(2023) 07 OHC CK 0025

In the Orissa High Court

Case No : CRLMC No.2653 Of 2022

Smt. Anuradha Sahoo — APPELLANT

Vs

State Of Odisha (Vigilance) — RESPONDENT

Date of Decision : 03-07-2023

Acts Referred:

Code of Criminal Procedure, 1973 — Section 482
Indian Penal Code, 1860 — Section 109
Prevention of Corruption Act, 1988 — Section 1391)(e), 13(2)
Income Tax Act, 1961 — Section 44AE

Citation : (2023) 07 OHC CK 0025

Hon'ble Judges : R.K. Pattanaik, J

Bench : Single Bench

Advocate : Pravash Ch. Jena, B.S. Tripathy, Niranjan Maharana

Final Decision : Dismissed

Judgement

R.K. Pattanaik, J

1. Instant petition under Section 482 Cr.P.C. is filed by the petitioner assailing the impugned order of cognizance dated 24th June, 2022 passed in VGR Case No.31 of 2011 (T.R. Case No.7 of 2022) by the learned Special Judge (Vigilance), Cuttack corresponding to Cuttack Vigilance P.S. Case No.31 of 2011 and for quashing of the entire proceeding on the grounds inter alia that the same is not tenable in law, inasmuch as, no prima facie case is made out against her with respect to the alleged offences under Sections 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and Section 109 IPC and therefore, the same is liable to be interfered with by invoking the inherent jurisdiction of this Court.

2. In fact, the DSP, Vigilance, CD, Cuttack lodged FIR on 31st May, 2011 stating therein the fact that pursuant to an allegation of possession of disproportionate assets beyond the source of income of the petitioner’s husband, an enquiry was conducted which revealed the details of the acquisition of immovable and movable assets by the family. It was alleged that the husband accused during his

service period between October, 1981 and the date of search on 25th November, 2010 acquired the disproportionate assets and he being a public servant could not satisfactorily account it for which constituted commission of an offence punishable under Section 13(2) read with 13(1)(e) of the PC Act.

3. A copy of the FIR is at Annexure-1 and it is gone through.

4. As earlier stated, the petitioner is the wife of the principal accused, who had earlier approached this Court in CRLMC No.3264 of 2011 which was disposed of with certain directions connected to the investigation as to whether the assets of other family members including the petitioner have been included, as such acquisitions were claimed to be from individual and independent sources of income. According to the petitioner, she is having separate source of income from transport business and diary firm and was regularly filing income tax return during the financial years 1999-2000 to 2010-2011 as against gross total income and such business was intimated to the employer of the accused husband and therefore, the said amount is required to be taken into consideration as her admitted income not being a part of the income shown as disproportionate. That part, the petitioner claimed to have income as an entrepreneur being a member of Jagatsinghpur District Truck Owner Association. Precisely with the above claim, the petitioner challenged the impugned order under Annexure-1 and prays for quashing of the entire proceeding in connection with T.R. No.7 of 2022 pending before the learned Special court.

5. Heard Mr. Jena, learned counsel for the petitioner and Mr. Maharana, learned counsel for the Vigilance Department.

6. While supporting the claim of the petitioner, Mr. Jena refers to a copy of this Courts' order dated 30th January, 2012 passed in CRLMC No.3264 of 2011 and also a copy of the intimation by husband regarding the income of the petitioner during the assessment year-2000-01 to 2011-2012 and acknowledgements of the income tax returns as at Annexure-5 series and also other documents such as loan accounts and loading passport of Jagatsinghpur District Truck Owner Association (Annexure-6 series) to suggest that the petitioner is a business woman having independent source of income and therefore, she could not have been chargesheeted along with the accused husband with the aid of Section 109 IPC. It has been reiterated by Mr. Jena that the petitioner has been filing income tax returns every financial year as per Section 44 AE of the Income Tax Act, however, all such aspects about her income separate from the accused husband were not duly taken cognizance of during investigation despite a specific direction in that regard by this Court while disposing of CRLMC No.3264 of 2011 and hence, the initiation of the prosecution with the submission of chargesheet followed by Annexure-1 and the entire proceeding corresponding to VGR Case No.31 of 2011 is unsustainable in law as against her.

7. On the other hand, Mr. Maharana, learned counsel for the Vigilance Department referring to the fact that a detailed investigation was held and

ultimately, it resulted in submission of chargesheet against the petitioner as well contends that the impugned order of cognizance under Annexure-1 is absolutely justified and according to law. It is further contended that the petitioner's husband is a public servant whose house was searched with other places, later to which, the FIR was lodged with the allegations that he acquired disproportionate assets. It is claimed by Mr. Maharana that during investigation, it was revealed that the petitioner, a house wife but was filing income tax returns showing her income from transport business and dairy firm, however, it also disclosed that there was no supporting evidence with respect to her source of income in managing the dairy firm and running the transport business, inasmuch as, no evidence was found at the time of search except showing ownership in respect of a vehicle. It is alleged that the petitioner, who has been a house wife knowing fully well that she had no sources of income intentionally aided and allowed her accused husband to acquire huge assets in her name to cover up the ill-gotten money thereby abetted in the commission of the offence. At lastly, it is submitted by Mr. Maharana that in the meantime, investigation was concluded and chargesheet since filed with the evidence on record showing the involvement of the petitioner, the learned court below did not commit any error or illegality while taking cognizance of the offence along with Section 109 IPC. It has been brought to the notice of the Court by Mr. Maharana that the petitioner's husband had filed CRLMC No.1111 of 2022 for quashing of the criminal proceeding on the plea of delay and right to speedy trial which was considered and disposed of with a reasoned order dismissing it on 10th August, 2022. In other words, it is contended that a plea of delay on enquiry and investigation cannot be a ground anymore to dismantle the prosecution and that apart, since a prima facie case is made out, the petitioner as against whom the learned court below has taken cognizance of the offence with the aid of Section 109 IPC, all such matters related to her alleged claim of independent and separate income should be left open for a decision during the trial.

8. Apart from merits of the case, Mr. Jena, learned counsel for the petitioner refers to the following decisions, such as, Abdul Rahman Antulay Vrs. R.S. Nayak 1992 (1) SCC 225; Biswanath Prasad Singh Vrs. State of Bihar 1993 AIR SCW 3631; Santosh De Vrs. Archana Guha and Others AIR 1994 SC 1229; Pankaj Kumar Vrs. State of Maharashtra and Others AIR 2008 SC 3077; Surendra Nath Mishra Vrs. State of Odisha and Another 2022(I) OLR 352 and Rama Chandra Behera Vrs. State of Orissa and Another decided in CRLMC No.1741 of 2010 while challenging the continuation of the prosecution on the ground of delay since the chargesheet was submitted after a lapse of 11 years.

9. Admittedly, the FIR was lodged on 31st June 2011 against the husband of the petitioner for having committed offences under Sections 13(2) read with 13(1)(e) of the PC Act in respect of the block period between October, 1981 and 25th November, 2010 and ultimately, chargesheet was submitted on 25th April, 2022. While dealing with under trial prisoners, the Apex Court in Hussainara Khatoon and Others Vrs. Home Secretary, Bihar and Others held that an accused is

entitled to right to speedy trial, however, sympathy for the under trials, who are in jail for long turn on account of pendency of cases would have to be balanced having regard to the effect the crime on the society in a given fact situation. The decision of the Supreme Court in Abdul Rahman Antulay (supra) is also an authority on the above subject. It has been reiterated by the Apex Court quite often in one of its decisions reported in (2012) 9 SCC 408 (Mohd Hussain@Julfikar Ali Vrs. The State (Govt. of NCT) Delhi) reiterated the law that it is neither advisable none practicable to fixe any time limit for trial of offence. It has also been observed therein that such rule cannot be invoked merely to shift the burden of proving justification un to the shoulder of the prosecution; in every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay and at the same time, it is also duty of the court to weigh all the circumstances of a given case before taking a decision thereon and highlighted the fact that the Supreme Court of the United State of America too has repeatedly refused to fix any ouster time limit in spite of 6th Amendment nor it is in favour of fixing any such limit while upholding the guarantee of rightful speedy trial. Considering the facts on record, the Court is however not inclined to entertain such a ground of delay defeating justice so raised by the petitioner when similar question was earlier examined and decided. Hence, therefore, the authorities relied on by Mr. Jena, learned counsel for the petitioner on the said point are not elaborately discussed.

10. With regard to the other ground whether the petitioner had independent and separate income is a question to be answered on receiving evidence during trial. In case, such a ground is made out during enquiry, the petitioner may even demand for discharge. The Court is not inclined to delve into such aspect of the case regarding separate income of the petitioner which would require threadbare examination of evidence in exercise of jurisdiction under Section 482 Cr.P.C. In other words, the said ground should be left open for decision of the learned court below.

11. Accordingly, it is ordered.

12. In the result, the CRLMC stands dismissed.

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