A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV NO.299 of 2026
CNR No. ODHC010292512026

(An application U/S.397 of CrPC r/w Sec.401 of CrPC & Sec.438 of BNSS)

Smt. Bijayalaxmi Das .... ***Petitioner***

-versus-

State of Odisha & Another .... ***Opposite Parties***

For Petitioner : ***Mr. A. Mohanty, Sr. Advocate along with Ms. S. Patnaik, Advocate***

For Opposite Parties : ***Mr. A. Pradhan, Addl. PP***
Mr. J.K. Panda, Advocate (OP-2)

CORAM:
JUSTICE G. SATAPATHY
DATE OF HEARING: 22.09.2026
DATE OF JUDGMENT:19.11.2026

G. Satapathy, J.

1. This is an application U/S.438 of BNSS r/w Sec.442 of BNSS (397/401 of CrPC) by the petitioner-accused seeking inter-alia to challenge the impugned order dated 16.03.2026 passed by the learned JMFC-II, (Cog. Taking), Cuttack in GR Case No.751 of 2023 refusing to discharge the accused-petitioner from this

case for commission of offence punishable U/Ss.294/323/ 341/406 & 506 of IPC in an application U/S.262 of BNSS/ Sec.239 of CrPC.

2. The short facts, bereft unnecessary details are that the complainant-Suryamani Tripathy who was working as a Sr. Grade Typist in the office of the Directorate Technical Education & Training Odisha, Buxibazar, Cuttack had cordial relationship with the accused-petitioner-Bijayalaxmi Das, an Asst. Prof. of Revenshaw University, but the complainant was arrested in connection with EOW PS Case No.14 of 2021, however, the present accused-petitioner met the complainant in the Jail and gave false assurance to him as well as his family members for getting him released from custody by influencing the Judge. The accused-petitioner had further impressed upon the complainant by convincing him that the DSP, EOW is the husband of one of her relations and she would approach the said DSP to submit the charge-sheet by deleting the major offences. Accordingly, the accused-petitioner asked for

Rs.11lakhs from the complainant for obtaining bail order from the High Court. Believing the false representation of the accused-petitioner, the wife of the complainant paid a cash of Rs.11lakhs to the accused-petitioner on 18.11.2021 near Barabati Stadium and the accused-petitioner had handed over a money receipt to the wife of the complainant by executing it on a non-judicial stamp paper.

2.1. When the bail application of the complainant in BLAPL No.10558 of 2021 was listed before the High Court for hearing, the same was transferred to another Bench, and thereby, the wife of the complainant asked the accused-petitioner the reason for transfer of the bail application, but the accused-petitioner got enraged and abused her in slang language and the wife of the complainant accordingly, demanded the accused-petitioner to return the aforesaid amount of Rs.11lakhs. When the accused-petitioner did not return the aforesaid sum of Rs.11lakhs, the complainant after being released from custody lodged a report on 26.05.2023 before the

IIC, Cantonment PS, who did not take any action against the accused-petitioner and thereby, the complainant approached the Court with a complaint which was sent to the local Police Station U/S.156(3) of CrPC resulting in registration of Cantonment PS Case No.117 of 2023 with commencement of investigation which ultimately resulted in submission of charge-sheet against the accused-petitioner and thereafter, finding prima facie materials, the learned JMFC-II (CT), Cuttack took cognizance of offences and proceeded in the matter after rejecting the discharge petition of the accused-petitioner by framing charge against her for commission of offence U/Ss.341/323/294/406/506 of IPC resulting in trial in the present case with examination of one witness in the meantime.

3. Heard, Mr. Ashok Kumar Mohanty learned Sr. counsel who is being assisted by Ms. Soma Patnaik, learned counsel for the revision petitioner; Mr. Amitav Pradhan, learned Addl. PP and Mr. Jugal Kishore Panda,

learned counsel for OP No.2 in the matter and perused the record.

4. On consideration of the settled position of law governing the scope for dealing an application for discharge U/S.262 of BNSS (239 of CrPC) vis-à-vis the revisional jurisdiction of this Court U/S.438 read with Section 442 of BNSS (397/401 of CrPC), undeniably at the stage of considering an application for discharge, the trial Court is not expected to conduct a mini-trial or weigh the pros and cons of the prosecution materials as if it were passing a final judgment of acquittal or conviction, but at the same time, if, upon consideration of police report and the documents submitted therewith U/S.193 of BNSS, the learned Magistrate finds that there is a strong suspicion as distinguished from mere suspicion against the accused for presuming that the accused has committed the offence(s), the Court would be fully justified in refusing to discharge the accused by framing charge against him/her. It is also well clarified by the law that at this stage of framing of charge, the

learned Magistrate/court is not required to make a roving inquiry with regard to material on record and examine the genuineness of the documents filed by the prosecuting agency. Further, at the stage of consideration of charge, which obviously includes discharge of accused, it is not permissible for a Court to sift the entire evidence or materials forming part of the charge-sheet with a view to find whether such evidence/materials would result in conviction of accused or not, and the Court would be perfectly justified to frame charge, if the materials on record reveals a prima facie case against the accused to proceed against him for a trial or such materials are sufficient to sustain a trial against the accused. Broadly speaking, framing of charge against an accused in a given case is dependent upon the following four factors: -

> *(i) Examination of materials and documents, if any forming part of the charge-sheet to find out prima-facie case;*
>
> *(ii) Whether there exist sufficient grounds/ materials for proceeding against the accused in the trial; but the same has to be done without sifting the materials forming part of the charge-*

sheet with a view to separate the grain from the chaff.

(iii) Whether the evidence/materials remain un-rebutted do not disclose the ingredient of the offences for which the accused has been charge-sheeted.

(iv) Whether the materials/evidence produced before the Court creates a grave suspicion against the accused.

5. On examining the materials on record against the present accused on the parameters delineated above, it is undisputed that the accused has been charge-sheeted for the offences for which she has been charged and there are allegation appearing against the accused emanating from the statement of the informant and his wife together with some documents. Besides, the case diary contains the statements of witnesses corroborating the allegation levelled against the petitioner, but the contention raised on behalf of the revision-petitioner regarding the opinion of handwriting expert on the document supporting the revision-petitioner, the same is essentially considered as matter of trial inasmuch as the said opinion being a plea of defence cannot be accepted at this stage as gospel truth to scuttle the prosecution

case against the revision-petitioner. It is equally well settled that the revisional jurisdiction of this Court is supervisory and limited in nature, but interference with an order refusing to discharge is warranted only when the order suffers from patent illegality, jurisdictional error or results in a gross miscarriage of justice. Undeniably, it is argued on behalf of the petitioner that after receipt of forensic expert's opinion, which is the opinion of Government Examiner of Questioning Documents that the disputed signatures stated to be put by the petitioner-accused do not match with her admitted signature, since there are unnatural hesitation and structural indication of forgery and thereby, no offence of forgery being prima facie established against the petitioner, even to sustain an FIR and therefore, the learned trial Court ought to have discharged the accused-petitioner, but this Court in reply to this contention reminds that at the stage of consideration of charge, it is not permissible to sift the evidence/materials to find out whether such evidence could result in conviction or

acquittal of the accused. This Court does not hesitate to say that merely because the document does not corroborate the allegation, the Court is not bound to discharge the accused, more particularly when there are other materials and statement of witnesses disclosing allegation against the accused and when the law on consideration of charge itself confers jurisdiction on the Court to frame charge, if there appears grave suspicion against the accused. It cannot be denied that the probative value of the documents has to be considered in a full-fledged trial, but it should not be accepted as a conclusive proof to terminate the proceeding against the accused at this stage of framing of charge. Besides, the prosecution has opportunity to produce the additional documents, which are collected during investigation after submission of charge-sheet which is the principle that has been laid down by the Apex Court in ***Central Bureau of Investigation Vrs. R.S. Pai and another; (2002) 5 SCC 82***; wherein a three-judge Bench of the Apex Court has held as under: -

"From the aforesaid sub-sections, it is apparent that normally, the Investigating Officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, ***as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently.*** *If some mistake is committed in not producing the relevant documents at the time of submitting the report or charge-sheet, it is always open to the Investigating Officer to produce the same with the permission of the Court. In our view, considering the preliminary stage of prosecution and the context in which Police Officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which prosecution proposes to rely, the word 'shall' used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but* ***if there is some omission, it would not mean that the remaining documents cannot be produced subsequently****. Analogous provision under Section 173(4) the Code of Criminal Procedure, 1898 was considered by this Court in* ***Narayan Rao v. State of Andhra Pradesh [(1958) SCR 283 at 293]*** *and it was held that the word "shall" occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not*

permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained."

6. It is, therefore, very clear that the prosecution can bring home the charge of forgery by producing additional documents, but the same has to be done in accordance with law. The provision of charge and discharge requires the Court to consider "the record of the case and the documents submitted therewith", but it would be improper for the Court to terminate the prosecution case at the threshold of consideration of charge by accepting a document which is in the nature of opinion of the expert, more particularly when there are other materials on record to sustain the charge for commission of the offences. In the context of absence of documents in support of allegation of forgery, this Court considers it apposite to refer to the decision in ***Rama Shankar Lal and others Vrs. State of UP; (1971) 3 SCC 905***, wherein at paragraph-7, the Apex Court has observed as under: -

> *"**7.** The document said to have been forged as already pointed out has not been produced in the case. According to the prosecution that document was taken back by Rama Shankar Lal; whereas according to the accused it was Vishnu Pad Mathur (PW 1) who had received back the original document from the office of the Sub-Registrar. Both sides desired this Court to draw an adverse inference against the opposite party for the non-production of the original sale deed. On the state of evidence on this point, we are disinclined to express any definite opinion on the question as to who had received back the sale deed from the office of the Sub-Registrar though it seems likely that Rama Shankar Lal had taken back the sale deed because the sale deed constituted proof of the title of the vendee. In the circumstances we refrain from raising any presumption from the non-production of the sale deed. However, the fact remains that we have not had the benefit of looking at the document alleged to have been forged, a circumstance which is material and which must to a large extent go against the prosecution.* ***We do not mean to say that in the absence of the document alleged to be forged the court can in no case hold the offence of forgery to be established, but to claim such a finding in the absence of the document said to be forged, the evidence must in our view exclude all possibility of a reasonable doubt. This is in accord with the general principle of our jurisprudence****."*

7. The petitioner has of course relied upon the decision in ***Rukmini Narvekar Vrs. Vijaya Satardekar***

and others; (2008) 14 SCC 1; wherein the Apex Court has held as under: -

> *"**22.** Thus in our opinion, **while it is true that ordinarily defence material cannot be looked into by the court while framing of the charge** in view of D.N. Padhi case, there may be some **very rare and exceptional cases** where some defence material when shown to the trial court would convincingly demonstrate that **the prosecution version is totally absurd or preposterous, and in such very rare cases the defence material can be looked into by the court at the time of framing of the charges** or taking cognizance. In our opinion, therefore, it cannot be said as an absolute proposition that under no circumstances can the court look into the material produced by the defence at the time of framing of the charges, though this should be done in very rare cases, i.e. where the defence produces some material which convincingly demonstrates that the whole prosecution case is totally absurd or totally concocted."*

8. It cannot be held at the stage of consideration of charge in the present case that the opinion of the handwriting expert eclipse the allegation levelled against the petitioner by the informant for misappropriation of his money only on the ground that the signature on the document does not match with her admitted signature, but who knows the signature might have been put

deliberately to create a confusion to mislead its examiner. The petitioner has of course relied upon the decision in ***Chelloor Mankkal Narayan Ittiravi Namboodiri Vrs. State of Travancore-Cochin; (1952) 2 SCC 392***; but the same judgment has been rendered in an appeal against acquittal and the materials/evidence on record has been totally considered on merit therein, but in the present case, this Court is confronted with a different situation to interfere with the order rejecting the discharge application of the petitioner, merely on the ground that the opinion of the handwriting expert on the document is inconclusive, however, this Court is conscious of the principle that at this stage of framing charge, the probative value of prosecution materials and the document(s) should not be minutely assessed or scrutinized to find out guilt or innocence of accused, unless the same are totally absurd and preposterous to terminate the prosecution case against the petitioner. Furthermore, it is an admitted position on record that subsequent to the passing of the impugned

order dated 16.03.2026, the learned JMFC-II (Cog. Taking), Cuttack has already framed charge against the Petitioner, and the trial has effectively commenced with the examination of one prosecution witness. Once the trial is underway and evidence is being recorded, this Court finds no compelling reason to exercise its revisional jurisdiction under Section 438 read with Section 442 of the BNSS to interdict the ongoing trial, especially when the Petitioner has every opportunity to raise all her factual and legal defences before the Trial Court at the appropriate stage

9. From a discussion made hereinabove and on conspectus of materials & documents placed on record, this Court does not find any patent illegality or perversity in the impugned order, so as to warrant interference by this Court nor is there any jurisdictional error in passing the impugned order nor does it result in a gross miscarriage of justice, and having not found any illegality, irregularity or perversity in the reasons assigned by the learned trial Court in rejecting the

discharge petition of the petitioner, this Court does not consider it proper to interfere with the impugned order.

10. In the result, the Criminal Revision being devoid of merit stands dismissed.

It is, however, clarified that any observation made in this judgment shall not be construed as an opinion of this Court on merits in the case and the learned trial Court is requested to dispose of the case strictly in accordance with law applicable to it.

(G. Satapathy)
Judge

Orissa High Court, Cuttack,
Dated the 19th day of November, 2026/Jayakrushna

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