

(2025) 05 OHC CK 1196

In the Orissa High Court

Case No : Criminal Revision No. 483 Of 2024

Sarat Chandra Dash

APPELLANT

Vs

State Of Odisha (Vigilance) Vs

RESPONDENT

Date of Decision : 15-05-2025

Acts Referred:

Constitution of India, 1950 — Article 21

Code of Criminal Procedure, 1973 — Section 161, 227, 397, 401, 482

Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(1)(e), 13(2), 20

Citation : (2025) 05 OHC CK 1196

Hon'ble Judges : S. S. Mishra, J

Bench : Single Bench

Advocate : M/s. Adyasidhi Mishra, S. Rath, D.K. Mohanty, P. Soni, S. Bahadur, Sangram Das

Final Decision : Allowed

Judgement

S.S. Mishra, J

1.The present Criminal Revision Petition has been filed under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, challenging the order dated 02.08.2024 passed by the learned A.D.J.-cum-Special Judge (Vigilance), Dhenkanal in T.R. Case No.09 of 2023 arising out of Vigilance G.R. Case No.61 of 2012, whereby the learned trial Court rejected the discharge petition filed by the petitioner seeking discharge from the offences under Sections 13(2) read with 13(1)(d)(e) of the Prevention of Corruption Act, 1988 (for short "the P.C. Act").

2. The brief facts leading to the present Revision Petition are that the petitioner, a retired government auditor now aged 67 years, was serving as Auditor in the Local Fund Audit (LFA), Dhenkanal. On 07.07.2012, based on an intelligence input, officials of the Vigilance Department allegedly intercepted the petitioner outside his office premises and seized a sum of Rs.1,14,800/- from his possession. It was alleged that the said sum was illicitly collected from various

officers of Kaniha Block to regularize audit objections.

3. An F.I.R. was registered under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act on the same day, i.e., 07.07.2012. However, despite the passage of more than 11 years, the investigating agency failed to conclude the investigation with due diligence and only submitted the charge-sheet belatedly on 21.09.2023. The sanction for prosecution was obtained much later on 25.08.2023.

4. The investigation revealed that the petitioner, Sarat Chandra Dash, then Auditor of the Local Fund Audit Office, Dhenkanal, was assigned to audit the accounts of Kaniha Block, Angul, during which he allegedly collected illegal gratification from various officers to overlook audit irregularities. Acting on credible intelligence, a Vigilance team intercepted him near the District Audit Office, Dhenkanal, on 07.07.2012. Upon search, Rs.1,14,800/- in cash along with various personal and official documents were recovered from his possession. The petitioner failed to provide a satisfactory explanation to the source of the seized amount, and his statements were inconsistent and uncorroborated by any financial record.

5. Further investigation involved examination of his wife, brother, and other relatives, all of whom denied having given him any such amount. Verification of bank statements also showed no recent withdrawals justifying possession of the seized cash. The amount was found disproportionate to his known and legal sources of income. After a thorough investigation by multiple Vigilance Officers ranging for more than a decade and upon obtaining sanction from the competent authority, charge-sheet was filed on 21.09.2023 under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act, 1988, in Cuttack Vigilance P.S. Case No.61 of 2012.

6. Upon submission of the charge-sheet, the learned Special Judge (Vigilance), Dhenkanal, vide order dated 03.10.2023 in V.G.R. Case No.61 of 2012 took cognizance of the offences based on sanction order, statement of witnesses recorded under Section 161 Cr.P.C. and other connected documents form part of the challan filed by the I.O. arriving at a prima facie satisfaction.

7. The petitioner then challenged the said cognizance order by filing CRLMC No.5465 of 2023. This Court vide order dated 12.04.2024 while disposing of the same granted liberty to the petitioner to file a discharge petition before the learned trial Court.

8. The petitioner, accordingly, filed a detailed discharge petition enumerating various legal and factual infirmities in the prosecution's case. However, by the impugned order dated 02.08.2024, the learned trial Court rejected the said petition stating that prima facie materials are found from the collected documents for consideration of framing of the charge against the accused under Section 13(2) r/w 13 (1)(d)(e) of the P.C. Act, 1988, so there is no merit in this petition seeking discharge of the accused.

9. Heard Ms. Adyasidhi Mishra, learned counsel for the petitioner and Mr.

Sangram Das, learned Standing Counsel for the Vigilance Department.

10. Ms. Mishra, learned counsel for the petitioner submitted that the impugned order dated 02.08.2024 rejecting the petitioner's discharge application is unsustainable in law and deserves to be set aside, as it suffers from non-application of judicial mind, mis-appreciation of facts, and failure to consider the absence of foundational ingredients necessary to frame charges under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act.

11. Ms. Mishra, learned counsel contended that there is no direct or circumstantial evidence indicating that the seized cash amounting to Rs.1,14,800/- was received by the petitioner by way of illegal gratification. The prosecution has failed to identify any complainant, victim, or witness who allegedly paid or saw the money being accepted as a bribe, despite the nature of the allegation requiring such evidence.

12. Learned counsel further pointed out that the two government officials who accompanied the petitioner during the audit, namely, Sri Akshaya Kumar Muduli and Sri Fagu Behera, were not examined by the investigating agency, nor cited as witnesses in the charge-sheet. Their omission from the list of witnesses is fatal, as they were material witnesses to establishing whether any illegal activity occurred during the course of the audit.

13. It was also submitted by the learned counsel for the petitioner that the petitioner has provided a reasonable and plausible explanation for the possession of the seized amount, which was advanced to him by his brother for the purpose of construction of a joint family house at Chandikhole. The bank statement showing a cash withdrawal of Rs.2,75,000/- from the brother's account prior to the incident has been placed on record which was ignored by the learned trial Court.

14. It was argued that the prosecution had failed to delineate the "check period" or to conduct any asset-liability analysis to demonstrate that the petitioner possessed assets disproportionate to his known sources of income. In the absence of such exercise, no offence under Section 13(1)(d)(e) of the P.C. Act is made out.

15. Ms. Mishra, learned counsel, further submitted that the inordinate and unexplained delay of over 11 years in filing the charge-sheet and obtaining prosecution sanction violates the petitioner's unalienable right to a speedy trial guaranteed under Article 21 of the Constitution. The delay has severely prejudiced the petitioner's ability to mount a defence and has led to immense mental, physical and financial hardship. Undergoing the ordeal of delayed procedure of investigation has caused infliction of punishment to the petitioner.

16. Lastly, it was submitted that the learned trial Court failed to examine whether a prima facie case existed to sustain the prosecution on the basis of

cogent materials. In a case involving serious penal consequences under the P.C. Act, mechanical framing of charges without basic evidentiary support amounts to abuse of process and deserves judicial interference under Section 397/401 of Cr.P.C.

17. Mr. Das, learned Standing Counsel for the Vigilance Department opposed the Revision Petition and submitted that the learned trial Court has rightly rejected the discharge application after considering the materials on record which, according to the prosecution, make out a prima facie case against the petitioner under Sections 13(2) read with 13(1)(d)(e) of the P.C. Act.

18. It was contended that the seizure of Rs.1,14,800/- from the petitioner's possession outside the office of the BDO, Kaniha Block, immediately after the audit, raises serious suspicion and supports the case of abuse of official position for obtaining undue advantage.

19. Mr. Das, learned Standing Counsel also contended that the delay in filing of the charge-sheet or obtaining sanction does not by itself vitiate the trial unless prejudice is demonstrably caused. In the present case, the sanction has been duly obtained and there is no illegality in the cognizance order or framing of charges that warrants interference by this Court.

20. The present case is emanating from a complaint allegedly received from reliable sources on 07.07.2012, which was reduced down in writing. The prosecution alleged that the petitioner was apprehended and on his personal search, Rs.1,14,800/- was recovered. Since he has given prevaricated statements to justify the possession of the said amount, it was presumed that the money he has collected by illegal manner while misusing his official position. The apprehension, search and seizure were made on 07.07.2012. It took more than a decade for the Investigating Agency to procure sanction order from the authority to prosecute the petitioner. On 25.08.2023, the Special Secretary to Government G.A. & P.G. Department, Bhubaneswar had accorded the sanction. A month thereafter, i.e., on 21.09.2023, the charge-sheet has been filed against the petitioner. Subsequently, vide order dated 03.10.2023, the learned Special Judge (Vigilance), Dhenkanal has taken cognizance of the offences punishable under Sections 13(2) read with Section 13(1)(d)(e) of the P.C. Act against the petitioner. The petitioner approached this Court by filing CRLMC No.5465 of 2023 seeking quashing of the entire charge-sheet. This Court vide order dated 12.04.2024 rejected the prayer made by the petitioner by dismissing the application, however, granted liberty to the petitioner to move before the learned trial Court seeking discharge. On the strength of the said order dated 12.04.2024, the petitioner approached the learned trial Court by filing an application under Section 227 of Cr.P.C. seeking discharge. The learned A.D.J.-cum-Special Judge (Vigilance), Dhenkanal vide order dated 02.08.2024 in T.R. Case No.09 of 2023 rejected the same, inter alia, observing as under:-

"The background of the case is that, while the accused was working as Auditor,

Local Fund Audit, Dhenkanal, had been to Kaniha Block Angul, in the month of May, 2012 for audit of accounts of Kaniha Block along with another Auditor Akshaya Kumar Muduli and peon Fagu Behera of District Local Fund Audit, Dhenkanal. During that audit, accused Sarat Chandra Dash, being a public servant had collected huge amount from the different officers of the Block illegally to regularize the defects pointed out during the audit and the said information came to the knowledge of the S.P. Vigilance, CD, Cuttack. On the direction of the S.P, Vigilance, CD, Cuttack, the accused was intercepted at Dhenkanal Town near Local Fund Audit Office, Dhenkanal on 07.07.2012 in presence of independent witnesses and vigilance staff and during search, an amount of Rs. 1,14,800/- was recovered from the carry bag of the accused, to which he could not satisfactorily account for such possession and the same has been acquired by him illegally abusing his official position and has accumulated the above cash illegally which is considered disproportionate to his known and legal sources of income and Sri H.K. Behera, D.S.P, Vigilance seized the above cash in presence of the witnesses. After obtaining sanction for prosecution against accused Sarat Chandra Dash, and as there is prima-facie evidence is made out against him, the I.O submitted charge sheet U/s.13(2) r/w 13(1)(d)(e) of the P.C Act, 1988 vide C.5 No.28, dtd.21.09.2023.

On perusal of the case record, It is found that, on the alleged date and time of search of his person and belongings, on search a sum of Rs.1,14,800/- (rupees one lakhs fourteen thousand eight hundred) of different denomination was recovered from his hand bag and on being asked by the vigilance team regarding the possession of such huge amount, the accused gave prevaricating statements by saying that, he has received Rs.20,000/- from his son Biswa Prakash Dash about 20 days back and on 28.06.2012 he had taken the amount of Rs.1,00,000/-(one lakh) from his wife who had obtained the same from his brothers (brothers of the accused) for payment to the Cement Dealer and on verification, the I.O found those pleas false and as the accused could not give any satisfactory account of possession of Rs.1,14,800/- has implicated him in this case.

However, there is nothing on record to show that, he has received Rs.20,000/- from his son Biswa Prakash Dash about 20 days back and on 28.06.2012 he had taken the amount of Rs.1,00,000/- (one lakh) from his wife who had obtained the same from his brothers (brothers of the accused). The accused could have filed the related bank statements along with his petition, but he has not done so. Although, he has submitted that, his brother had withdrawn rupees one lakh on 28.06.2012 but no prima-facie material is brought on record. On the other hand, the recovery of such a huge amount from the exclusive and conscious possession of the accused is itself sufficient to proceed against the accused.

It is the settled proposition of law that at the stage of framing of charge, the Court will not make a detailed analysis of the evidence proposed to be led by the prosecution but it is sufficient if the same makes out a prima-facie case. No

meticulous analysis of the evidence is to be addressed at this stage. Thus, when prima-facie materials are found from the collected documents for consideration of charge against the accused U/s.13(2) r/w 13(1)(d)(e) of the P.C. Act.1988, there is no merit in such petition seeking discharge of the accused.

As such, I find the petition filed on behalf of the accused U/s 227 of Cr.P.C. being devoid of any merit and hence stands rejected. Put up on 02.09.2024 for consideration of charge against the accused."

The petitioner is aggrieved by the said order and approached this Court by filing the present Criminal Revision Petition.

21. While attacking the impugned order dated 02.08.2024, the petitioner has raised many points which have already been enumerated in the preceding paragraphs. I am not inclined to deal with the merits of the case at this stage as the petitioner is trying to defend his case on the basis of the documents which are not form part of the charge-sheet. At this stage, the revisional jurisdiction of this Court under Section 397/401 of Cr.P.C., is forbidden to examine the probative value of the documents placed before this Court and also to examine the veracity of the defence projected by the petitioner so as to explain the legitimate source of income, i.e., Rs.1,14,800/-. However, taking into consideration the facts unfolded in the present case rather, I am inclined to examine the issue as to whether in absence of a check period and on the basis of the isolated recovery, a case of disproportionate asset under Section 13(1)(d)(e) of the P.C. Act can be thrashed upon the petitioner or not? And I am inclined to examine the effect of the delay in investigation and submission of the charge-sheet belatedly.

The delay in the present case is about 11 years. In a catena of judgments, the Hon'ble Supreme Court has already settled the law that the right to speedy trial in a criminal prosecution is an inalienable right guaranteed under Article 21 of the Constitution of India. This right is applicable not only to the actual proceeding before the Court but also includes within its sweep the preceding police investigation. In this case, though the case was not a complicated one rather relating to an isolated recovery, still it took 11 years for the vigilance department to conclude the investigation. Therefore, in that context, it would be apt to rely upon the judgment of the Hon'ble Supreme Court in the case of Mahendra Lal Das vrs. State of Bihar and Ors., reported in 2002 (1) SCC 149. Relevant part of the said judgment reads as under:-

"In cases of corruption the amount involved is not material but speedy justice is the mandate of the Constitution being in the interests of the accused as well as that of the society. Cases relating to corruption are to be dealt with swiftly, promptly and without delay. As and when delay is found to have been caused during the investigation, inquiry or trial, the concerned appropriate authorities are under an obligation to find out and deal with the persons responsible for such delay. The delay can be attributed either to the connivance of the authorities with

the accused or used as a lever to pressurise and harass the accused as is alleged to have been done to the appellant in this case. The appellant has submitted that due to registration of the case and pendency of the investigation he lost his chance of promotion to the post of Chief Engineer. It is common knowledge that promotions are withheld when proceedings with respect to allegations of corruption are pending against the incumbent. The appellant has further alleged that he has been deprived the love, affection and the society of his children who were residing in foreign country as on account of the pendency of the investigation he could not afford to leave the country."

Echoing the same principle, the Hon'ble Supreme Court in the matter of Hasmukhlal D. Vora and another vrs. The State of Tamil Nadu, reported in Criminal Appeal No. 2310 of 2022 has held as under:-

"23 There has been a gap of more than four years between the initial investigation and the filing of the complaint, and even after lapse of substantial amount of time, no evidence has been provided to sustain the claims in the complaint. As held by this Court in Bijoy Singh & Anr. Vs State Of Bihar, (2002) 9 SCC 147 inordinate delay, if not reasonably explained, can be fatal to the case of the prosecution. The relevant extract from the judgment is extracted below:

"Delay wherever found is required to be explained by the prosecution. If the delay is reasonably explained, no adverse inference can be drawn, but failure to explain the delay would require the Court to minutely examine the prosecution version for ensuring itself as to whether any innocent person has been implicated in the crime or not. Insisting upon the accused to seek an explanation of the delay is not the requirement of law. It is always for the prosecution to explain such a delay and if reasonable, plausible and sufficient explanation is tendered, no adverse inference can be drawn against it."

24. In the present case, the Respondent has provided no explanation for the extraordinary delay of more than four years between the initial site inspection, the show cause notice, and the complaint. In fact, the absence of such an explanation only prompts the Court to infer some sinister motive behind initiating the criminal proceedings.

25. While inordinate delay in itself may not be ground for quashing of a criminal complaint, in such cases, unexplained inordinate delay of such length must be taken into consideration as a very crucial factor as grounds for quashing a criminal complaint."

22. Even in the case of Vakil Prasad Singh vrs. State of Bihar, reported in (2009) 3 SCC 355, the Hon'ble Supreme Court has held as under:-

"18. Time and again this Court has emphasised the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of CrPC [in particular, Sections 197, 173, 309, 437(6) and 468, etc.] and the constitutional protection enshrined in Article 21 of the Constitution.

Inspired by the broad sweep and content of Article 21 as interpreted by a seven-Judge Bench of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] and in *Hussainara Khatoon (1) v. State of Bihar* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] this Court had observed that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. It was also observed that: [*Hussainara Khatoon (1) case* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] , SCC p. 89, para 5]

"5. ... No procedure which does not ensure a reasonably quick trial can be regarded as ?reasonable, fair or just? and it would fall foul of Article 21."

The Court clarified that speedy trial means reasonably expeditious trial which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

19. The exposition of Article 21 in *Hussainara Khatoon (1) case* [(1980) 1 SCC 81 : 1980 SCC (Cri) 23] was exhaustively considered afresh by the Constitution Bench in *Abdul Rehman Antulay v. R.S. Nayak* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] .

Referring to a number of decisions of this Court and the American precedents on the Sixth Amendment of their Constitution, making the right to a speedy and public trial a constitutional guarantee, the Court formulated as many as eleven propositions with a note of caution that these were not exhaustive and were meant only to serve as guidelines.

20. For the sake of brevity, we do not propose to reproduce all the said propositions and it would suffice to note the gist thereof. These are: (*A.R. Antulay case* [(1992) 1 SCC 225 : 1992 SCC (Cri) 93] , SCC pp. 270-73, para 86)

(i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily;

(ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and retrial;

(iii) in every case, where the speedy trial is alleged to have been infringed, the first question to be put and answered is — who is responsible for the delay?;

(iv) while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on—what is called, the systemic delays;

(v) each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may

be taken as presumptive proof of prejudice. In this context, the fact of incarceration of the accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case;

(vi) ultimately, the court has to balance and weigh several relevant factors—?balancing test? or ?balancing process?—and determine in each case whether the right to speedy trial has been denied;

(vii) ordinarily speaking, where the court comes to a conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open and having regard to the nature of offence and other circumstances when the court feels that quashing of proceedings cannot be in the interest of justice, it is open to the court to make appropriate orders, including fixing the period for completion of trial;

(viii) it is neither advisable nor feasible to prescribe any outer time-limit for conclusion of all criminal proceedings. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint;

(ix) an objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in the High Court must, however, be disposed of on a priority basis.”

23. Conjoint reading of all the judgments vis-à-vis the facts of the present case makes it abundantly clear that the delay that has caused in the present case is fatal. Therefore, even if the petitioner is subjected to trial in a case of present nature at an inordinate belated stage, it may not be possible for the prosecution to secure conviction. The right of the accused-petitioner to defend his case is also marred to an irreparable extent. Hence, further procrastination of the proceeding in the given facts and circumstances of the case would neither be beneficial to the prosecution nor the defence, therefore, the trial is destined to be a futile exercise. In this context, I am reminded of the judgment of the Hon’ble Supreme Court in the cases of *Gian Singh vs. State of Punjab* and another, reported in 2012 (10) SCC 303 and *B.S. Joshi & others vs. State of Haryana & another*, reported in (2003) 4 SCC 675. The Hon’ble Supreme Court has already held that while exercising the jurisdiction under Section 482 of Cr.P.C. or revisional jurisdiction, the Court can scuttle the trial if it arrived at a conclusion that there is a bleak chance for the prosecution to obtain a conviction. In this context, the judgment in *B.S Joshi (Supra)* by Hon’ble Supreme Court, while referring to the judgment of *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.*, reported in [(1988) 1 SCC 692] assume importance.

For convenience of ready reference, the following paragraph of the said judgment in B.S. Joshi (supra) reads as under:-

"In *Madhavrao Jiwajirao Scindia & Ors. v. Sambhajirao Chandrojirao Angre & Ors.* [(1988) 1 SCC 692], it was held that while exercising inherent power of quashing under Section 482, it is for the High Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. Where, in the opinion of the Court, chances of an ultimate conviction is bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the court may, while taking into consideration the special facts of a case, also quash the proceedings."

24. It is trite that clearly defined check period is indispensable in DA cases. It serves as a foundation for comparing the accused's assets and expenditures against the known source of income. Absence of an improper and undefined check period would lead to the collapse of the prosecution's case. The necessity of a clearly defined check period in disproportionate assets (DA) cases is firmly rooted in judicial precedent, as it forms the bedrock for accurately assessing the accused's assets, expenditures, and income. In *State of Maharashtra v. Pollonji Darabshaw Daruwalla* (AIR 1988 SC 88), the Hon'ble Supreme Court underscored that an improperly demarcated check period risks rendering the prosecution's calculations speculative, as omissions in accounting for pre-existing assets or income sources such as agricultural holdings or inherited property can invalidate the entire case. The Hon'ble Supreme Court held thus:

"The choice of the period must necessarily be determined by the allegations of fact on which the prosecution is founded and rests. However, the period must be such as to enable a true and comprehensive picture of the known sources of income and the pecuniary resources and property in possession of by the public-servant either by himself or through any other person on his behalf, which are alleged to be so disproportionate. In the facts and circumstances of a case, a ten year period cannot be said to be incapable of yielding such a true and comprehensive picture. The assets spilling-over from the anterior period, if their existence is probablised, would, of course, have to be given credit-to on the income side and would go to reduce the extent and the quantum of the disproportion.

On this aspect, the High Court observed:

"... 20. But at the same time, it has also to be remembered that the prosecution, without showing any reason has selected to begin the calculation of the assets from 1958. I do not see any substantial reason in the selection of the year 1958. It is on record that from 1954, the accused had become the Appraiser. It is also on record that from year 1958 the accused had separated from his brother mother after the child was born to his wife. When I a the Public Prosecutor for the reason for selecting the period of 1958 to 1968, he said that it was done

because the prosecution could lead evidence so as to show that the investment during these 10 years would be disproportionate of assets compared to the moneys received. Looking to the logic of the prosecution, if amounts invested upto 1958 excluded by themselves, I see considerable force in Vashi's arguments that the first year of 1958 should also be considered along with the previous years. There is no charm in selecting the year. I think that the prosecution would have been in a better position instead of selecting the period of 1958 to 1968, it had taken the entire period service from 1946 to 1968 and given credit of the amount that he has earned against all the assets that he had collected. It is therefore difficult to understand why the prosecution has chosen the period from 1958 to 1968 ".... 20. We have carefully considered this evidence of the Police Inspector but still we are not convinced about the selected of the period. We feel that the prosecution by selecting the check period of 10 years, when the accused had put in service from 1946 to 1968, i.e. for 22 years has done something whereby the chances of prejudicing the case of the accused are there."

This principle was also reaffirmed in *State of Maharashtra v. Dnyaneshwar Laxman Rao Wankhede*, reported in (2010) 2 SCC (Cri.) 385, where the prosecution's failure to conclusively establish the timeline of alleged bribes and income sources led to acquittal, highlighting the cascading effects of an ambiguous check period on evidentiary reliability. Similarly, recent judgments like *Akshaya Kumar Nayak v. State of Odisha (Vigilance)*, in CRLA No.148 of 2020, disposed of on 30.07.2024 and *Damodar Das v. State of Odisha*, in CRLA No.682 of 2023, disposed of on 07.05.2024, have emphasized that deviations from a rigorously defined check period such as excluding income from undisputed landholdings or misaligning expenditure timelines fatalize the prosecution's ability to prove "known sources of income" under the Prevention of Corruption Act. Courts consistently stress that even minor discrepancies in the check period, such as overlapping dates or unverified asset valuations, create reasonable doubt, necessitating acquittal.

25. The present case involves an isolated recovery of a sum of Rs.1,14,800/- from the possession of the petitioner. There is no evidence brought on record by the IO in the charge sheet regarding demand for gratification or extending illegal favours to anyone by the petitioner. It's only alleged that on demanding an explanation from the petitioner regarding the source of acquisition of the amount he gave inconsistent answer, however, the period of the source of income was not specified. In absence of provision specific period during which the known source of income causing the acquisition of the amount is prejudicial to the petitioner. As a result, at the belated stage, i.e. after 11 years, subjecting the petitioner to trial to explain the source of an isolated recovery on a particular date is virtually impossible. Since the presumption under Section 20 of the P.C. Act operates against the petitioner, he has to discharge the burden of proving the source. Hence, delay in prosecution is fatal to the defence of the petitioner. Moreover, in absence of a defined and specific check period being provided by the prosecution, the petitioner is prejudicially positioned to discharge the burden of

presumption under section 20 of the P.C. Act.

26. Taking into account the foregoing discussions in toto, I am of the considered view that the impugned order dated 02.08.2024 passed by the learned A.D.J.-Cum-Special Judge (Vigilance), Dhenkanal in T.R. Case No.09 of 2023 arising out of Vigilance G.R. Case No.61 of 2012 is not sustainable. Hence, the same is set aside. The petitioner is discharged of all charges.

27. Accordingly, the CRLREV is allowed and disposed of.

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