

(2020) 03 OHC CK 0008

In the Orissa High Court

Case No : Criminal Revision No. 584 Of 2019

Nikunja Kishore Das

APPELLANT

Vs

State Of Odisha (Vigilance)

RESPONDENT

Date of Decision : 16-03-2020

Acts Referred:

Indian Penal Code, 1860 — Section 120B, 420, 468, 471
Prevention Of Corruption Act, 1988 — Section 13(2), 13(1)(d)

Citation : (2020) 03 OHC CK 0008

Hon'ble Judges : B.P. Routray, J

Bench : Single Bench

Advocate : H.M. Dhal, Sangram Das

Final Decision : Dismissed

Judgement

B.P. Routray, J

1. The order dated 16.8.2019 passed by the learned 1st Additional Special Judge, (Vigilance), Bhubaneswar in T.R. No.17/10 of 2015/2007 rejecting the prayer of the petitioner to discharge him has been assailed in the present revision.

2. The petitioner is the Managing Director of M/s. Kalinga Beverage Pvt. Ltd., Janla. It is alleged that the present petitioner along with the co-accused, Subhankar Routray and the excise officials have presented 44 numbers of forged treasury challans amounting to Rs.1,36,97,864/- in order to issue pass in favour of the company-M/s. Kalinga Beverage Pvt. Ltd. to lift IMFL in between the period 28.11.1996 to 29.01.1998. Presentation of these fake and forged treasury challans were subsequently detected in the audit leading to registration of the F.I.R. on 8.6.1998 for the offences under Secs.420/468/471/120-B, I.P.C. and Secs.13(2) read with 13(1)(d) of the P.C. Act, 1988. Consequently on completion of investigation, charge-sheet was submitted on 31.12.2001 for the aforesaid offences against six accused persons including the present petitioner and

Subhankar Routray.

3. A prayer was made on behalf of the petitioner before the learned trial court to discharge the petitioner from accusation of the offences on the ground that presentation of forged treasury challans were beyond his knowledge being dealt by Subhankar Routray, who signed the challans and had the responsibility of presenting them to the Bank as well as getting necessary pass for lifting IMFL. This has been admitted by said Subhankar Routray by swearing an affidavit on 13.5.1998 absolving the knowledge of the present petitioner in such presentation of the challans. But the learned trial court upon consideration of the prayer of the petitioner has rejected the same observing the limited scope to be looked into at the time of framing of charge and by holding prima facie case against the present petitioner for the offences.

4. This is the subject matter of challenge by the petitioner before this Court in the present revision and the petitioner by reiterating the same stand, contends that criminal liability against the petitioner is not attracted prima facie to implicate him in the offences to proceed against him in the trial.

5. On the other hand, learned Standing Counsel for the Vigilance Department submitted that there are materials to attract the mens rea against the petitioner for the offences alleged as reveals from the documents and statements of witness particularly the one, namely, Prasanna Das.

6. On the backdrop of such submissions, it is necessary to see whether there is prima facie case against the petitioner revealing his criminal intent in commission of cheating, forgery and criminal conspiracy. It is important to mention here that the entire amount of Rs.1,36,97,864/- has already been deposited by the petitioner as per the submission of the petitioner which is not disputed by the counsel for the Vigilance. One more thing is to be noticed that, the company, namely, M/s. Kalinga Beverage Pvt. Ltd. is not an accused as per the copy of charge-sheet filed by the counsel for the Vigilance.

7. The allegation in short is to the extent that by presenting fake and forged treasury challans, necessary passes were obtained to lift the liquor thereby causing loss to public ex-chequer through cheating, forging and criminal conspiracy.

8. Admittedly, the license is in the name of the present petitioner and the forged treasury challans were in the name of the present petitioner though the fact remains that the said challans were signed by the co-accused, Subhankar Routray on behalf of the petitioner. Therefore, prima facie a close nexus between Subhankar Routray and the present petitioner is clearly seen in commission of the offences considering the duration of time from 28.11.1996 to 29.01.1998 and the extent of amount involved as well as the number of treasury challans. By swearing an affidavit, one of the co-accused admitting the mens rea on his part for the offences may not be prohibited, but thereby to absolve the criminal liability of another co accused and his involvement in the offences is definitely

not permitted under the law. Further, making deposit of the demand amount upon detection of the fraud will also not make out of a case in favour of the accused to get him rid of the culpability. Apart from all these, the statement of Prasanna Das as recorded in course of investigation also implicates the criminal state of mind against the petitioner. Thus when prima facie case is seen against the petitioner, no justification is found to interfere with the order of the learned trial court in rejecting the prayer of the petitioner for discharge.

9. Accordingly, no merit is seen in the revision petition and the same is dismissed.

A copy of this order be communicated to the learned trial court without delay.