

(2003) 09 OHC CK 0058

In the Orissa High Court

Case No : Criminal Miscellaneous Case No's. 927, 928, 3217, 3232 and 3233 of 2002

Rajkumari Panigrahi and etc.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 05-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457

Citation : (2004) CLT 103 (Suppl CrI) : (2004) CriLJ 1004 : (2003) 26 OCR 552 : (2003) OLR 775 Supp

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

Bench : Single Bench

Advocate : B.P. Ray, S. Pujari, P.K. Patnaik, B. Sahoo, J.A. Reddy and S. Sharma, for the Appellant; D.K. Mohapatra, Standing Counsel (Vigilance), for the Respondent

Judgement

P.K. Tripathy, J.—All the aforesaid Criminal Misc. Cases are as against rejection of the applications u/s 457 of the Criminal Procedure Code (in short, "the Code") on 22-12-2001 by learned Chief Judicial Magistrate, Sambalpur in connection with Sambalpur Vig. G.R. Case Nos. 61 and 64 of 2001. Maheswar Kar, petitioner in CRMC No. 3217 of 2002 is the accused in the said Vig. G.R. Case. Rajkumari Panigrahi, petitioner in CRMC No. 927 of 2002 is his sister-in-law being his wife's younger sister. She is a married woman. Snehaprabha Panigrahi, petitioner in CRMC No. 928 of 2002 is the mother-in-law of the accused. She is a pensioner. Abharani Panigrahi, petitioner in CRMC No. 3232 of 2002 is the wife of the accused and Debasis Panigrahi, petitioner in CRMC No. 3233 of 2002 is the brother-in-law of the accused, being his wife's younger brother.

2. All the aforesaid CrI. Misc. Cases were heard analogously and are disposed of by this common order.

3. Vigilance Department conducted a raid in the house (quarter) of the accused while he was serving at Rourkela as the District Labour Officer and on 3-5-2001

and 4-5-2001 seized large number of documents consisting of bank deposits, valuable securities, fixed deposits etc. amounting to nearly half a crore of rupees. While the matter is still under investigation the investigating agency is of prima facie opinion that the accused possesses disproportionate assets to the tune of about 38 lakhs and that includes keeping money benami as well as in Joint accounts in the names of his wife and in-laws.

4. The accused and his aforesaid relatives filed five separate misc. cases u/s 457 of the Code for release of the bank pass books, fixed deposits, Kisan Vikas Patras etc. as per certain items of the seizure lists of 3-5-2001 and 4-5-2001 (the details of such documents and their serial numbers in the seizure lists have been noted in the respective impugned orders). Each of the petitioners contended that the money due on such documents and deposits are their self earning. Each of them also stated that the fixed deposits and the deposits like Kisan Vikas Patras have become matured for encashment and therefore such documents and valuable securities be released in their favour to operate the accounts and to encash the deposits. Learned Chief Judicial Magistrate has rejected all such applications on the self-same ground that because of the pendency of the investigation and allegation of huge amount of disproportionate assets it will not be appropriate to release such documents in favour of the respective petitioners.

5. In course of argument Mr. D. K. Mohapatra, learned Standing Counsel for the Vigilance Department advanced stiff resistance to the prayer of the petitioners for release of the said pass books and fixed deposits etc. on the ground on which learned C.J.M. rejected the applications of the petitioners. He also relied on the ratio in the case of State of Maharashtra Vs. Tapas D. Neogy, . In that case, Hon"ble Apex Court has considered the jurisdiction of the Investigating Officer u/s 102 of the Code to seize or prohibit operation of the bank account. The Hon"ble Apex Court is of the view that:

"xx xx xx It is well know that corruption in public offices has become so rampant that it has become difficult to cope with the same. Then again the time consumed by the Courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer."

6. Notwithstanding the aforesaid position of law Mr. B.P. Ray, learned counsel arguing for the petitioners contended that the fixed deposits and Kisan Vikas Patras etc. which have become matured for encashment if shall not be permitted to be encashed then that will not enure to the benefit of either of the parties. He argued that if ultimately it would be decided that accused had no link with such amount and that would not come within his assets, then in such case petitioners

would lose interest for encashment at a belated post-matured period. On the other hand, if the petitioners would be allowed to encash the same with any condition stipulated while releasing the documents then in the event of the said amount found to be within the disproportionate assets of the accused then that would be available to the Court for appropriate punishment keeping in view the provision in Section 16 of the Prevention of Corruption Act, 1988.

He further argued that such a solution to the situation is not opposed to the above stated principle enunciated by the Apex Court.

7. Mr. Ray also argued that the pension papers of the mother-in-law of the accused cannot be of any relevancy except to indicate the amount she receives towards pension and if that document shall not be released in her favour then she shall suffer for not getting her pension. Mr. Mohaptra, learned Standing Counsel, fairly states, that such document be released in her favour by retaining the xerox copy if the accused shall undertake to admit the xerox copy as evidence at the time of trial.

8. On due consideration of the contention of both the parties this Court directs that if fresh applications shall be filed by the petitioners for release of the fixed deposits, Kisan Vikas Patras and deposits of such nature for encashment on the ground of maturity of the period of the deposits, such applications be allowed by the Court below on such terms and conditions as will be deemed just and proper and that should include the condition of furnishing Bank guarantee to the extent of the maturity value of such deposits besides undertaking by the accused to not to claim prejudice in that respect or acceptance of xerox copies of such document as evidence from the side of the prosecution. In that respect, this Court is of the view that the deposits which have matured should not be permitted to loose interest and at the same time petitioners should not be given a free-hand to deal with the money without having the accountability and further that, accused should not take advantage of release of those documents to raise technical objection on admission/introduction of evidence or otherwise. The matter relating to release of the pension paper of Snehaprabha Panigrahi be also accordingly considered.

9. While passing the impugned orders learned C.J.M. should have visualised the aforesaid solution to pass appropriate order on the applications u/s 457 of the Code.

10. Therefore, while disposing of the CRMCs. in the aforesaid manner, it is directed that on filing of fresh applications, if any, by the concerned petitioners, after serving copy on the prosecution, such applications be considered and disposed of by the Court below expeditiously and preferably within a period of two weeks from the date of service of copy on the prosecution. The C.D. in sealed cover produced by learned Standing Counsel be returned to him in that condition.