
(2002) 10 OHC CK 0064

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 2284 of 1998

Pramod Kumar Nanda alias Das

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 30-10-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 482

Prevention of Corruption Act, 1988 — Section 13(1), 13(2), 7

Citation : (2003) 95 CLT 284 : (2002) OLR 763 Supp

Hon'ble Judges : P.K. Mohanty, J

Bench : Single Bench

Advocate : J.M. Mohanty, for the Appellant; D.K. Mohapatra, Standing Counsel (Vigilance Department), for the Respondent

Final Decision : Dismissed

Judgement

P.K. Mohanty, J. 1. This is an application u/s 482, Code of Criminal Procedure for quashing Bhubaneswar Vigilance P.S. Case No. 26/98 initiated against the petitioner u/s 13f(2) read with Sections 13(1)(d)/7 of the Prevention of Corruption Act, 1988.

2. The short fact of the prosecution case is that on recommendation of the village committee, for construction of Bhapur-Talasua road under Jawahar Rojgar Yojana Share Scheme, the informant, Manguli Pradhan, a contractor was issued with the work order for construction of the aforesaid road. The informant after receiving the work order stacked the necessary materials like sands and stone etc. at the work site as per the direction of the Junior Engineer of the block. The petitioner, the Block Development Officer (BDO) was approached by the informant to check measure the materials for going ahead with the second phase of the work of spreading over and proceeding with the necessary work. The petitioner, on being approached by the informant to depute the Junior Engineer for measurement of the stacked materials, demanded illegal gratification of Rs. 1,000/-. One Prafulla Kandey, the Sarpanch of Kakatpur Gram Panchayat was present in the office of

the B.D.O. However, on negotiation the B.D.O. reduced the amount to Rs. 500/- to be paid by the complainant whereafter he agreed to depute the Junior Engineer for necessary measurement. The informant reluctantly agreed to pay Rs. 500/- on 20.5.98. However, being aggrieved by the illegal demand, he reported the matter in writing to the Superintendent of Police (Vigilance) on 19.5.98 for taking legal action. A case was registered under the direction of the S.P. (Vigilance), Bhubaneswar Division, Bhubaneswar bearing Vigilance P.S. Case No. 26 dated 19.5.1998. The Vigilance party after complying with the necessary formalities accompanied with one Dushmant Kumar Mohapatra and Shri Debadutta Patnaik, Junior Clerks of the office of the Executive Engineer, Prachi Division, Bhubaneswar and the informant, Manguli Pradhan on the appointed date and-time reached the B.D.O.'s office as per the arrangement. The informant approached the B.D.O., Shri Nanda who was present in his office and the B.D.O. enquired if the informant had come prepared with the demanded money. Informant handed over Rs. 500/- to Shri Nanda who kept the same in his left side chest pocket of the wearing shirt. The members of the raiding party who had taken position as described in details in their statements, on getting signal, came to the office room of the B.D.O. who had admitted to have accepted some money. He brought out the money, counted the same for Rs. 500/-, necessary formalities were observed, the G.C. notes were seized under the seizure list. The investigation was in progress; but at this time the petitioner having filed the petition, further investigation has been stayed by order of this Court.

3. The learned counsel for the petitioner submitted that the entire case foisted falsely with a motive to harass the petitioner. The petitioner has received no money from the complainant and some ward members wanted to put the petitioner to suspension and harassment to demoralise him since he was not obliging them in their illegal work. The amount according to the petitioner if at all was received from Sarpanch Prafulla Kumar Kandey to whom a loan was given by the B.D.O., was being returned inasmuch as when there is admission of complainant himself that he has not paid the money and the money was paid by Sarpanch, Kandey, the continuation of the case shall be an abuse of the process of law. The learned Standing Counsel, Vigilance has placed the case-diary including the xerox copy of the FIR, preparation report and the statements of the informant-Manguli Pradhan, Shri Debadutta Patnaik & Shri Dushmant Kumar Mohapatra, Junior Clerks in the office of the Executive Engineer, Prachi Division, Bhubaneswar who were also accompanying the raiding party of the Vigilance.

Having heard the learned counsel for the parties and having gone through the material placed as above, it appears that there has been clear allegations of demand of illegal gratification by the petitioner who was then the B.D.O. for deputing a Junior Engineer to check measure the materials stacked by the informant, who was appointed as a contractor for construction of the road in question and in terms of the demand, the informant having reluctantly agreed and being aggrieved, approached the Vigilance Department for action. The Vigilance Police on receipt of the information, registered a case, made necessary

arrangement for a raiding and detection of the crime. The petitioner is alleged to have been caught red handed while receiving the demanded illegal gratification of Rs. 500/-. The statement of eye witnesses recorded u/s 161, Cr.P.C., corroborates the prosecution story. The probative value of the statements and its acceptability or credibility is to be gone into during the trial and at this initial stage of investigation, I do not find any reason to throttle the investigation and nip it at the bud. No case is made out for exercising power u/s 482, Cr.P.C. to stall the further investigation or the prosecution.

4. The law is well settled that exercise of inherent power u/s 482, Cr.P.C. is available to the High Court to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Exercise of power u/s 482, Cr.P.C. should be consistent with the scope and ambit of the same. In appropriate cases, to prevent judicial process from being an instrument of oppression or harassment in the hand of frustrated or vindictive litigants, exercise of inherent power is not only desirable but necessary also, so that the judicial forum of Court may not be allowed to be utilised for any oblique purpose. But if on a perusal of the FIR or the complaint, the statements of the witnesses recorded u/s 161, Cr.P.C., and any other materials collected a prima facie case is made out, the High Court will not exercise its inherent power to frustrate the proceeding and nip it at the bud. In rarest of rare cases, the High Court would be justified in quashing the investigation if the aforesaid conditions are fulfilled and it finds that continuation of investigation further would be an abuse of process of law only. This view is in consonance with the view expressed by the Hon''ble Supreme Court in T.T. Antony Vs. State of Kerala and Others, and AIR 2001 SCW 2571 (T. T. Antony v. State of Kerala).

5. In the result, this petition for quashing the further investigation is dismissed. Let the investigating agency proceed with the investigation expeditiously and take such steps as is available under law.