
(2013) 02 OHC CK 0010
In the Orissa High Court
Case No : CRLREV No. 701 of 2012

Smt. Baijayanti Swain and Another

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 07-02-2013

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B
Prevention of Corruption Act, 1988 — Section 13(2)

Citation : (2013) 3 Crimes 89 : (2013) 1 OLR 803

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Advocate : Sanjib Swain, S. Ch. Panda and B.R. Rath, for the Appellant;

Judgement

B.K. Nayak, J.—The petitioners along with another are accused persons in T.R. Case No. 332 of 2007 pending in the Court of the learned Special Judge (Vigilance), Cuttack for alleged commission of offences u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act and Section 120-B of the IPC. The petitioner's application to discharge them having been rejected by the learned Special Judge (Vigilance), Cuttack by his order dated 03.11.2011, they have filed this criminal revision. In a nutshell the prosecution case is that on the allegation that the then Vice-Chairman, Cuttack Development Authority, Cuttack (co-accused) was showing undue official favour to the petitioner's firm, M/s. Chinmayee Enterprisers and thereby causing loss to the C.D.A., an enquiry was taken up. The enquiry revealed that co-accused, who was the Vice-Chairman. C.D.A. from 30.06.1999 to 16.05.2001 invited quotations vide Notice No. 19056/CDA dated 30.10.2000 for purchase of 5000 number of good quality well dressed granite stone pillars of size 5" x 5" x 2" for use in different sections of Bidanasi Project Area. On the basis of the quotation call notice, three firms including the petitioner's firm offered their quotation. The other two firms, namely, M/s. Juvenile Enterprisers, Talatelenga Bazar, Cuttack and M/s. Abhisek Enterprisers, Palitpara, Cuttack offered their quotations @ Rs. 111/- and 110/- whereas the petitioner's firm quoted Rs. 99/- per pillar stone. It was alleged that no Tender

Call Notice was given through the newspapers by the Vice-Chairman of the C.D.A. for wide publicity, though the materials worth Rs. 4,50,000/- were purchased in bulk, thereby violating the provisions of O.G.F. Rule 96 and O.P.W.D. Code 3-5-9. It is further alleged that after receipt of the quotations, the Dealing Assistant and Planning Member of the C.D.A. gave office note indicating that the earlier purchase rate per pillar stone was @ Rs. 38.90, but the Vice-Chairman, C.D.A. made negotiation with the petitioners and ultimately supply order was placed @ Rs. 90 per piece of pillar stone and an agreement was executed with the petitioner's firm. The firm supplied 5000 number of pillar stones in two phases. A sum of Rs. 2,70,000/- was paid to the firm towards the cost of 3000 pillar stones supplied in 1st phase and payment for the rest 2000 number of pillar stones is yet to be made. During enquiry it was also ascertained that the pillar stones of the size 6" x 5" x 2" were purchased by the Settlement Officer, Cuttack @ Rs. 35/- per piece during the relevant year. It is alleged that had there been wide publicity by the C.D.A. about the requirement they would have got the material at better competitive rates. It is thus alleged that the co-accused, Vice-Chairman of the C.D.A. conspiring with the petitioners for pecuniary gain had paid excess amount of Rs. 1,65,000/- with ulterior motive in disregard of the O.G.F. Rule and O.P.W.D. Code.

It is also alleged that during the investigation, it was found that the petitioner's firm itself had supplied pillar stones in the previous year (i.e. 1999-2000) @ ps. 38.90 per piece.

2. The learned counsel for the petitioner submits that though the petitioners are being charged under Sections 120-B of the IPC along with the co-accused, there is no iota of material to show that any agreement was reached between the petitioners and the Vice-Chairman of the C.D.A. to cause any wrongful pecuniary gain to any body or any wrongful loss to the C.D.A. or any other wrongful act and in absence of any material with regard to such agreement or meeting of mind by the accused persons, no charge of conspiracy could be framed against the petitioners. It is his further submission that in case the Vice-Chairman of the C.D.A. failed to follow any Rule of O.P.W.D. Code or O.G.F. Rule, the petitioners could not be held liable for such violation.

3. Learned Standing Counsel for the Vigilance Department, on the other hand, submits that there cannot be any direct evidence of conspiracy in each and every case and that conspiracy can be gathered from the circumstances. It is his submission that in the instant case, the petitioners themselves having supplied similar stone pillars on the very previous year @ only Rs. 38.90 per piece, it cannot be expected that within a year the price was increased to Rs. 90/- per piece and that this rise in price within a short duration by itself is a circumstance to presume that the petitioners entered into a conspiracy with the co-accused Vice-Chairman.

4. Conspiracy has its foundation in an agreement to commit an offence. It consists not merely of the intention of two or more, but in the agreement of two

or more persons to do an unlawful act by unlawful means. In this connection, the following observation of the Hon''ble Apex Court in the case of Pratapbhai Hamirbhai Solanki Vs. State of Gujarat and Another, is worth noting:

22. In Ram Narayan Popli v. Central Bureau of Investigation, while dealing with the conspiracy the majority opinion laid down that the elements of a criminal conspiracy have been stated to be (a) an object to be accomplished, (b) a plan or scheme embodying means to accomplish that object, (c) an Agreement or understanding between two or more of the accused persons whereby, they become definitely committed to co-operate for the accomplishments of the object by the effectual means, and (d) in the jurisdiction where the statute required an overt act. It has been further opined that the essence of a criminal conspiracy is the unlawful combination and ordinarily the offence is complete when the combination is framed. No overt act need be done in furtherance of the conspiracy, and that the object of the combination need not be accomplished, in order to constitute an indictable offence. Law making conspiracy a crime is designed to curb immoderate power to do mischief which is gained by a combination of the means. The encouragement and support which co-conspirators give to one another rendering enterprises possible which, if left to individual effort, would have been impossible, furnish the ground for visiting conspirators and abettors with condign punishment. The conspiracy is held to be continued and renewed as to all its members wherever and whenever any member of the conspiracy acts in furtherance of the common design. The two-Judge Bench proceeded to state that for an offence punishable u/s 120-B, the prosecution need not necessarily prove that the perpetrators expressly agree to do or cause to be done illegal act; the agreement may be proved by necessary implication. Offence of criminal conspiracy has its foundation in an agreement to commit an offence. A conspiracy consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act by unlawful means.

5. As has been submitted by the learned Standing Counsel for the Vigilance Department relying on the decision of the Hon''ble Apex Court in Ghulam Din Buch etc. etc. Vs. State of Jammu and Kashmir, , there is no controversy over the proposition that the ingredients of offence of conspiracy can be inferred from circumstances drawn from materials available on record. However, without there being any acceptable material pointing to the circumstances, no inference about commission of conspiracy can be drawn. In the instant case, admittedly there is no allegation of any understanding or agreement by the petitioners with the Vice-Chairman of C.D.A. (co-accused) to cause a pecuniary gain either to the co-accused or to the petitioners. The only circumstance pointed out by the learned Standing Counsel for the Vigilance Department is the allegation that in the very previous years i.e. 1999-2000, the petitioner's firm supplied granite stone pillars @ 38.90 per piece whereas in the relevant year 2000-01 the cost of stone pillar was unusually increased to Rs. 90/- per piece. In support of such contention the learned Standing Counsel refers to the statements. of some witnesses recorded

by the Investigating Officer during investigation. The statement of one Srinivas Mohapatra, Finance and Accounts Member of C.D.A. reveals that the previous price of Rs. 38.90 per pillar was during the year 1995-1996 and not during 1999-2000. His statement does not reveal that the petitioner's firm had supplied pillar during such previous procurement. The statement of one Laxmidhar Mahalik, Senior Assistant, C.D.A., is also to the same effect. The only statement of one Dusmant Kishore Swain, Senior Accounts Assistant, C.D.A. is that the very same firm (petitioner's firm) supplied same materials in the previous year @ Rs. 38.90 per piece. It is the specific assertion of the petitioners that they had not supplied any stone pillars to C.D.A. earlier or even in the previous year @ Rs. 38.90 per piece. With reference to the statement of Dusmant Kishore Swain, the learned Standing Counsel, Vigilance Department was directed to point out from the case diary or produce documentary materials with regard to procurement of stone pillars by C.D.A. in the previous year i.e., 1999-2000 and supply of the same by the petitioner's firm. The learned Standing Counsel admitted that no such document has been seized by the I.O. during investigation. He also failed to produce any such document. Therefore, in view of the specific statements of two senior staffs as noted above that the previous procurement was in the year 1995-96 and that there being no document to show that the petitioner's firm supplied any material in the previous year i.e. 1999-2000, the circumstance pointed out by the learned Standing Counsel has no basis. Apparently, the Trial Court without adverting to the aforesaid materials and without being alive to the ingredients of offence of conspiracy has jumped to the conclusion that the accused- Vice-Chairman, C.D.A. Cuttack entered into conspiracy with the petitioners and passed order for supply of granite stone pillars by the petitioners' firm at a higher rate. The framing of charge against the petitioners was therefore unwarranted and hence the impugned order cannot be sustained.

Resultantly, the impugned order is set aside and the petitioners are discharged from the offences charged.

The CRLREV is accordingly disposed of.