

(2025) 10 OHC CK 1423

In the Orissa High Court

Case No : Criminal Revision No. 625, 648 Of 2024

Dipak @ Deepak Kumar Sahu And Others

APPELLANT

Vs

State Of Orissa (Vigilance)

RESPONDENT

Date of Decision : 13-10-2025

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 227, 228, 397, 482

Citation : (2025) 10 OHC CK 1423

Hon'ble Judges : Chittaranjan Dash, J

Bench : Single Bench

Advocate : Adyashakti Priya, Sangram Das, P. K. Nayak

Final Decision : Dismissed

Judgement

Chittaranjan Dash, J

1. The legality, propriety and correctness of the order dated 24.08.2024 passed by the learned Special Judge (Vigilance), Cuttack in T.R. Case No.21 of 2009, as assailed in CRLREV No.625 of 2024, and the order dated 21.05.2024 passed by the learned Judge, Special Court, Cuttack in same T.R. Case No.21 of 2009, as assailed in CRLREV No.648 of 2024, having been called in question on the same set of facts and arising out of a common chargesheet, has been heard analogously and disposed of by this common order.

2. The background facts of the case are that the Project Director, DRDA, Cuttack, vide Letter No.4073/DRDA dated 03.12.1999, submitted a written report before the Deputy Superintendent of Police (Vigilance Cell), Cuttack, alleging irregularities committed by certain public servants in the execution of plantation work under the Employment Assurance Scheme in Nischintakoili Block during the year 1998-99, involving a total sum of ₹ 6,81,000/- sanctioned for miscellaneous tree plantation and avenue plantation, and further alleging misappropriation of the said amount.

Upon receipt of the written report, an enquiry was conducted. In the course of

the enquiry, it was revealed that Shri Dayanidhi Rout, ASCO, Kendrapara (while in charge of the office of the ASCO, Cuttack, from 10.05.1999 to 20.04.2000), and Shri Lingaraj Barik, Range Officer, Nischintakoili Soil Conservation Range (from January 1996 till 31.05.2000), along with Govinda Chandra Bhuyan, Deepak Kumar Sahu and Padma Charan Barik, then functioning as assistants under the Employment Assurance Scheme, had violated the guidelines issued by the Ministry of Rural Development, Government of India. It was further found that an amount of ₹ 6,81,000/-, allotted through the Plantation Committee of the DRDA, Cuttack, was earmarked for 20 hectares of miscellaneous tree plantation and 12 Running Kilometres (RKM) of avenue plantation in Nischintakoili Block during 1998-99, distributed as follows:

- i. 6 RKM avenue plantation from Asureswar to Narendrapur – ₹ 2,73,000/-,
- ii. 6 RKM avenue plantation from Barapada to Nagaspur – ₹ 2,73,000/-, and
- iii. Tarata miscellaneous tree plantation over 20 hectares – ₹ 1,35,000/-.

The then ASCO, Cuttack, received the entire sanctioned amount through cheques to execute the aforesaid works. However, during a joint inspection by the Assistant Project Director, it was revealed that no plantation work had been undertaken at the approved sites during 1998-99, nor had the unspent amount been refunded despite repeated demands from DRDA authorities for details of the plantation said to have been carried out. It further transpired during enquiry that the approved plantation sites were inspected on 07.12.2001 by the APD (Scheme), DRDA, Cuttack Vigilance Forest Squad, Amin of Salepur Tahasil and officials of the Nischintakoili Soil Conservation Range, namely Lingaraj Barik, Deepak Kumar Sahu and Gobinda Chandra Bhuyan. No plantation was found at the approved sites. The Soil Conservation staff present during inspection stated that Shri Dayanidhi Rout, ASCO, Cuttack, had not entrusted them with any plantation work at those sites during 1998-99, nor was any such work undertaken. Instead, they claimed to have carried out a three-row avenue plantation during 1999-2000 at Demand to Nimal (5 RKM), Natkai to Ramkrishnapur (4 RKM) and Ramkrishnapur (3 RKM), allegedly under the direction of the ASCO, Cuttack, which, according to them, was subsequently damaged during the Super Cyclone of 1999. Verification of this claim was undertaken on the same day, i.e., 07.12.2001, by the said authorities, during which only 68 plants of Acacia, Simili, Badachakunda, Mayhanimba and Karanjia species were found against the 18,000 plants claimed to have been planted in 1999-2000. The spot inspection also revealed that more than a single-row plantation with 2m x 2m spacing, in accordance with the prescribed norms, was not possible on either side of the road for want of space. No dead stumps or impressions of pits were found at the site to justify the alleged three-row plantation.

During enquiry, the ASCO, Cuttack, claimed to have undertaken the avenue plantation work during 1999-2000 instead of 1998-99, and at sites not approved

by the Plantation Committee, Cuttack. This was stated to be illegal, as neither permission nor approval for such diversion was accorded by the DRDA, Cuttack, which had repeatedly asked the ASCO to refund the unspent amount. Even assuming such plantation in 1999-2000, the spot inspection indicated that at best ₹ 2,73,720/- could have been spent for undertaking 12 RKMs of single-row avenue plantation at the rate of ₹ 22,810/- per RKM, and thus the balance ₹ 4,07,280/- to have been refunded; however, no refund was made.

It was also noted that even the single-row plantation was not undertaken at the approved sites. From the aforesaid facts and circumstances, it appeared that Shri Dayanidhi Rout, ASCO, Cuttack, Shri Lingaraj Barik, Range Officer (Retd.) and others were not authorised to incur any expenditure without the prior approval of the implementing authority, namely, the Collector, Cuttack, nor could they divert any project or site under the Employment Assurance Scheme at their discretion beyond the approved norms. It was, therefore, alleged that they, having entered into a criminal conspiracy, failed to carry out the avenue plantation and miscellaneous tree plantation at the approved sites as sanctioned by the Plantation Committee, whereupon the FIR was registered and investigation commenced.

3. In course of the investigation, the I.O. too found the allegations made against the Petitioners both in the FIRs and in course of the inquiry to have given rise to a prima facie case committing the offences aforementioned by the Petitioners and accordingly submitted the charge sheet.

4. After submission of the charge-sheet, the Petitioners approached the learned trial court seeking discharge from the offences alleged, primarily on the ground that they had already been exonerated in the Departmental Proceedings. It was their contention that continuation of the criminal prosecution would serve no fruitful purpose in view of such exoneration. The learned court below, however, rejected the prayer for discharge, purportedly without proper application of mind to the facts and legal position. The same plea has been reiterated before this Court as a ground to assail the impugned orders. Learned counsel for the Petitioners also relied upon the decisions in *Ashoo Surendranath Tewari vs. The Dy. Superintendent of Police, EOW, CBI and Another*, reported in (2020) 9 SCC 636; *Dr. Minakumari Pani vs. State of Orissa*, decided in CRLMC No.3407 of 2010; *Satyashree @ Satyashree Mohapatra vs. State of Odisha*, reported in (2022) 88 OCR-72; and *Ramesh vs. State of Gujarat and Others*, reported in Writ Petition (Criminal) No. 256 of 1989, in support of his case.

5. Learned counsel for the State, on the other hand, vehemently opposed the submissions advanced by the learned counsel for the Petitioners and contended that the exoneration of the Petitioners in the departmental proceedings would not ipso facto lead to their acquittal in the criminal trial. The parameters governing both proceedings are absolutely independent and distinct. The materials available against the Petitioners, as reflected in the charge sheet, are sufficient for framing of charges to face trial, which has been rightly adjudicated by the learned trial

court while declining to accede to the prayer of the Petitioners for discharge from the offences alleged.

6. In a matter relating to an application for discharge, the Hon'ble Supreme Court in *State of Tamil Nadu by Inspector of Police, Vigilance and Anti-Corruption vs. N. Suresh Rajan and Others*, reported in (2014) 11 SCC 709, held as follows:

-

"29. We have bestowed our consideration to the rival submissions and the submissions made by Mr. Ranjit Kumar commend us. True it is that at the time of consideration of the applications for discharge, the court cannot act as a mouthpiece of the prosecution or act as a post office and may sift evidence in order to find out whether or not the allegations made are groundless so as to pass an order of discharge. It is trite that at the stage of consideration of an application for discharge, the court has to proceed with an assumption that the materials brought on record by the prosecution are true and evaluate the said materials and documents with a view to find out whether the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. At this stage, probative value of the materials has to be gone into and the court is not expected to go deep into the matter and hold that the materials would not warrant a conviction. In our opinion, what needs to be considered is whether there is a ground for presuming that the offence has been committed and not whether a ground for convicting the accused has been made out. To put it differently, if the court thinks that the accused might have committed the offence on the basis of the materials on record on its probative value, it can frame the charge; though for conviction, the court has to come to the conclusion that the accused has committed the offence. The law does not permit a mini trial at this stage."

7. A similar view has also been taken by the Hon'ble Supreme Court in *State of Gujarat vs. Dilipsingh Kishorsingh Rao*, reported in 2023 SCC OnLine SC 1294, wherein it is held as follows:-

"11. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged. The expression "the record of the case" used in Section 227 Cr.P.C. is to be understood as the documents and 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. The submission of the accused is to be confined to the material produced by the investigating agency.

12. The primary consideration at the stage of framing of charge is the test of existence of a prima-facie case, and at this stage, the probative value of materials on record need not be gone into. This Court by referring to its earlier decisions in the *State of Maharashtra Vs. Som Nath Thapa* (1996) 4 SCC 659 and the *State of MP Vs. Mohan Lal Soni* (2000) 6 SCC 338 has held the nature of evaluation to be made by the court at the stage of framing of the charge is to

test the existence of prima-facie case. It is also held at the stage of framing of charge, the court has to form a presumptive opinion to the existence of factual ingredients constituting the offence alleged and it is not expected to go deep into probative value of the material on record and to check whether the material on record would certainly lead to conviction at the conclusion of trial.

13. The power and jurisdiction of Higher Court under Section 397 Cr.P.C. which vests the court with the power to call for and examine records of an inferior court is for the purposes of satisfying itself as to the legality and regularities of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept in such proceedings. It would be apposite to refer to the judgment of this court in *Amit Kapoor Vs. Ramesh Chandra* (2012) 9 SCC 460 where scope of Section 397 has been considered and succinctly explained as under:

"12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error and it may not be appropriate for the court to scrutinise the orders, which upon the face of it bears a token of careful consideration and appear to be in accordance with law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes, but are merely indicative. Each case would have to be determined on its own merits.

13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

14. This Court in the aforesaid judgement has also laid down principles to be considered for exercise of jurisdiction under Section 397 particularly in the context of prayer for quashing of charge framed under Section 228 Cr.P.C. is sought for as under:

"27. Having discussed the scope of jurisdiction under these two provisions i.e. Section 397 and Section 482 of the Code and the fine line of jurisdictional

distinction, now it will be appropriate for us to enlist the principles with reference to which the courts should exercise such jurisdiction. However, it is not only difficult but is inherently impossible to state with precision such principles. At best and upon objective analysis of various judgments of this Court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction under Section 397 or Section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the Court under Section 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of Section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The Court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith *prima facie* establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the Court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the Court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The Court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion formed *prima facie*."

15. The revisional court cannot sit as an appellate court and start appreciating the evidence by finding out inconsistency in the statement of witnesses and it is not legally permissible. The High Courts ought to be cognizant of the fact that trial court was dealing with an application for discharge."

8. In view of the mandate of the Hon'ble Supreme Court, as discussed above, and upon examining the case as it has emerged herein along with the decisions

cited, this Court is of the considered view that the contention of the Petitioners regarding their exoneration in the departmental proceedings on similar charges may, at best, be a factor for appreciation of the extent of the alleged irregularities vis-à-vis the evidence to be adduced during trial. However, such exoneration, by itself, cannot absolve the Petitioners of the accusations so as to bring the criminal proceeding to an end. It is well settled that the parameters governing a departmental proceeding are distinct from those regulating a criminal trial. A departmental enquiry is largely a fact-finding exercise and is not necessarily guided by strict rules of evidence, whereas a criminal prosecution proceeds on the basis of legally admissible evidence with the object of determining whether the charges are proved beyond reasonable doubt.

9. Having regard to the grounds urged by the Petitioners, it cannot be said that the materials placed in the charge-sheet do not disclose any case against them so as to warrant discharge. The pleas advanced may, if at all, carry weight during the course of trial, but cannot be a ground to nip the proceeding in the bud. Accordingly, this Court finds no infirmity or illegality in the orders of the learned trial court rejecting the prayer for discharge from the offences alleged. Hence ordered.

10. In the result, the orders dated 24.08.2024 and 21.05.2024 passed by the learned Special Judge (Vigilance), Cuttack in T.R. Case No.21 of 2009, as impugned in CRLREV No.625 of 2024 and CRLREV No.648 of 2024 respectively, stand confirmed. Both the Criminal Revisions stand dismissed as being devoid of merit.