

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No.2598 of 2022

Sanjay Kumar Naik

....

Petitioner

Mr. Smruti Ranjan Mohapatra, Advocate

-Versus-

State of Odisha (Vigilance)

....

Opposite Party

Mr. Niranjana Maharana
ASC for Vigilance Department

CORAM:

JUSTICE R.K. PATTANAIK

DATE OF JUDGMENT:21.12.2022

1. The petitioner by invoking inherent jurisdiction of this Court has challenged the correctness and legality of the impugned order dated 26th August, 2022 passed in VGR No.12 of 2017 (T.C. No.8 of 2018) by the learned Special Judge (Vigilance), Baripada on the grounds inter alia that the same is not tenable in law and hence, liable to be quashed in the interest of justice with a consequential direction to the court below to recall P.Ws.2 and 3 for their further cross-examination.

2. An application under Section 482 Cr.P.C. was moved by the petitioner before the learned court below to recall P.Ws.1, 2 and 3 for further cross-examination on the ground that some questions relevant to the case could not be confronted to them and claiming that the same is very much necessary for just decision in the matter. The said application was rejected by the learned Vigilance court by order 25th November, 2021 which was challenged by the petitioner in CRLMC No.2566 of 2021 and the same was disposed of on 2nd August, 2022 with a direction to the

court below to freshly examine recall of witnesses and pass appropriate orders thereon in the light of the directions therein. The petitioner thereafter moved an application under Section 311 Cr.P.C. for recall of P.Ws.2 and 3 instead enclosing the questionnaire under Annexure-5(a). However, once again the learned court below rejected it by order dated 26th August, 2022 which is currently under challenge.

3. Heard Mr. Mohapatra, learned counsel for the petitioner and Mr. Maharana, learned counsel for the Vigilance Department.

4. Mr. Mohapatra, learned counsel for the petitioner submits that the learned court below did not apply its judicial mind and in a mechanical manner rejected the application filed under Section 311 Cr.P.C. vide Annexure-6 which is therefore not sustainable in law. It is further submitted that P.Ws.2 and 3 are material witnesses and unless they are further cross-examined on recall, it would certainly cause immense prejudice to the petitioner. It is claimed that such recall and further cross-examination of P.Ws.2 and 3 is indispensable. That apart, according to Mr. Mohapatra, all the relevant questions have been detailed in the application which are to be confronted to P.Ws.2 and 3 for a just decision but no such opportunity was provided by the learned court below and therefore, the impugned order under Annexure-6 is liable to be interfered with in exercise of inherent jurisdiction of the Court.

5. Mr. Moharana, leaned counsel for the Vigilance Department strongly objects to the recall of P.Ws.2 and 3 on the ground that it is not required and besides that the learned court below examined the same and rightly rejected under Annexure-6. According to Mr. Moharana, the learned court below considered the plea of the petitioner and finally after a detailed discussion

with reference to the questionnaire correctly declined to recall the witnesses, which is therefore absolutely justified and in accordance with law.

6. The Court perused the copy of the application as at Annexure-5 series and also the depositions of P.Ws.2 and 3 as at Annexure-7 (series). Admittedly the petitioner had approached this Court in CRLMC No.2566 of 2021 for recall of P.Ws.1, 2 and 3 which was disposed of on 2nd August, 2022 vide Annexure-4 with a direction to the leaned court below to consider it afresh as per the law laid down in the case of **Advocate General Vrs. Shiv Kumar Yadav** reported in **AIR 2015 SC 3501**. Later to the above direction, the petitioner moved another application under Section 311 Cr.P.C. confining it to recall of P.Ws.2 and 3. However, the learned Vigilance Court did not consider it proper for recall and further cross-examination of the said witnesses and rejected the same under Annexure-6.

7. The discretion of the Court under Section 311 Cr.P.C. to summon a witness either to examine or further cross-examine him is wide and expansive. Such a decision by a Court can be taken at any stage of enquiry or trial if such recall, reexamination or further cross-examination of any witness appears to be essential to the just decision of the case. In fact, there is no fitter or any limitation on the jurisdiction of a court to summon or recall a witness under Section 311 Cr.P.C. but the rider is that it shall have to be exercised only when the same is necessary for just decision of a case and to advance the cause of justice.

8. As far as the present case is concerned, P.W. 2 is an over-hearing witness, whereas, P.W.3 is the informant at whose instance the vigilance action against the petitioner was set into motion. The learned court below considered the questions to be

confronted to P.Ws.2 and 3 and discussed in detail while rejecting the prayer for recall. At the behest of P.W.3, the Vigilance Department led the trap against the petitioner who is said to have been found receiving the bribe. The transaction between P.W.3 and the petitioner is said to be overheard by P.W.2.

9. The question is whether the impinged order under Annexure-6 suffers from any legal infirmity? For the said purpose, the questionnaire under Annexurs-5 is to be gone through with reference to the depositions of P.Ws.2 and 3. The question regarding partition and the enquiry held by the R.I. is a matter within the knowledge of P.W.3 and no purpose would be served to question P.W.2 in that regard who is merely an overhearing witness. Similarly, with respect of the source of bribe money and the circumstances leading to the alleged demand etc. and if at actual demand was made or not may be relevant for P.W.3 and not P.W.2. The presence of the R.I. and Tahasildar at the spot or otherwise is not a material question vis-à-vis P.W.2 and if at all it was disclosed to the I.O. by him is also irrelevant. As to the trap and in what manner P.W.2 overheard the demand has also been disclosed and narrated by him during and in course of examination and hence, in the considered view of the Court, there is no need for his recall for further cross-examination. As to P.W.3, at no point of time he ever appeared to have claimed as the sole legal heir and therefore, a question on partition is again not relevant. What was the dealings of P.W.3 with the local R.I. and if at all the concerned Tahasildar had directed the petitioner to deal with the file of P.W.3 is also a question not so significant. The actual purpose of the alleged demand and details of the consequent events have been narrated by P.W.3 during his examination and also cross-examination by the defence. All such questions which are claimed to be material as per the petitioner

have either been asked and confronted to P.W.3 or elicited during the latter's cross-examination and therefore, in the humble opinion of the Court, no recall is necessary in the facts and circumstances of the case. The cross-examination of P.Ws. 2 and 3 has been elaborate and it has more or less covered all the questions with regard to the alleged trap. In other words, in the considered view of the Court, the questions many of which have been confronted to P.Ws.2 and 3 during trial and hence their recall would be a repetition and the same is needed to be avoided. The learned Vigilance court is, therefore, committed no any wrong or any error while rejecting the application and in passing the impugned order Annexure-6 and hence, it calls for no interference.

10. Accordingly, it is ordered.
11. In the result, the petition stands dismissed.

(R.K. Pattanaik)
Judge

U.K. Sahoo