

(2022) 04 OHC CK 0135

In the Orissa High Court

Case No : Criminal Revision No.135 Of 2018

Pratap Chandra Mahanta And Another

APPELLANT

Vs

State of Orissa (Vigilance)

RESPONDENT

Date of Decision : 22-04-2022

Acts Referred:

Code of Criminal Procedure, 1973 — Section 162, 212, 212(2), 219, 219(1), 220, 220(2), 227, 239, 397, 401, 465
Indian Penal Code, 1860 — Section 409
Prevention of Corruption Act, 1988 — Section 13(1)(c), 13(1)(d), 13(2)

Citation : (2022) 04 OHC CK 0135

Hon'ble Judges : A.K. Mohapatra, J

Bench : Single Bench

Advocate : S.R.Mohapatra, A.K. Apat, B.R. Mohanty, M.K. Swain, S. Harichandan, L. Pattanaik, S. Mohanty, Sangram Das

Final Decision : Disposed Of

Judgement

A.K. Mohapatra, J

1. The present Criminal Revision has been filed by the Petitioners assailing the order dated 07.12.2017 passed in VGR Case No.11 of 2014 by the learned Special Judge (Vigilance), Keonjhar thereby rejecting the Petitioners' discharge petition and framing charge against the Petitioners for alleged commission of crime under Section 13(2) read with Section 13(1)(c)(d) of Prevention of Corruption Act, 1988 and Section 409 of I.P.C.

2. The case of the prosecution as called out from the Revision Petition in a nutshell is that on the allegation of huge misappropriation of BPL/AAY rice cost from the quota of Chamakpur Gram Panchayat under Joda Block of Keonjhar district by lifting the quota in the name of dead/migrant beneficiaries and showing the same to have distributed over the period from September-2008 to March-2014. On the aforesaid allegation, the Inspector of Vigilance Keonjhar Unit (Informant) conducted an enquiry and on verification, it was found that as many

as 1081 cards under BPL category and 190 cards under AAY category were allotted to Chamakpur Gram Panchayat out of which 19 BPL/AAY beneficiaries died and 21 BPL beneficiaries migrated from Chamakpur G.P. leaving behind nobody from the family to receive the BPL/AAY rice though against their card numbers BPL/AAY rice is being lifted by the Gram Panchayat Secretary-cum-VLW-cum-PEO, Chamakpur G.P.

3. It is also alleged that the Petitioner No.1 during his incumbency as VLW-cum-PEO Chamakpur G.P. 14.12.1998 to 19.07.2012 had lifted total of 16,860.35 quintal of rice under the head of BPL/AAY beneficiaries. Out of the total rice lifted, a quantity of 212.95 quintal has been shown to be distributed amongst 21 dead/migrated BPL/AAY beneficiaries, which is false and fraudulent. As a result of which, it is alleged that there was a misappropriation of government money to the tune of Rs.3,73,566/-, i.e. the differential cost of purchase/economic cost and subsidized cost of the rice and it is further alleged that during incumbency of Petitioner No.2 as VLW-cum-PEO of the said G.P. for the period from 08/2012 to 03/2014, a total quantity of 6722.76 quintal of rice were lifted and distributed under the heading BPL/AAY beneficiaries. Out of the said quantity of rice, 106.50 quintal of rice was shown to be distributed in the name of aforesaid 21 dead/migrated beneficiaries and the differential cost of purchase /economic cost and subsidized cost comes to the tune of Rs.2,26,435/-. It has also been alleged that since no surviving legal heirs were found against the aforesaid 21 cards, their names have been deleted from the list of BPL/AAY beneficiaries from the month of April-2014 by the C.S.O., Keonjhar.

4. Heard Mr.Smruti Ranjan Mohapatra, learned counsel for the Petitioners and Mr.Sangram Das, learned Standing Counsel for Vigilance Department. Perused the case records.

5. Mr. Mohapatra, learned counsel for the Petitioners submits that the Petitioners are no way connected with the alleged crime and they have been falsely implicated by the Informant only to harass them.

6. Mr. Das, learned Standing Counsel for the Vigilance Department submits that after registration of F.I.R., the investigation of the case has been completed by the Investigating Agency and the charge-sheet has been submitted against the Petitioners under Section 13(2) read with Section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 and Section 409 of I.P.C., as such, a prima facie case is made out against the Petitioners on the basis of materials available on record. He further submits that the Special Judge, Vigilance Department on being satisfied with the materials had taken cognizance of the alleged offences.

7. It is further apt to mention here that at the time of framing of charge, the present Petitioners filed an application under Section 227 of Cr.P.C. read with Section 239 Cr.P.C. to discharge the Petitioners from the alleged criminal liability. However, learned trial court after hearing the parties, vide its order dated 07.12.2017 has rejected the aforesaid application of the Petitioners. Such order

dated 07.12.2017 has been assailed in the present Revision Petition.

8. Learned Special Judge, Vigilance, Keonjhar after rejecting the application of the Petitioners under Section 227 Cr.P.C. read with Section 239 Cr.P.C. filed by the Petitioners went ahead to frame charge against the Petitioners. Accordingly, the following charges were framed against the Petitioners:

Charges framed against Pratap Chandra Mahanta (Petitioner No.1) :

First- That, you being a public servant, while working as Ex VLV cum PEO Chamakpur G.P. being the in charge of the FPS Chamakpur for PDS distribution lifted and shown migrated persons between the period from 20275 quintal of rice amounting to Rs.3,40,044/- in the name of dead and migrated persons between the period from 09/2008 to 07/2012, dishonestly misappropriated or otherwise converted for your own use which had been entrusted to you for distribution of TPDS (Targeted Public Distribution System) and thereby committed offence of misconduct u/s.13(1)(c) of the Prevention of Corruption Act, 1988 punishable u/s.13(2) of the said Act and within my cognizance.

Secondly-That, during the said period by abusing your position as a public servant you obtained the aforesaid amount of Rs.3,40,044/- and thereby committed criminal misconduct u/s.13(1)(d) of the Prevention of Corruption Act, 1988 punishable u/s.13(2) of the said Act, and within my cognizance.

Thirdly- That, during the aforesaid period being a public servant employed as such and in such capacity entrusted with certain property i.e. 20250.75 quintal of rice amount to Rs.3,40,044/- committed criminal breach of trust in respect of said property and thereby committed an offence punishable u/s.409 IPC, and within my cognizance. .

Charges framed against Subash Chandra Naik (Petitioner No.2)

First- That, you being a public servant, while working as Ex-VLV-cum-PEO Chamakpur G.P. lifted and shown distribution of 106.56 quintal of rice amounting to Rs.2,26,562/- in the name of dead and migrated persons between the period from 08/2012 to 3/2014, dishonestly misappropriated or otherwise converted for your own use which had been entrusted to you for distribution of TPDS (Targeted Public Distribution System) and thereby committed offence of misconduct u/s.13(1)(c) of the Prevention of Corruption Act, 1988 punishable u/s.13(2) of the said Act, and within my cognizance.

Secondly- That, during the said period by abusing your position as a public servant, you obtained the aforesaid amount of Rs.2,26,562/- and thereby committed criminal misconduct u/s.13(1)(d) of the Prevention of Corruption Act, 1988 punishable u/s.13(2) of the said Act, and within my cognizance.

Thirdly-That, during the aforesaid period being a public servant employed as such and in such capacity entrusted with certain property i.e. 106.56 Kgs. of rice amounting to Rs.2,26,562/-, committed criminal breach of trust in respect of

said property and thereby committed an offence punishable u/s.409 I.P.C. and within my cognizance.”

9. Mr. Mohapatra, learned counsel for the Petitioners contended that in the present case, the alleged misappropriation of rice amounting to Rs.3,40,044/- by Petitioner No.1 between the period from September-2008 to July, 2012. The alleged amount of misappropriation of Rs.2,26,562/- by the Petitioner No.2 is between August-2012 to March-2014. In the said premises, it is submitted by Mr. Mohapatra that both the Petitioners should not have been made to face one trial by framing two different charges and due to such irregularities, Petitioners are seriously prejudiced.

10. In the aforesaid context, learned counsel for the Petitioners relying on the provision of Section 219(1) Cr.P.C. submits that the order framing charge in the present case is in violation of the provision as envisaged under Section 219(1) of Cr.P.C. The provision of Section 219(1) of Cr.P.C. reads as follows :

“When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences whether in respect of the same person or not, he may be charged with and tried at one trial for, any number of then not exceeding three.”

11. Learned counsel for the Petitioners has also referred to and relied upon the provision as envisaged under Sections 212(2) and 220(2) of Cr.P.C., the same has been quoted hereunder:

“212. Particulars as to time, place and person:

(1) xx xx xx.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219.”

12. Relied upon the aforesaid provision, learned counsel for the Petitioners submits that the aforesaid provision makes it clear that the gross sum during the entire period of one year can be specified and while specifying the gross sum itself are to be specified failing which the Petitioners will be seriously prejudiced. He further submits that since the provision as envisaged under Section 212(2) and 220(2) of Cr.P.C. has not been followed by the trial court in the present case. The charge framed in the present case is defective and such defect is not curable. Accordingly, he has distinguished an argument that the rejection of Discharge Petition by the trial court is illegal and is liable to be set aside.

13. Learned counsel for the Petitioners further contends that the alleged misappropriation made by both Petitioners are pertaining to two different period,

therefore, the same cannot be tried together. As such, the charge framed by the learned trial court is defective.

14. Mr. Mohapatra, learned counsel for the Petitioners further contends that in view of the provision of law in Criminal Procedure Code, the trial court has committed a gross illegality by referring to the gross amount of misappropriation by the Petitioners in the charge. Moreover, the allegations are pertaining to the period more than one year. He further submits that when the period exceeds one year or charge does not satisfy the first and the last date during which the criminal breach of trust or dishonest misappropriation of money has taken place, the same will cause serious prejudice to the Petitioners and the charge so framed is a defective one. It is further contended that such defect cannot be cured or regularized by taking resort to the provision contained under Section 465 of Cr.P.C. It was further submitted that in view of Section 219(1) Cr.P.C., the Petitioners must be charged with not more than three offences of the same kind if it has been committed within a span of twelve months from the first and to the last of such offences whether in support of same person or not? Therefore, if an accused to have alleged to commit four distinct alleged offences of misappropriation involving separate and distinct as well as many, the prosecution is by law permits to try three of such offences in one trial, if the same is committed within a span of one year and further the remaining charges, if the same are beyond one year, the same to be tried at another trial. On such ground, learned counsel for the Petitioners submits that the framing of charge is defective and as such unsustainable in law.

15. Per contra, learned Standing Counsel for the Vigilance Department supports the order of the learned Special Judge (Vigilance), Keonjhar and he further submits that the learned trial court has not committed with any illegality by framing charges as indicated hereinabove and he has not committed any illegality by rejecting the application filed by the Petitioners under Section 227 read with Section 239 Cr.P.C.

16. Mr.Das further submits that in the event it is found that the charge of misappropriation involved in this case is clubbed for a period for existing one year, the same can be cured by segregating and taking into consideration each year as one unit. He further submits that on such technical objection, it cannot be said that the entire trial will be vitiated and the accused Petitioners are entitled to the benefit of discharge under Sections 227 Cr.P.C. read with Section 239 Cr.P.C.

17. Having heard learned counsel for the parties, this Court perused the charges framed by the trial court, which has been filed along with the Revision Petition at Annexure-4. A close scrutiny of the charges against both the Petitioners reveals that the same has been framed in three categories:

18. On a bare perusal of the analysis of the charges against the Petitioners, it is seen that the charges framed on three different counts are not inconsonance

with the provision of Criminal Procedure Code. Now, therefore, the question arises as to whether the defect in the form of charge is a mere irregularity, which is curable in nature or the same is a fatal mistake which would lead to termination of the trial in the present case.

19. Relying upon the judgment of this Court in the case of Krushna Chandra Behera vs. State of Orissa, reported in 2017 (I) ILR-CUT 351. Badrinath Naik vs. State, reported in (1993) 6 OCR – 58, State of Jharkhand through S.P., CBI vs. Laluu Prasad alias Lal Prasad Yadav, reported in AIR 2017 Supreme Court 3386. As such, the charge framed in the above matters are defects and the same is not in consonance with the provision contained in Criminal Procedure Code. More specifically the provisions contained in Sections 212(2), 219(1) and 220 (2) of the Cr.P.C.

20. In Lal Prasad Yadav's case (supra), Hon'ble Supreme Court of India while dealing with the issue of framing of charge and more specifically in the context of Section 212, 219, 220 of the Cr.P.C., in paragraphs-21 and 23 of the judgment it has been observed as follows:

21. When the accused is charged with criminal breach of trust or dishonest appropriation of money or other immovable property, it shall be sufficient to specify the gross sum or describe the moveable property, it shall be sufficient to specify the gross sum or describe the moveable property in respect of which offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items of exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 219 provided that the time included between the first and last of such dates shall not exceed one year. A charge shall contain such particular as to time and place of the alleged offence and time period shall not exceed one year. Time period and place of the offence is material in such cases.

23. It is apparent from section 212 read with section 219 that there have to be separate trials for different years covering the period of more than one year. Same kind of offence is a different thing than the "same offence" for the purpose of sections 219, 220 or 300. The scheme of law is clear that separate charges for distinct offences must be framed separately and they cannot be clubbed together for more than one year.

21. Learned Standing Counsel for the Vigilance Department relying upon the judgment in the case of Kadiri Kunhahammad vs. State of Madras, reported in AIR 1960 SC 661, submits that the trial court has not committed any illegality while framing charges against the Petitioner in the aforesaid case. However, in the event this Court comes to a conclusion that the charges had not been framed properly than the same can be construed to be a mere irregularity and as such the same can be cured by the learned trial court. In the aforesaid context, learned Standing Counsel for the Vigilance Department relying upon paragraphs

6, 7 and 8 of the judgment in Kadiri Kunhahammad 's case (supra), the relevant portion of the said judgment is quoted herein below:

"6. The last argument urged by Mr. Purshottam is that the charge in question contravenes the mandatory provisions of the proviso to Section 222 (2) of the Code, and according to him this contravention vitiates the whole trial and renders void the order of conviction and sentence passed against the appellant. Section 222 occurs in Ch. XIX which deals with the form of charges. Sub-section (1) of Section 222 mentions the particulars as to time and place of the alleged offence which should be included in the charge. The object of this provision is to give the accused person a reasonably sufficient notice of the matter with which he is charged. Sub-section (2) provides that, when an accused person is charged with criminal breach of trust, it is sufficient to specify the gross sum in respect of which the offence is alleged to have been committed and the dates between which the said offence had been committed. The proviso adds that it is unnecessary to specify particular items or exact dates provided that the time included between the first and the last of such dates shall not exceed one year. It is common ground that the breach of trust which gives rise to count one in the sixth charge covers a period between April 1949 and October 1951 which is more than one year and that is the basis of Mr. Purshottam's argument. We have already dealt with the effect of Section 235 (1). Under the said provision more offences than one committed by the conspirators can be tried together at a trial where all the conspirators are jointly tried; and to that extent Section 234 (2) cannot be invoked in such a case. That being so, Mr. Purshottam's argument means nothing more than this that the form of the charge is inconsistent with the proviso to Section 222 (2). If the first count in the sixth charge had been split up into two sub-counts, each one specifying the amount in respect of which breach of trust had been committed during the period of one year that would have met the requirement of the proviso to Section 222 (2).

7. The failure of the prosecution to split up the first count into two Sub-counts cannot obviously be regarded as introducing a fatal infirmity in the validity of the trial. It would be noticed that this argument is not one of misjoinder. It is based on the formal requirement prescribed by the proviso to Section 222 (2) as to how charges of breach of trust should be framed. There is no difficulty in holding that such an irregularity can be cured both under Section 225 and Section 537 of the Code, provided of course no prejudice has been thereby caused to the appellant's case.

8. It would be relevant to state that the breach of every provision of the Code does not necessarily make the trial invalid. In this connection we may incidentally point out that the question about the effect of the breach of statutory provisions contained in the Code has often been raised for judicial decision. In *Pulukuri Kottayya v. Emperor*, 74 Ind App 65: (AIR 1947 PC 67), the Privy Council has held that if the criminal trial is conducted substantially in the manner prescribed by the Code but some irregularity occurs in the course of such

conduct, the irregularity can be cured under Section 537, and none the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind. In that case the irregularity held proved consisted in the breach of the provisions of Section 162 of the Code. Having considered the relevant circumstances and facts proved in the case, the Privy Council held that the breach of Section 162 had caused no prejudice to the accused and could not sustain the argument that his trial was bad.”

22. Having heard the rival contentions of the parties and upon examination of the materials placed before this Court and upon careful scrutiny of the charges framed by the trial court in the case, this Court is of the considered view that the charge has not been properly framed. Moreover, the said defect is a mere irregularity and the same can be cured by the trial court. Accordingly, this Court sets aside the impugned order dated 07.12.2017 passed in VGR Case No.11 of 2014 by the learned Special Judge, Vigilance, Keonjhar and further the learned court below is directed to reconsider the matter in the light of the discussion made hereinabove as well as in view of the provision contained in Sections 212, 219 and 220 of Cr.P.C. and after providing opportunity of hearing to the accused Petitioners, learned court below shall do well to frame charge again and proceed further in the matter in accordance with law. Further, considering the fact that the FIR in the present case is of the year 2014, learned court below is directed to carry out the entire exercise indicated hereinabove within a period of two months from the date of communication of certified copy of this order after providing opportunity of hearing to the accused Petitioners.

23. With the aforesaid direction, the criminal revision petition stands disposed of. There shall be no order as to cost.

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