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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2841 of 2022

Ashok Kumar Jallan & another .... ***Petitioners***

Mr. A.K. Mishra Advocate

-versus-

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

Mr. **N.** Moharana, S.C. Vigilance

CORAM:
THE HON'BLE MR. JUSTICE CHITTARANJAN DASH

Date of Judgment: 24.10.2025

Chittaranjan Dash, J.

1. Heard learned counsels for both the Parties.

2. By means of this application, the Petitioners seek to quash the order dated 20.06.2011 passed by the learned Special Judge, Vigilance, Sambalpur in connection with CTR Case No.37 of 2007 arising out of Sambalpur Vigilance P.S. Case No.40 of 2004.

3. The background facts of the case are that Petitioner No.1 is the Managing Director of M/s. Orient Constructions Private Limited, Sambalpur, and Petitioner No.2 is the Power of Attorney holder of the said company. M/s. Orient Constructions Private Limited, Sambalpur, was entrusted

with the construction of the Karamdihi-Subdega-Talsera-Balisankara and Luhakera Road, extending over 37 kilometres. The Executive Engineer (R&B) Division, Sundargarh, along with the Assistant Engineer and the Junior Engineer of Rajgangpur Sub-Division and Subdega Section, were responsible for supervising the said construction work as the departmental technical officers. During the course of the construction, allegations arose regarding the execution of work being substandard in nature, whereupon an enquiry was initiated. In the course of inspection by the technical wing of the Vigilance Department, conducted in the presence of the Petitioners and other concerned officials, it was detected that, despite the substandard work executed by the contractor, an excess payment of Rs.11,34,990/- had been made to the contractor. It was further revealed during the inspection that the co-accused, namely, Albert Ekka, the then Executive Engineer, along with the Assistant Engineer and Junior Engineer, by abusing their official positions, showed undue official favour to the contractor, M/s. Orient Constructions Private Limited, represented through the Petitioners, and permitted the execution of substandard work, thereby causing loss to the Government to the extent mentioned above.

It is further alleged that the said Executive Engineer and two other officials entered into a criminal conspiracy

with the Petitioners and allowed execution of the substandard work, thereby committing offences punishable under Sections 420 and 120-B of the Indian Penal Code, besides offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. Subsequently, upon registration of the FIR, the matter was taken up for investigation, and upon completion of the same, a prima facie case having been made out against the Petitioners along with the Government officials, charge-sheet was submitted against them under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Sections 420 and 120-B of the IPC.

4. After cognizance was taken of the offences, the Petitioners filed an application before the learned Trial Court seeking their discharge from the case by resorting to the provisions of Section 227 of the Code of Criminal Procedure, 1973

5. The learned trial court having considered the application of the Petitioners found the offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 420 of IPC not made out but found sufficient material to frame the charge under Section 120-B of the IPC directing the Petitioners to stand the trial

and accordingly, the Petitioners faced the charge under Section 120-B of the IPC.

6. Mr. Mishra, learned counsel for the Petitioners assailing the impugned order passed by the learned trial court, inter alia, submitted that the construction work in respect to 37 Kms. road connecting Karamdihi-Subedega-Talsara-Balisankara Luhakera was undertaken in the year 2002 and 2003 with an estimated cost of Rs.9,22,22,907/-. The tender was called for and the Petitioners firm was the lowest bidder to undertake the contract at the estimated cost of Rs. 7,98,94,792/- and the work was due to commence on 01.08.2002 and was to be completed on 28.02.2005. According to the learned counsel, the inspection of site was done by the technical team comprising the inspector of vigilance, Assistant Engineer, vigilance, J.E., Vigilance accompanied by the Assistant Engineer, PWD, the Junior Engineer of the PWD and the running bills were raised in phase manner and it was reimbursed after proper verification and appropriate sanction by the Junior Engineer, Assistant Engineer and Executive Engineer. It is further submitted that the payments were made to the contractor as per CPWD Code as advance to be adjustable in the final bill after the detail measurement and certification of the authority in accordance with the terms of agreement. The learned counsel

also drew the attention of this Court to the fact that after the cognizance was taken by the trial court, the same was challenged before this Court in CRLMC No.2804 of 2007 and this Hon'ble Court was pleased to quash the order of cognizance taken against the Petitioners under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act observing that the Petitioners are not public servant and as such, the offences under the Prevention of Corruption Act, are not applicable to them. In the aforesaid order this Court also granted liberty to the Petitioners to move application for discharge in respect to the other offences under Sections 420/120-B of the IPC and accordingly, the Petitioners moved the application under Section 227 Cr.P.C. for discharge of the Petitioners from the offences under Section 420/120-B of the IPC.

7. According to the learned counsel for the Petitioners clause-6 of the conditions of the contract of the agreement clearly states that all intermediate payment to the contractor shall be treated as advance payment and it will be adjusted at the final payment after the completion of the work and the work was to be completed by 28.02.2005 whereas the inspection report dated 13.11.2003, 14.11.2003 and 28.02.2004 gave rise to the lodging of the FIR against the Petitioners on 05.10.2004 i.e. almost 11 months prior to the

completion of the work and before submission of the final bill. He further submitted that the three officials, who have been accused of the offences have since been expired and in absence of the said officials, it may not be possible for the Petitioners to defend their case fairly and as such, the charge under Section 120-B of IPC alone in absence of a proper defence to the Petitioners cannot be proceeded with. Even otherwise, the very fact that the FIR was lodged pursuant to the inspection conducted while the time line for completion of the contract work had over then and the Petitioners' firm had not submitted the final bill, the charges against the Petitioners cannot be proceeded with being premature.

8. Learned counsel for the State (Vigilance), on the other hand, vehemently opposed the contentions raised by the learned counsel for the Petitioner and submitted that the trial in the case has already commenced and six numbers of witnesses have already been examined. He further submitted that the plea propounded by the Petitioners are the plea of their defence and involve question of fact and law, which can only be appreciated in course of the adjudication of the matter in trial. He further submitted that the law is well settled that once the trial commences, the defence plea of the Petitioners with regard to the discharge from the offences does not arise. He also submitted that the offence under

Section 120-B of IPC being a substantive offence, the same cannot be effaced merely because some of the co-accused persons have expired in the meanwhile. It being an independent offence and the Petitioners, who are still surviving and facing the trial, the prayer for quashing of the proceeding at this stage is unwarranted. He drew the attention of this Court in respect to the decisions in the matter of Deputy ***Superintendent of Police, Salem vs. Nirmala*** reported in ***2018 ALL MR (Cri) 440 (S.C.),*** wherein the Hon'ble Apex Court referring to the judgment in the matter of ***State of Karnataka v. J. Jayalalithaa***, reported in ***(2017) 2 SCC 375*** held that death of the principle accused does not result in abatement of the trial and the similar view has also been reiterated by the Hon'ble Apex Court in the matter of ***State through CBI, New Delhi vs. Jitendra Kumar Singh***, reported in (***2014) 11 SCC 724***. He further drew the attention of this Court to the decision in the matter of ***Yash Pal Mittal vs. State of Punjab***, reported in ***(1977) 4 SCC 540***, wherein the Apex Court at Paragraph-9 and 10 of their judgment held that "the main object of the criminal conspiracy in the first charge is undoubtedly cheating by impersonation, the other means adopted inter alia, are preparation or causing to be prepared spurious passports forgoing or causing to be forged entries and endorsements in that connection". According to

the Hon'ble Apex Court, the charge does not commute plurality of objects of the conspiracy and whether the charges will be ultimately established against the accused is a completely different matter within the domain of the trial court. Mr. Moharana, the learned counsel for the State (Vigilance) therefore, submitted that there is no infirmity or illegality in the order passed by the learned trial court rejecting the prayer of the Petitioners under Section 227 of Cr.P.C. and the framing of charge in the offence under Section 120-B of IPC.

9. Needless to mention that an offence under Section 120-B of the IPC for criminal conspiracy can be maintained and prosecuted even if the substantive offence such as under Section 420 of IPC is not arrayed. The rationale behind this is that the conspiracy is a distinct and independent offence and the crucial element for establishing the factum of conspiracy is the agreement between two or more people to do or caused to be done an illegal act and the actual commission of the intended illegal act is not a necessary ingredient once the agreement between two or more people is held established. One of the fundamental principles in criminal jurisprudence is that "for every distinct offence there shall be a separate charge and every charge should be tried separately". This principle becomes significant while dealing with criminal

conspiracy under Section 120-B of the IPC alongside the substantive offences. The question of whether conspiracy charges should be framed separately from the main offence has been consistently been dealt with and it is held that such offence constitute fundamentally a different offence requiring separate treatment. The offence typically involves a discreet act committed at specific time and places and its proof requires circumstantial evidence showing co-ordination and planning.

10. In view of the above, the mere fact that some of the co-accused have been expired and the case against them have since been abated would not stand on the way for the court to proceed against the Petitioners in trial for the offences under Section 120-B of the IPC.

11. Coming to the fact that the inspection was undertaken by the Vigilance while the work was under execution and some running bills were reimbursed while the final bill was still not submitted and the Petitioners' firm had also sufficient security with the authority, could have been taken at this stage but the assertion of the learned counsel for the State for the Vigilance that the trial has already commenced and six witnesses have already been examined deters this Court to interfere with the matter at this stage. However, the

Petitioners appear to have propounded a good ground and the same can be taken up before the learned trial court as a defence plea.

12. This Court is therefore, not inclined to interfere with the order dated 20.06.2011 passed by the learned Special Judge, Vigilance, Sambalpur in connection with CTR Case No.37 of 2007 arising out of Sambalpur Vigilance P.S. Case No.40 of 2004. The CRLMC stands disposed of accordingly.

(Chittaranjan Dash)
Judge

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