IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.416 of 2026
[CNR No.ODHC010404602026]

An application under Section 438 read with section 442 of the BNSS, 2023 read with section 528 BNSS, 2023

Amar Kumar Behera ……. **Petitioner**

-versus-

State of Odisha (Vigilance) …… **Opposite Party**

Advocates who has appeared in this case through Hybrid Mode:

For Petitioner : Mr. Digambara Mishra, Advocate

For Opposite Party : Mr. Sangram Das, Standing Counsel for Vigilance

CORAM:

THE HON'BLE MISS JUSTICE SAVITRI RATHO

J U D G M E N T

……....

Date of Hearing :03.07.2026 and 15.10.2026
Date of Judgment :30.10.2026

……....

Savitri Ratho, J. This Criminal Revision has been filed challenging the order dated 19.05.2026 passed by the learned Special Judge (Vigilance), Jeypore in V.G.R. Case No. 19 of 2014, refusing to discharge the petitioner from the charge under Section 13(l)(c) read

with Section 13(2) of the Prevention of Corruption Act, 1988 (in Short "P.C. Act") and the continuation of the proceeding against him for the said offences.

2. By the same order, the learned Special Judge, Vigilance, Jeypore, discharged the petitioner from offences punishable under Sections 409 and 120-B Indian Penal Code (in Short "IPC") and Section 13(1)(d) of the P.C. Act. Observing that it was a case of the year 2014 and several adjournments had been granted to the petitioner, the time petition filed on behalf of the petitioner was rejected and NBW of arrest issued against him and notice was issued to his bailors. Charge was framed against co-accused Brundaban Majhi for commission of offence under Section – 13 (1) (c) read with Section 13(2) of the PC Act and Section 406/109 of the IPC; and under Section-13(1) (c) / 13(2) / 12 of the PC Act and Section 406 of the IPC against co-accused Jagabandhu Bisoi.

3. As per the submissions of the learned counsel on 15.10.2026, V.G.R. Case No. 19 of 2014 is posted to 02.11.2026 for trial. On 15.10.2026, the Criminal Revision was posted for on 29.10.2026 and the execution of the NBW of arrest issued against

the petitioner was stayed till that date. On the same day, the Registry was directed to obtain specific instructions regarding status of the trial in VGR Case No 19 of 2014.

4. As per report dated 22.10.2026 of the learned Special Judge, Vigilance, Jeypore, the split up case VGR Case No.19(A) of 2014 is posted to 02.11.2026 awaiting execution of NBW. VGR Case No.19 of 2014 was earlier posted to 01.07.2026 and is now posted to 12.11.2026 for hearing and no prosecution witnesses have been examined.

PROSECUTION ALLEGATIONS

5. The Petitioner-Amar Kumar Behera was working as Range Officer, Jeypore from 02.07.2007 to 01.02.2014. He was in additional charge of Boriguma Range for the period from 08.02.2012 to 05.01.2014. Co accused Brundaban Majhi was posted as Forester, B. Singpur Section since 03.01.2014. During the year 2012, Govt. approved construction of Forest Guard Quarter with built up area of 500 Sq.ft at the unit cost of Rs.4,20,000/- under Compensatory Afforestation Fund Management and Planning Authority (CAMPA) APO-2011. In June, 2013 basing on

the requisition of the petitioner - Amar Kumar Behera, Range Officer, Boriguma Range, Rs.35,22,000/- was released vide cheque No.-12888 out of which Rs.4,20,000 was meant for construction of the forest Guard quarter at Podapadar and Rs.25,00,000 for barren hill plantation. On 26.6.2013 the petitioner transferred the amount of Rs.29,20,000/- into A/C No.08651000006188 in Indian Overseas Bank, Pujariput which stands in the name of Forester, Singpur. This was credited into the account of the Forester on the same day. On the next day, i.e 27.6.2013, Sri Brundaban Majhi, Forester vide cheque No.581520 transferred Rs.4,20,000/- into the A/C No.086501000006177 of IOB, Pujariput which stands in the name of Sri Jagabandhu Bisoi of village Singhiguda under Nabarangpur. Jagabandhu Bisoi belongs to Sindhiguda which is the village of Sri Brundaban Majhi, Forester. He is a farmer by profession and is no way concerned with the construction of Forest Range Quarter at Podagada. On 28.06.2014, Rs.4,20,000/- was withdrawn from his account in cash. Scrutiny of the vouchers produced by Sri Brundaban Majhi - Forester towards construction of Forest Guard quarter at Podagada revealed that Rs.4,20,000 has

been shown to be paid to Sri Bisoi vide Voucher No. 116 to 128 of 07/2013 and Sri Bisoi has given money receipts against each voucher acknowledging receipt of amounts. Sri Majhi, the Forester has shown measurement of work but there is no M.B. reference in any voucher. Sri Majhi has shown payment of Rs.4,20,000/- for completion of the Forest Guard Quarter building. But the construction has not been completed. In order to assess the cost of the building, technical inspection of the said building was taken up on 22.09.2014 with the assistance of Sri Satyabrata Sethi, Asst. Engineer, Boriguma Block in presence of Sri Amar Kumar Behera. Forest Range Officer and present Forester of B. Singhpur Section. During technical inspection the AE found civil works worth of Rs.1,28,968/- only to have been executed. The remaining amount of Rs.2,91,032/- has been misappropriated by the Forester Sri Brundaban Majhi in connivance with Sri Amar Kumar Behera, Forest Range Officer, Boriguma and Sri Jagabandhu Bisoi a co-village of Forester Majhi. Hence Koraput Vigilance P.S. Case No. 47 of 2014 was registered against them for the offences punishable

under Section 13(2) read with Section 13(1)(c) of the P.C. Act, 1988, and Sections 409 and 120-B of the IPC.

6. After completion of investigation, charge-sheet dated 30.06.2023.was submitted against Mara Kumar Behera, Brundaban Majhi and Jagabandhu Bisoi under Section 13 (2) read with Section 13(1)(c) (d) of the P.C. Act, 1988 and, Section- 409/120-B IPC.

7. When the case was posted for framing of charge , an application was filed by the petitioner on 11.05.2026 for discharge stating that there was no material on record to indicate that he had committed the offences under Section 13(2) read with Section 13(1)(c)(d) of the P.C. Act, 1988 or Section- 409/120-B IPC. Relying on Rule -309(10) of the Forest Code, he submitted that the officer responsible to prepare and render account is personally responsible for completeness and strict accuracy of the same and the petitioner was not at fault.

8. The Special P.P. objected to this application stating that the materials collected during investigation prima facie indicated involvement of the petitioner in commission of the offences.

IMPUGNED ORDER

9. The learned Special Judge Vigilance, Koraput, referring to the statements of Sarat Chandra Sahu, Satyabrata Sethi and Ram Chandra Nepak recorded under Section 161 of the Cr.P.C., observed that there is no specific material to suggest that the petitioner conspired with Brundaban Majhi or the contractor Jagabandhu Bisoi to facilitate misappropriation of the project money and discharged him of the offences punishable under Sections 409 and 120-B IPC. But referring to the provisions of Rule 28 and Rule – 309 (10) of the Orissa Forest Code observed that the petitioner had not discharged his duty as per those provisions and had allowed the co-accused persons to misappropriate Government money and he did this either dishonestly or fraudulently. Investigation revealed that the contractor and forester prepared some false vouchers of different dates, though the entire amount had been received by the contractor on a single day. The construction work was not completed. The partly constructed work was worth Rs 1,27,419/- and the work of Rs.2,92,581/- was not executed and there was misappropriation of this amount of Government money. The range Officer had a duty to

ensure proper execution of the project work and see that the work is carried out as per the working plan or scheme, but failed to do so. The justification for not doing so can be raised by the petitioner as his defence during the trial. So prima facie materials were available against him for commission of the offence defined in Section- 13 (1) (c) of the PC Act. At the time of framing of charge, it was not necessary for the prosecution to establish the case beyond reasonable doubt. A prima facie case was sufficient for framing of charge. His case did not come with the principles of clauses (3) to (7) framed in ***Ch. Bhajan Lal's*** case as there was no express prohibition to proceed against him and the allegations in the FIR and the materials collected during investigation were neither absurd nor inherently improbable so as to discharge him.

SUBMISSIONS

10. I have heard Mr. Digambara Mishra, learned counsel for the Petitioner and Mr. Sangram Das, learned Standing Counsel for the Opposite party-Vigilance. Written note of submission has been filed on behalf of the Petitioner on 10.07.2026. The written note contains submissions which had not been made on 03.07.2026 and

some decisions which had not been relied on 03.07.2026 when the matter was heard, but I have gone through the same.

COUNSEL FOR PETITIONER

11. Mr. Mishra, learned counsel for the Petitioner has advanced the following contentions :-

i) The prosecution does not allege that the petitioner retained Government money, misappropriated Government money, fabricated vouchers, prepared false money receipts, withdrew Government funds for his own benefit, or obtained any pecuniary advantage. The prosecution attributes all such acts to the Forester, who was entrusted with execution of the work, after release of funds in accordance with departmental procedure.

ii) The sole allegation against the petitioner is that he failed to supervise the execution of the work, forwarded the vouchers to the Divisional Office, and thereby violated the supervisory obligations cast upon him under the Odisha Forest Code.

iii) The learned Special Judge, while passing the impugned order dated 19.05.2026, discharged the petitioner from the offences punishable under Sections 409 and 120-B of the IPC and Section

13(1)(d) of the Prevention of Corruption Act with the following categorical findings :

(a) after transfer of the sanctioned amount, the petitioner had no dominion or control over the money;

(b) the transfer of funds by the petitioner to the Forester was not shown to be wrongful in any manner; and

(c) there was no material suggesting conspiracy between the petitioner, the Forester, and the contractor.

iv) The above findings completely negate the foundational ingredients required to constitute an offence under Section 13(1)(c). But, despite recording these findings, the learned Court retained the charge under Section 13(1)(c) for which the impugned order suffers from an inherent legal contradiction.

v) The continuation of the prosecution against the petitioner under Section 13(1)(c) read with Section 13(2) of the P.C Act is unsustainable in law, as the essential ingredients of the offence are conspicuously absent from the prosecution case itself.

vi) Section 13(1)(c) criminalizes only two categories of conduct:-

(a) dishonest or fraudulent misappropriation or conversion by the public servant of property entrusted to him or under his control; or

(b) conscious permitting of another person to dishonestly or fraudulently misappropriate or convert such property.

vii) Parliament has not criminalized the administrative omission or lapse in supervision. The statute does not employ expressions such as "failure to supervise", "negligent supervision", "administrative lapse", or "failure to detect irregularities" etc. Those expressions occur neither expressly nor by necessary implication within Section 13(1)(c). The language employed in the penal statute cannot be imported or expanded to include what the Legislature has deliberately omitted.

viii) That even assuming that Rule 28 imposed a duty of supervision, breach of that duty cannot automatically constitute criminal misconduct unless the statutory ingredients of Section 13(1)(c) are independently established by the materials on record.

ix) An alleged breach of the Odisha Forest Code is being used to proceed against the petitioner for an offence of criminal

misconduct under the Prevention of Corruption Act. Administrative rules cannot enlarge the ingredients of a penal offence. Criminal liability must arise exclusively from the statute creating the offence and not from executive instructions prescribing departmental procedure or administrative guidelines.

x) The charge-sheet attributes the preparation of false vouchers, preparation of false money receipts, issuance of cheques, and diversion of ₹4,20,000/- to the Forester. There is no allegations that the petitioner prepared any forged document, received any portion of the alleged misappropriated amount, fabricated any record, or derived any personal benefit. Hence criminal liability cannot be fastened upon the petitioner merely because of his supervisory position.

xi) The prosecution has failed to establish any of the essential statutory requirements, namely: (a) entrustment of the property to the petitioner or its continuance under his control; (b) dishonest or fraudulent intention; (c) misappropriation (e) conversion for his own use involving wrongful gain or personal benefit; or (f)

conscious permission enabling another person to dishonestly misappropriate Government property.

(xii) The learned Special Judge has recorded findings which completely negate the statutory ingredients of Section 13(1)(c) of the PC Act and yet, in the same order, has directed that a charge under that very provision be framed. The error is therefore one of law and jurisdiction, warranting interference in revisional jurisdiction.

In support of his submissions, he has relied on the following decisions :-

i) M. Narayanan Nambiar vs State Of Kerala 1962 SCC OnLine SC 85

ii) C.K Jaffer Sharief vs State (Through CBI); (2013) 1 SCC 205

iii) Susanta Kumar Dalei @Susanta Kumar Dalai vs .State of Odisha (Vigilance);2026 SCC OnLine SC 889

iv) Basudeb Mohapatra vs. State of Orissa; 1971 SCC OnLine Ori 202

v) K.H. Kamaladini vs State; 2025 SCC OnLine SC 1176

vi) Sudarsan Sahu Vs. State;1978 CRI.LJ.(NOC) 52(ORI.)/ in Criminal Appeal No. 187 of 1974, Date of Judgment- 11.05.1976

STANDING COUNSEL (VIGILANCE)

12. Mr. Sangram Das, learned counsel for the vigilance has vehemently opposed the submissions made by the learned counsel for the petitioner and submitted as follows :-

i) That the Divisional Forest Officer released a sum of Rs.35,22,000/- in favour of the petitioner, Amar Kumar Behera, the then Range Officer, Borigumma Range, vide Cheque No.012888, pursuant to the administrative approval accorded for execution of the project under the CAMPA Scheme. The said amount included Rs.4,20,000/- earmarked for construction of the Forest Guard Quarter at Podapadar. On 26.06.2013, the petitioner transferred the said amount to the account of the Forester, Brundaban Majhi. On the very next day, i.e., 27.06.2013, the Forester

transferred the entire amount of Rs.4,20,000/- to the account of the contractor, Jagabandhu Bisoi. During investigation, it was found that the contractor and the Forester prepared false vouchers of different dates, although the entire amount had been received earlier by the contractor on a single day.

ii) The technical inspection revealed that the value of the work actually executed was only Rs.1,27,419/-, whereas the remaining work valued at Rs.2,92,581/- was not executed, resulting in misappropriation of Government funds.

iii) The petitioner had transferred the entire amount to the Forester and failed to ensure that the amount was utilized for the purpose it was meant, i.e. construction of the quarters and thereby facilitated its mis appropriation by the co accused persons and thereby committed am offence under Section – 13 (1) (c) read with Section 13 (2) of the PC Act.

iv) At the stage of framing of charge, the Court is not required to determine whether the material is sufficient for conviction. The limited consideration is whether there exists a prima facie case requiring the accused to face trial. The innocence or defence of the accused is to be adjudicated during the course of trial, and not at the stage of framing of charge. Therefore, the Court need not undertake a detailed examination or appreciation of the evidence at this stage.

v) The allegations in the FIR and the materials collected during investigation cannot at this stage be said to be baseless, absurd, or inherently improbable so as to justify discharge of the petitioner from the alleged offence.

vi) That the allegations in the FIR and the materials collected during investigation prima facie discloses the involvement of the petitioner in the alleged offence and he has failed to demonstrate that his case falls within any of the categories enumerated in Clauses (3) to (7) framed in **Bhajan Lal's** case

vii) Discharge after framing of charge is not permissible in criminal proceedings.

In support of his submissions he has relied on the following decisions : –

(i) State of Haryana and others vs Bhajan Lal and others reported in 1992 Supp (1) SCC 335

(ii) Ratilal Bhanji Mithani v. State of Maharashtra; (1979) 2 SCC 179

(iii) Stree Atyachar Virodhi Parishad v. Dilip Nathumal Chordia; (1989) 1 SCC 715

(iv) Anil Kumar vs State of UP; 2023 AHC 164133.

STATUTORY PROVISIONS

13. The relevant Clause in the Orissa Forest Code ix extracted below for easy reference:-

Orissa Forest Code

Rule 28 *"28. Duties of Range Officers.*

Range Officers are expected to carry out the following duties to the best of their ability:
(i) He must know the nature, value and extent of the forest property committed to his charge and must

know the plan prescribed for the protection and management of that property which not only consist of natural forests and wild life but also plantations, roads, buildings, wells, etc. He is responsible for the protection of forests in his charge and should see that the works are carried out as per the prescriptions in the working plan or scheme or as directed by his superior officers.

(ii) He is responsible for the discipline, conduct and work of all his subordinates in the discharges of their duties.

(iii) He is absolutely responsible for all cash disbursement and expenditure within his Range, and all payments of pay and labour must as far as possible be done personally by him. He should see that all forest revenue due from his Range is collected and credited to Government.

(iv) He is to communicate all official orders and instructions to his subordinates, and to see that they understand them fully and carry them out.

(v) He is to check and control all work within his Range and also to see that work is carried out as per programme of work approved by the Divisional Forest Officer and ensure that the Government funds are used in the most economical and efficient way.

(vi) He is to protect Government interests by insisting upon the maximum of good work from all subordinates and labour and producing the highest revenue from his Range consistent with the highest principles of forestry.

(vii) He is to collect, check and consolidate all returns and registers and prepare the monthly range account and to carry out all necessary office work promptly and correctly.

(viii) He is to prevent to the best of his ability any misuse of authority by subordinates. In the case of compounding forest offences, he should see that rules are strictly followed.

(ix) He is required to supervise thoroughly the work of the forest contractors and agents appointed by Government to deal with forest produce working within his jurisdiction and see that they work according to rules.

Note-The provisions of the above rules will apply mutatis mutandis to all Divisional Forest Officers and Assistant Conservators."

Prevention of Corruption Act

Section 13 of the PC Act has been substituted by Act 16 of 2018 with effect from 26.07.2018. Section 13 (1) (c) and (d) and Section

13 (2) as they stood before the Amendment are extracted below :-

Section-13 Criminal misconduct by a public servant.- *(1) A public servant is said to commit the offence of criminal misconduct,:-*

(a) xxx

(b) xxx

(c) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or under his control as a public servant or allows any other person so to do; or

(d) if he ,—

(i) by corrupt or illegal means, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(ii) by abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or

(iii) while holding office as a public servant, obtains for any person any valuable thing or pecuniary advantage without any public interest; or

(e) xxx

(2) Any public servant who commits criminal misconduct shall be punishable with imprisonment

for a term which shall be not less than four years but which may extend to ten years and shall also be liable to fine."

DISCUSSION AND ANALYSIS

14. A perusal of the impugned order reveals that the learned trial court has not referred to existence / absence of materials for framing charge against the petitioner for the offence under Section – 13 (1) (d) of the PC Act. Even against the co accused, there is no discussion regarding the said offence. This could be due to oversight, which is a matter of the Court had referred to the said offence in paragraph 1 of the impugned order.

15. In any view of the matter, as nothing has been brought to the notice of the Court that the impugned order discharging the petitioner from the offence under Section 409 / 120 B IPC or not dealing with the offence under Section 13 (1) (d) of the PC Act has been challenged by the prosecution this Court has to proceed on the assumption that the petitioner has also been discharged from the offence under Section 13 (1) (d) of the PC Act

In the case of ***M. Narayanan Nambiar*** (supra), the Appellant had challenged his conviction under Section 5 (1) (d) read with Section 5 (2) of the PC Act. Section 5 (1) (d) is similar to Section 13 (1) (d) of the PC Act 1988. The Supreme Court found that the High Court had relied upon a document filed by the Respondent without giving an opportunity to the Appellant to file objection to contest its reliability and remanded the matter to the High Court for fresh consideration.

16. In the present case, it is presumed that the petitioner has been discharged from the offence under Section 13 (1) (d) of the PC Act ,as there is no observation or finding of the learned trial court regarding existence of materials for framing of charge for the said offence against him.

17. In the case of ***C.K Jaffer Sharief*** (supra), the appellant had challenged the order of the Delhi High Court affirming the order of trial court rejecting his application for discharge. The allegations against the appellant was that while working as Union Minister of Railways, he had dishonestly made the Managing Directors of RITES (Rail India Technical & Economics Services

Ltd.) and IRCON (Indian Railway Construction Co. Ltd.) to approve the journeys of S/Shri B.N. Nagesh, the then Additional PS to Railway Minister, S.M. Mastan and Murlidharan, Stenographers in the railway cell and one Shri Samaullah (domestic help of the appellant) to London in connection with his medical treatment and thereby committed the offence of Section 13 (1) (d) of the PCT Act. Sanction had not been granted for prosecution of the Appellant and it had been mentioned in the chargesheet that the proceedings against the Appellant be dropped. But the learned trial court refused to accept the closure report and took cognizance of the offence against him and thereafter rejected the application filed for discharge. The Supreme Court discussed the provision of Section 13 (1) (d) of the PC Act and held as follows : -

> *"It is difficult to visualise as to how in the light of the above facts, demonstrated by the materials revealed in the course of investigation, the appellant can be construed to have adopted corrupt or illegal means or to have abused his position as a public servant to obtain any valuable thing or pecuniary advantage either for himself or for any of the aforesaid four persons."*

"That dishonest intention is the gist of the offence under section 13(1)(d) is implicit in the words used i.e. corrupt or illegal means and abuse of position as a public servant. A similar view has also been expressed by this Court in ***M. Narayanan Nambiar vs. State of Kerala*** *:* ***(1963) Supp. (2) SCR 724****, while considering the provisions of section 5 of Act of 1947. If the totality of the materials on record indicate the above position, we do not find any reason to allow the prosecution to continue against the appellant. Such continuance, in our view, would be an abuse of the process of court and therefore it will be the plain duty of the court to interdict the same."*

18. In the present case, the offence involved is one under Section – 13 (1) (c) of the PC Act and not under Section 13 (1) (d) of the PC Act. The nature of allegations against the petitioner are totally different. I am therefore of the view that this decision will not come to the aid of the petitioner.

19. In the case of ***Susanta Kumar Dalei @Susanta Kumar Dalai*** (supra), the allegations were that the appellant had committed the offence under Section 13 (2) read with Section 13 (1) (d) of the PC Act and Section 471/477-A / 120-B of the IPC.

The prosecution alleged that a huge quantity of timber had been felled illegally and transported by the contractor in the disguise of fallen trees in connivance with the Forest and OFDC officials and the Appellant who was working as a Forester along with other accused committed the offence in order to derive pecuniary benefit for themselves by abusing their official position and there was a clandestine deal between them and the Government officials. The application for discharge of the Appellant had been rejected by the learned trial Court and the High Court. Two co accused (IFS Officers) who were more prominently in charge of administrative events had already been discharged by the High Court. The Supreme Court found on a comparative assessment that there was no distinguishing feature between the roles ascribed to them and the appellant. While allowing the appeal, the Supreme Court has held as follows : -

> *"20. We are of the opinion that the presence of general allegations, without any overt act or specific imputations against the accused, cannot be sufficient to proceed to trial. The law is well settled that at the stage of consideration of discharge, though a*

detailed appreciation of evidence is not warranted, the Court must be satisfied that there exists sufficient ground for proceeding against the accused. In this case, even if the entirety of the material produced by the prosecution is accepted as true, it does not disclose the commission of any offence by the Appellant. The allegations appear to be cast in a net wide enough to implicate all, without regard to individual acts or culpability. This is impermissible under law.

21. Furthermore, it is not in dispute that two co-accused, namely Indian Forest Service officers who were similarly situated and even more prominently placed in the administrative chain of events, have already been discharged by the High Court. A comparative examination of the roles ascribed to the discharged co-accused and the present Appellant shows no distinguishable basis that would justify differential treatment. The principle of parity, which is a fundamental tenet of criminal jurisprudence, requires that similarly situated accused persons be treated alike. When the allegations and evidence against the Appellant are not even qualitatively stronger than those against the discharged co-accused, the continuation of proceedings against the

Appellant alone would be arbitrary and violative of Article 14 of the Constitution of India."

20. The facts of the present case are distinguishable, In the present case, there are specific allegations that the petitioner transferred the entire amount for construction of quarters to the co accused Forester Brundaban Majhi on one day and the latter transferred the entire amount to the co accused Jagabandhu Bisoi who is his co villager the next day and vouchers were submitted by him subsequently. The construction was not completed and it was found that only portion of the funds were utilized for construction and the balance amount misappropriated by the two co accused . The petitioner failed to ensure proper utilization of the Government funds and had allowed misappropriation of a portion of it by the accused and charge had already been framed against the two co accused.

21. In the case of ***Basudeb Mohapatra*** (Supra), this Court discharged the petitioner observing that there is no charge of conspiracy and whether in view of the two reports, the prosecution case had any basis or direct material to proceed against him for

commission of the offences under Section 5 (1) (c) and Section 5 (1) (d) of the PC Act. The two reports indicated gross negligence by the accused but that did not amount to criminal liability. While quashing the proceedings, this Court observed that there is no direct material against the accused but the learned trial court is not precluded from proceeding against him if further material is placed before him.

22. In the present case, it is the case of the petitioner that he has not discharged his duty in accordance with Clause 28 of the Orissa Forest Code and has transferred the entire amount to the co accused Forester in one day, who in turn he has transferred the entire amount to the other co accused who is his co villager and has passed bills without any verification of the work.

23. In the case of ***K.H. Kamaladini*** (Supra)**,** the allegation against the appellant was that he was working as Executive Engineer in the PWD and the allegations was that tender notices were not published in the newspapers and some works were unnecessarily split without any justification. His application for discharge was rejected by the Sessions Judge and charges were

framed against the appellant for the offences under Sections 409 and 468 of the IPC and Section 13 (1) (d) read with Section 13 (2) of the PC Act. Criminal Revision filed by him was dismissed by the High Court. Holding that there was no allegation that the appellant had obtained for himself or any other person any valuable thing or pecuniary advantage, or had dishonestly misappropriated or converted to his own use any property entrusted to him, the Supreme Court held that the offence under Section 13 (1) (d) read with Section 13 (2) of the PC Act is not made out against him. While doing so, the Supreme Court has held as follows:

> *"14. There is no allegation made in the chargesheet that the appellant obtained for himself or for any other person any valuable thing or pecuniary advantage. Therefore, on a plain reading, clause (d) of sub-section (1) of Section 13 of the PC Act will not be attracted. In this case, there is no allegation that the appellant agreed to accept or accepted any gratification. There is no allegation that he had agreed or accepted any valuable thing or had dishonestly misappropriated or converted for his own use any property entrusted to him. Therefore, the 'criminal misconduct' as provided in Section*

13(1) is not attracted in this case. That is how even the offence punishable under Section 13(2) of the PC Act is not attracted. In short, there was no case made out to proceed against the appellant for the offences punishable under Section 13(1)(d) read with Section 13(2) of the PC Act. To this extent, the impugned orders will have to be modified."

24. As stated earlier, in the present case, it is the case of the prosecution that the co accused persons have misappropriated portion of the amount which had been meant for construction of the quarter and the petitioner has allowed this by passing the bills after the entire amount had been transferred by him to the co accused.

25. In the case of ***Sudarsan Sahu*** (Supra)**,** conviction of the appellant under Section 5(1)(c) read with Section 5 (2) of the PC Act was set aside by this Court after considering the evidence on record . While doing so, this Court has held as follows:-

"In view of the aforesaid discussion, the reasonable conclusion is that in order to establish a person to be guilty for allowing another to misappropriate, his failure to bring the offender to book or his gross negligence in detecting the fraud that was committed would not itself lead to the inference that he allowed

the fraud to be perpetrated. Taking into consideration the action of the top-most authority (P,W.I) and his conduct, prosecution, according to me, has not been able to prove that appellant had any intention or criminal animus or with knowledge he allowed P.W.1 to misappropriate the G.C.I. sheets, In view of these circumstances, I hold that prosecution has failed to establish the guilt of appellant for which he was charged,"

26. In the present case, the petitioner is yet to face trial and will get ample opportunity to prove his defence during the trial.

27. In the case of ***Bhajan Lal*** (Supra), the Supreme Court has held as follows:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the

process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection

and that too in the rarest of rare cases, that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."

28. Keeping in view the allegations against the petitioner, I am not satisfied that his case comes under any of the categories specified in the case of ***Ch. Bhajan Lal*** (supra)**.**

29. In ***Ratilal Bhanji Mithani*** (Supra), the Supreme Court has held as follows:-

"28. Once a charge is framed, the Magistrate has no power under Section 227 or any other provision of the Code to cancel the charge, and reverse the proceedings to the stage of Section 253 and discharge the accused. The trial in a warrant case starts with the framing of charge; prior to it, the proceedings are only an inquiry. After the framing of the charge if the accused pleads not guilty, the Magistrate is required to proceed with the trial in the manner provided in Sections 254 to 258 to a logical end. Once a charge is framed in a warrant case, instituted either on complaint or a police

report, the Magistrate has no power under the Code to discharge the accused, and thereafter, he can either acquit or convict the accused unless he decides to proceed under Section 349 and 562 of the Code of 1898 (which correspond to Sections 325 and 360 of the Code of 1973).”

30. In the case of ***Anil Kumar*** (Supra), the Allahabad High Court has held as follows:

“11. In the present case, the order passed by learned trial court dismissing application of the accused-revisionist for discharge, has been assailed through filing instant criminal revision, whereas the factual position is that after dismissal of discharge application on 07.12.2021, the trial court framed the charges against the accused revisionist and evidence has been recorded. In as much as three witnesses of fact have already been examined in the case. Hon'ble Supreme Court in **Ratilal Bhanji Mithani vs The State Of Maharashtra 1979 SC 94**, *held that after framing of charge, the question of discharge does not arise. The same view was taken in the case of* **Stree Atyachar Virodhi Parishad vs Dilip Nathumal Chordia 1989 SCC (1715)**. *Once the charges are framed, the accused is put to trial and thereafter the accused may either be acquitted*

or convicted, but he cannot be discharged. Discharge post framing of charge is not recognized in the Criminal Procedure Code. So far as the electronic and documentary evidence propounded by the revisionist in support of his claim of innocence and false implication by the informant is concerned, Hon'ble Supreme Court in **State Of Orissa vs Debendra Nath Padhi AIR 2005 SC 359**, *held that defence of the accused is not looked into at the stage when the accused seeks to be discharged under Section 227 Cr.P.C. "The record of the case", used in Section 227CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police."*

31. These two decisions are obviously not relevant for deciding this Criminal Revision, as charge has not yet been framed against the petitioner, for which the nature of allegations against him have been examined in order to ascertain if charge should be framed against him.

32. In the case of ***Stree Atyachar Virodhi Parishad*** (Supra), the Supreme Court has held as follows:

> *"14. These two decisions do not lay down different principles.* ***Prafulla Kumar*** *case has only reiterated what has been stated in* ***Ramesh Singh*** *case. In fact, Section 227 itself contains enough guidelines as to the scope of enquiry for the purpose of discharging an accused. It provides that "the Judge shall discharge when he considers that there is no sufficient ground for proceeding against the accused". The "ground" in the context is not a ground for conviction, but a ground for putting the accused on trial. It is in the trial, the guilt or the innocence of the accused will be determined and not at the time of framing of charge. The court, therefore, need not undertake an elaborate enquiry in sifting and weighing the material. Nor is it necessary to delve deep into various aspects. All that the court has to consider is whether the evidentiary material on record if generally accepted, would reasonably connect the accused with the crime. No more need be enquired into."*

33. There can be no quarrel about the proposition of law reiterated in this decision that at the time of framing of charge,

elaborate enquiry and sifting of materials is not required. The Court has to consider whether materials sufficient for the accused to face trial are available and is not required to consider if such material will be sufficient to convict the accused.

34. The contention of the learned counsel for the petitioner that failure to supervise the execution of the work or negligence in carrying out his duties, without any dishonest intention will not make the petitioner liable for an offence under Section – 13 (1) (c) of the PC Act, is rejected as because he had transferred the entire amount to the co-accused Forester and he passed the bills which were submitted subsequently without verifying if the work had been completed.

35. As per Rule 28 of the Orissa Forest Code, the petitioner was responsible for proper utilization of the money. But in the present case, the entire money allocated for building of the quarters has been transferred to the account of the forester the very next day and the forester has transferred the entire amount to the co accused Jagabandhu Bisoi who is not even a contractor, but a co villager of

the Forester, in the absence of any voucher or bill. The vouchers were submitted subsequently.

36. There may not be any allegation that the petitioner has converted any amount transferred by him to the account of the Forester for his own use. But from the sequence of events, a strong suspicion arises that the petitioner by transferring the entire amount to the account of the forester on one date and failing to ensure that the entire money is utilized for construction of the quarter, has permitted the two co accused persons to misappropriate a portion of Government money for their own use.

37. I find substance in the contention of the learned counsel for the petitioner regarding absence of allegations regarding receipt of any pecuniary benefit by the petitioner. But this is not a necessary ingredient for establishing the offence under Section 13 (1) (d) of the PC Act .

CONCLUSION

38. I am satisfied that the materials collected during investigation prima facie indicate that the petitioner allowed the co accused persons to misappropriate portion of the Government

money meant for construction of quarters by transferring the entire amount to the Forester and after the entire amount had already been transferred to the account of the co accused Jagabandu Bisoi, a co-villager of the Forester Brundaban Majhi. passing vouchers without ascertaining that the amount had been utilized for construction .

39. This is not the stage to decide whether this material is sufficient to convict the petitioner for the offence under Section 13 (1) (c) of the PC Act. The material is sufficient to frame charge against the petitioner, hence the impugned order does not call for any interference.

40. The petitioner is therefore liable to be face trial for commission of offence under Section – 13 (1) (c) read with Section 13 (2) of the PC Act and is not entitled to be discharged.

41. The Criminal Revision being devoid of merit stands dismissed.

42. By order dated 15.10.2026, this Court had stayed execution of the NBW issued against the petitioner, till 29.10.2026.

43. In order to afford one chance to the petitioner to participate in the trial, and in order to save time and resources of the Court, it is

directed that if the petitioner surrenders in the learned trial Court on or before 12.11.2026 in VGR Case No.19(A) of 2014, (the date to which VGR Case No.19 of 2014 is posted for trial). The NBW of arrest issued against him on 19.05.2026 shall be recalled and he shall be allowed to continue on his previous bail. Charge shall be framed against him on his appearance on that date so that the petitioner and the two co accused are tried together.

44. For the above purpose:-

i) the learned trial Court shall post VGR Case No 19 (A) of 2014 which is presently posted to 02.11.2026 to 12.11.2026 ;

ii) the execution of NBW of arrest issued against the petitioner shall remain stayed till 12.11.2026 ;

iii) the original trial (VGR Case No 19 of 2014) shall thereafter proceed against the co accused alongwith the petitioner; and

iv) necessary orders for joint trial be passed by the learned trial court.

45. It is made clear that if the petitioner does not surrender on or before 12.11.2026 before the learned trial Court, it is open to the learned trial court to proceed against the petitioner in accordance

with law for ensuring his presence during trial, including execution of the NBW of arrest.

46. Even if it is not possible to proceed against the petitioner and the co accused persons in one trial, due to non co-operation of the petitioner or any other reason, endeavour shall be made by the learned trial Court to post the two cases - VGR Case No. 19 of 2014 and VGR Case No. 19 (A) of 2014 on the same dates.

47. Copy of this judgment be communicated to the learned trial court - Special Judge (Vigilance), Jeypore, forthwith by the Registry.

(**Savitri Ratho**)
Judge

Orissa High Court, Cuttack
Dated, the 30th October, 2026/*RKS*

Signature Not Verified
Digitally Signed
Signed by: RANJAN KUMAR SETHI
Reason: Authentication
Location: ORISSA HIGH COURT, CUTTACK
Date: 05-Nov-2026 19:41:05