecution, charge-sheet was submitted against the accused persons including the petitioner under the aforementioned sections.

3. After appearance, the petitioner filed an application with prayer to discharge her from the case on the ground that there are no materials against her on record to frame charge. It was further claimed that as per the provision under Section 52 of the Registration Act, there was no scope for the petitioner to know about the alleged forgery of the signature of the vendor or for her mother, the vendee, about the impersonation. However, learned Court below did not accept the contentions raised by the petitioner and held that there are sufficient materials to presume that the accused persons had committed the offence and therefore, rejected the petition

for discharge. The said order is impugned in the present revision.

4. Heard Sri L.K. Mishra, learned counsel for the petitioner and Sri Sangram Das, learned Standing Counsel appearing for the Vigilance.

5. Shri LK Mishra has assailed the impugned order on the following grounds:

> (i) Since the prosecution has not traced the whereabouts of the original owner of the land so far, it cannot be said that there was any impersonation
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> (ii) Learned court below failed to consider that the petitioner had initiated an undervaluation proceeding against the Vendee under the provisions of Odisha Stamp Rules and realized Rs.23,650/- and Rs.4300/- as deficit stamp duty and registration fees respectively much before initiation of the vigilance proceeding.
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> (iii) As per procedure envisaged under Section 52 of the Registration Act, the registering officer

cannot be made liable for things done in his official capacity and in any case the requirements of the statute were complied with in the instant case and therefore, there was no scope for the petitioner to suspect any foul play.

(iv) Learned Court below failed to appreciate that the petitioner had been cheated by the principal accused namely, Banshidhar Nayak.

(v) There has been no pecuniary loss caused to the Government by the said transaction.

(vi) The petitioner has been implicated only on suspicion but not any material showing alleged culpability.

(vi) The petitioner was absolved in the departmental proceeding initiated against the same charges.

6. Per contra, Sri Sangram Das contends that this is not just a case of simple suspicion but a case of grave suspicion inasmuch as there are materials on record to show that the petitioner misused her official

position to allow registration of the sale deed in favor of her mother. That apart, several incriminating materials were seized from the possession of the petitioner which shows her involvement in the alleged occurrence.

7. Before proceeding to examine the merits of the contentions noted above, it would be apposite to refer briefly to the settled position of law relating to discharge.

8. The Apex Court made a distinction between 'simple suspicion' and 'grave suspicion' in the case of ***State of Bihar vs. Ramesh Singh***, reported in (1977) Crl LJ 1606 and ***Dilawar Balu Kurane vs. State of Maharashtra***, reported in (2202) 2 SCC 135. The position that emanates from the decisions quoted above is, where the materials placed before the Court discloses grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion

against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Cr.P.C. and for such purpose, he has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before him without making a roving enquiry into the pros and cons of the matter. This Court also had the occasion of relying on the above cited judgments in a similar case being ***Santanu @ Priyabrata Senapati vs. State of Orissa***, reported in 2022 (II) ILR-CUT-226. In the said case this Court held as follows:

> *10. From the above narration it is evident that only a grave suspicion can justify framing of charge against an accused. To further explain, suspicion per se may be entirely in the realm of speculation or imagination and may also be without any basis, whereas grave suspicion is something which arises on the basis of some acceptable material or evidence. Only because there is no other explanation for the alleged occurrence, the needle of suspicion should point at the accused cannot be a reasonable basis to proceed with the trial against him. But to do so, there must be some nexus or link between him and the occurrence which is ex facie available to be seen or inferred from the materials placed before the Court. Only then will the statutory requirement of "sufficient ground" as per Section 227 Cr.P.C. be said to have been satisfied.*

9. Coming to the facts of the present case, it is borne out from the record that the petitioner was acting as the Registering Officer in the office of Sub- Registrar, Talcher and had allowed registration of the sale deed executed by Syed Mohd. Isaq in favor of her mother, Sunamani Barik. It was revealed from investigation that the vendor has been absent from his known address for several years and his whereabouts are not known. One Bismilla Khan is said to have impersonated the vendor by affixing his photograph and signature on the sale deed as the vendor. As the Registering Officer it was the duty of the petitioner to examine whether the requirements of a valid registration were fulfilled or not. The petitioner claims to have found that the vendor was duly identified by witnesses and also fixed his photograph only on the sale deed. Therefore, it could be a plausible argument that there was no reason for the petitioner to entertain any doubt as regards the identity of the so-called vendor, his photograph or his signature. It could also be a plausible argument that the petitioner having herself initiated a

case of undervaluation and realized the deficit fees and duty much prior to the vigilance proceeding must be held to have adequately shown her bonafides.

10. Ordinarily, the Registering Officer, if found to have followed the procedure laid down in Section 52 of the Registration Act can be treated to have acted in good faith and therefore, would be entitled to protection due to a public servant. It would be profitable at this stage to refer to the relevant provision of Section 52 of the Registration Act, 1908, which is quoted hereinbelow.

> ***"52. Duties of registering officers when document presented***.—(1) (a) The day, hour and place of presentation, 1 [the photographs and finger prints affixed under section 32A,] and the signature of every person presenting a document for registration, shall be endorsed on every such document at the time of presenting it;
> (b) a receipt for such document shall be given by the registering officer to the person presenting the same; and
> (c) subject to the, provisions contained in section 62, every document admitted to registration shall without unnecessary delay be copied in the book appropriated therefore according to the order of its admission.
>
> (2) All such books shall be authenticated at such intervals and in such manner as is from time to time prescribed by the Inspector-General."*

Undoubtedly, the Registering Officer stands protected of any action taken by him/her in registering a document in official capacity. But in the instant case, the beneficiary of the sale transaction and the sale deed is none other than her own mother. Therefore, simply by invoking the provision under Section 52 of the Registration Act, the possible culpability of the petitioner cannot be thrown away.

11. There is of course no law that bars registration of a document by the authority only because the vendor or vendee happens to be his/her close relation. But the moment any foul play comes to surface, a natural and reasonable doubt arises as to the bonafides of the said authority. To such extent, lodging of the FIR cannot be faulted with. There is no material to directly show that the petitioner was aware of the fraud played by the impersonator and the other witnesses. So, to such extent only, the suspicion, as referred above would have to be treated as a simple suspicion, which is not sufficient to frame charge.

12. However, it is borne out from the materials on record that the sale-deed in question, agreement dated

29.05.2004 and affidavit dated 31.05.2004 were seized from the residence and office of the petitioner. This is a very significant fact, the effect of which cannot be overlooked. Moreover, this by itself is capable of changing the nature of suspicion from simple to grave. In other words, when the above fact is considered along with the other materials on record, it creates a strong suspicion that the petitioner was involved in the whole transaction knowingly and deliberately. Mere initiation of an undervaluation proceeding cannot water down such suspicion even a bit, for the possibility of the same having been done deliberately only to show bonafides cannot altogether be ruled out.

13. It has been argued that the petitioner was absolved in the departmental proceeding initiated on the same charge. This is firstly, not entirely correct because the petitioner appears to have been visited with the penalty of 'censure' for her misconduct and therefore, it would not be correct to equate the same with exoneration from the charge; and secondly, findings in the

departmental proceeding are not binding on the criminal proceeding as the nature of proof required to establish the guilt in both are different.

14. Thus, it is seen that the materials on record are such as raise a strong/grave suspicion that the petitioner may have committed the alleged offence, which is adequate to frame charge against her. The grounds raised by the petitioner can always be considered during trial but not at this stage. This court therefore, finds no reason to interfere with the impugned order.

15. In the result, the revision is found to be without any merit and is therefore, dismissed.

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Sashikanta Mishra,
Judge

Orissa High Court, Cuttack,
The 23rd December, 2022/ A.K. Rana.