IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.753 of 2019

Prativa Tarai. .... ***Petitioner***

M/s. H.K. Mund, A.R. Mohanty, A.K. Dei,
S.K. Pandia, A. Padhi, Advocates

-versus-

State of Odisha (Vigilance). .... ***Opposite Party***
Mr. Sangram Das, Standing Counsel (Vigilance)

CORAM:
JUSTICE S. PUJAHARI

ORDER
06.05.2022

Order No.	
08.	**1.** This is an application filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973. **2.** Heard the learned counsel for both the sides through hybrid mode and perused the relevant papers on record vis-à-vis the grounds taken by the petitioner vide her application with reference to the impugned order dated 21.09.2019 passed by the learned Special Judge, Vigilance, 2nd Court, Cuttack in T.R. No.4 of 2015 corresponding to the Cuttack Vigilance P.S. Case

No.12 dated 26.02.2010, rejecting the petition filed by the present petitioner – co-accused under Section 239 of the Code of Criminal Procedure.

3. The petitioner is the wife of the principal accused in the case referred to above in which, upon submission of charge-sheet by the Vigilance Police, cognizance has been taken of the offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988, for short "P.C. Act" for the accusation of his having amassed disproportionate source to the tune of Rs.32,63,832/- while working as public servant, in the name of himself and his family members including his wife – present petitioner. On the basis of the charge-sheet so submitted, cognizance has also been taken of the offence under Section 109 of IPC for abetment of the aforesaid offence under the P.C. Act. The petitioner moved an application under Section 239 of Cr.P.C. seeking for her discharge from the prosecution, on the ground, inter-alia, that she had her own source of income, for which she had submitted Income Tax returns.

4. It is the submission of the learned counsel for the petitioner that she being an income tax assessee, and there being no material on record showing her to have instigated, encouraged or aided the principal accused to commit the alleged offence, continuance of the prosecution against her under Section 109 of IPC is not only prejudicial to her, but also to tantamount to gross abuse of the process of the Court. The learned counsel further contends that there being no material from the side of the Investigating Agency to impeach the veracity or the genuineness of the income tax returns filed by the petitioner, those documents ought to have been duly considered by the Court below while considering the question of charge.

5. It is, however, pointed out by the learned counsel appearing for the Vigilance Department that the I.T. returns emphasized by the petitioner had been filed for the first time on 11.05.2012, i.e., after the check period and the house search was made. It is thus his submission that those papers were created for the purpose of defence in this case. It is further argued by him that Income tax returns being self declaration of an assessee, are not in the nature of conclusive proof. His ultimate submission is that the stage of the charge being not a stage to take into account the probable defence plea or give a deeper scrutiny to the materials produced by the prosecution, having regard to the materials on record the Court below rightly declined to discharge the petitioner, and that this Court should not interfere with the order impugned.

6. Having heard both the sides with reference to the materials on record, this Court hardly finds any patent illegality or impropriety in the impugned order. At the stage of the charge, the Court is required to find out as to if the materials produced by the prosecution are capable of making out a case of presumption of guilt against the accused and not a case beyond reasonable doubt to return a finding of guilt. As noted above, the I.T. returns relied on by the petitioner were filed at post check period stage, that too, after commencement of the investigation. Be that as it may, the defence plea of the petitioner that she had her own source of income can be delved into during the trial. The offence of criminal conspiracy or abetment largely depends upon the circumstantial proof, a matter of trial, which is yet to reckon. Hence, no case is made to allow discharge of the petitioner from the purview of the prosecution.

7. In the result, this CRLREV stands dismissed.

(S.Pujahari)
Judge

MRS