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THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.722 of 2024

(In the matter of an application under Section 438 of Bharatiya Nagarik Suraksha Sanhita, 2023)

Arun Kumar Mohanty *Petitioner*

-Versus-

State of Odisha (Vigilance) *Opp. Party*

For the Petitioner : Mr. Deba Prasad Das, Advocate

For the Opp. Party : Mr. Sangram Das, Standing Counsel
(Vigilance Department)

CORAM:

THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA

Date of Hearing: 22.01.2025 :: *Date of Judgment: 29.01.2025*

S.S. Mishra, J. The petitioner by invoking the inherent jurisdiction of this Court assailed the order dated 10.09.2024 passed by the learned Special Judge (Vigilance), Cuttack in T.R. Case No.36 of 2017, whereby his application under Section 239 Cr.P.C. seeking his discharge from all the offences charged-sheeted, has been turned down.



2. The prosecution case:-

During the period from 1979-1983, one Bhramarabar Mohanty was residing at Kesharpur in the house of one Sukanta Kishore Mohanty on rent. While he was residing there, he had purchased lands appertaining to Plot No.486, Khata No.11, Mouza-Mushadih measuring Ac. 0.12 dec. from Uchhaba Swain and another plot bearing No.497 & 498, Khata No.24, Mouza-Bijaychandrapur measuring Ac.1.00 dec. from Jadumani Mangaraj in the name of his son Arun Kumar Mohanty (name sake of the present petitioner) through RSD No.2115 dated 03.04.1982 and RSD No.3077 dated 04.05.1982. In both the sale deeds, the name and address of the purchaser was mentioned as Arun Kumar Mohanty. Later, the said Bhramarabar Mohanty left Kesharpur and started living in his native place at Dhenkanal. After the death of the said Bhramarabar Mohanty, his son, Arun Kumar Mohanty started residing in the village at Dhenkanal. It is alleged that in the year 2004, on the requisition of IDCO, Bhubaneswar, the Land Acquisition Officer (MIP), Jagatsinghpur acquired Ac.407.22 dec. of land in Mouza-Mushadih and Bijaychandrapur under Kujanga Tahasil, for industrial purpose, for



which notification was issued. The land of Arun Kumar Mohanty also came under the said acquisition. The land compensation was decided and disbursed. But the informant has not received the same, rather someone else has taken away the awarded compensation amount on misrepresentation.

3. Case of the petitioner:-

In the instant case, notice was issued in the name and address of the present petitioner. In response to the said notice, the brother of the petitioner approached the authority and confirm about the authority of the notice. On being asked by the LAO, the petitioner through his brother produced the documents relating to the land in question by obtaining certified copies from the Sub-Registrar's Office. The compensation was assessed at Rs.17,72,302/- in respect of the acquired land and the same was released in favour of the petitioner on his executing an indemnity bond to refund of money, in case it is claimed by anyone else or otherwise the claim is found to be false.

4. It is alleged that afterwards, the real Arun Kumar Mohanty laid his claim over the lands and compensation. Receiving the rival claim, the



Land Acquisition Authority issued notices to the present petitioner. It was ascertained from the office that the petitioner has laid his claim over the compensation and he was not the person entitled to compensation, rather, Arun Kumar Mohanty is someone else, who indeed is the real claimant. Accordingly, the entire money amounting to Rs.17,72,302/- was deposited back in the office of the Land Acquisition Officer, Jagatsinghpur (for short "LAO") in terms of the bond executed by the petitioner.

5. From the record, the following admitted facts are emanating. The petitioner has been employed as a Security Officer in Hindustan Aeronautics Limited, Bangalore. He had received a notice on 08.03.2010 from the Land Acquisition Officer, Jagatsinghpur in his residential address regarding acquisition of certain land. Through the notice, he was asked to produce relevant documents for determination of the compensation in lieu of the acquisition of the land. The accused under bonafide believe that the land mentioned in the notice might have been purchased by his father in his name had obtained certified copy of the documents and submitted the same to the Land Acquisition Officer,



Jagatsinghpur. It is relevant to mention that the notice not only mentioned the name of the petitioner but also the name of his father and the village name etc. Therefore, there was no occasion for him to doubt about the veracity of the notice.

6. The Land Acquisition Officer passed an award dated 21.06.2011 to the tune of Rs.17,72,302/-. The award amount was disbursed to the petitioner on execution of indemnity bond to return the whole amount in case of any dispute. After long lapse of time, the complainant, whose name, parentage, age and address resembles with the petitioner complained regarding non-receipt of the award in lieu of his land being acquired. On 03.11.2012, the LAO, Jagatsinghpur issued another notice to the present petitioner mentioning therein that the claim of the informant whose name, parentage, age and address resembles with the petitioner. Since the petitioner had already furnished an indemnity bond, on 21.01.2013 he refunded the entire amount of compensation, he had received. However, in the meantime i.e. on 31.12.2012, an F.I.R. was already registered against him and other officials for the alleged commission of offences punishable under Section 13(2)/13(1)(d) of the



P.C. Act read with Sections 419/420/120-B of I.P.C. The matter was investigated and charge-sheet was filed on 14.09.2015 against as many as four accused persons including the petitioner.

7. The petitioner moved an application before the learned Court below for discharge on 13.05.2024. When the matter was taken up for hearing by the learned trial Court on 10.09.2024, it was informed that two co-accused persons, namely, Susanta Kumar Swain and Rabindra Kumar Lenka have already expired. Hence, trial qua them has already been abated. The petitioner and other co-accused person, namely, Nrusingha Charan Swain are sought to face the trial. The co-accused Nrusingha Charan Swain unsuccessfully challenged the proceeding by filing CRLMC No.1897 of 2018. This Court vide order dated 01.08.2019 dismissed his petition. The petitioner in the application for discharge has contended that he had received the award amount of Rs.17,72,302/- as the notice was issued to him by the LAO, Jagatsinghpur. When it is discovered that the informant whose name, parentage, age and address resembles with him has claimed the said amount, he has returned the entire amount by discharging the indemnity bond furnished by him.



Therefore, as the conduct of the petitioner is bona fide and has been done in good faith, no criminal liability could be fasten upon him.

8. The learned trial Court vide impugned order dated 10.09.2024 has rejected the application of the petitioner *inter alia* observing as under:-

“in the case of Central Bureau of Investigation Vrs Dr. Anu Kumar Srivastava, AIR 2017 SC 3698 Hon’ble Apex Court held that at the stage of framing of charge trial court is not to examine and assess in detail materials placed on record by prosecution nor is it for court to consider sufficiency of materials to establish offence against accused persons. At the stage of charge, court is to examine materials only with a view to be satisfied that a prima facie case of commission of offence alleged has been made out against the accused persons. So also in the case of State by the Inspector of Police Vrs. Chenmoi vrs. Selvi and another AIR 2018 SC 81, it is held that court must proceed with presumption that material brought on record by the prosecution are true and must evaluate such material with a view to find out whether facts disclose existence of ingredients of offence.

The grounds for discharge of the accused charge itself are not good grounds to discharge the accused from the charge.

For the discussion made herein above and keeping the proposition of law and after going through the case record and materials available therein, I am of the considered view that prima-facie there is sufficient materials to presume that the accused petitioner has committed the offence U/Ss-13 (2) r/w section 13(1)(d) of P.C. Act and U/s. 419,420,120-B IPC. I therefore, found no merit in the petition filed by the learned counsel for the accused petitioner namely Aruna Kumar Mohanty. Hence, the prayer for discharging the above named accused-



petitioner stands rejected. Put up later for passing orders on the petition filed on behalf of accused, Nrusingha Charan Swain.”

Feeling aggrieved by the aforementioned order of the learned trial Court, the petitioner has approached this Court by filing the present petition.

9. Heard Mr. Deba Prasad Das, learned counsel for the petitioner and Mr. Sangram Das, learned Standing Counsel for the Vigilance Department.

10. Mr. Das, learned counsel for the petitioner reiterating the admitted facts of the present case and has submitted that out of four accused persons, two of them have already expired and the petitioner and one Nrusingha Charan Swain is facing the trial. By narrating the facts of the present case, he submits that from the conduct of the petitioner, no *mens rea* could be established. Therefore, the criminal liability cannot be foisted upon him. Moreover, there is no loss caused to the ex-chequer or for that matter to the informant. The award amount received by him has already been returned on indemnification. Therefore, a conduct of a person poised with good faith and bona fide believe does not attract any



criminal offence. The petitioner has only received the award amount as the notice was issued to him by the LAO, Jagatsinghpur. The name, parentage, age and address of the present petitioner and the informant are resembles without any variation. Therefore, this would be at best a case of mistaken identity.

11. On the contrary, Mr. Das, learned Standing Counsel for the Vigilance Department has submitted that no fault could be found from the impugned order as the trial Court has meticulously dealt with the position of law while deciding the application of the petitioner for discharge. The learned trial Court has noticed all the judgments related to the point of discharge and has dismissed the application. The stand taken by the petitioner in the present case being a disputed question of facts, needs to be deciphered during trial only. Hence, he prays for dismissal of the present petition.

12. I have perused the documents placed on record and the argument advanced by the parties. It is an admitted case on record that the name, parentage, age and address of the petitioner is resembles with the name, parentage, age and address of the complainant. When the notice was



issued to the petitioner on the mistaken identity, the petitioner had participated in the proceeding, and encash the award amount. However, while accepting the award amount, he had furnished indemnity bond to return the award amount in case of any dispute. The complainant at a belated stage raised the claim. Once the same came to light, notice was issued to the petitioner by the LAO, Jagatsinghpur. In pursuance to the said notice, the petitioner has refunded the entire amount by indemnification. Therefore, indeed there is no financial loss caused either to the ex-chequer or to the complainant for that matter. Section 79 of the I.P.C. largely covers the case of the petitioner. The provision reads as under:-

“79. Act done by a person justified, or by mistake of fact believing himself justified, by law:- Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by a person of a mistake of law in good faith, believes himself to be justified by law, in doing it.”

13. From the facts scenario of the present case, it is apparent that the petitioner has encashed the awarded amount by mistakenly believing himself to be the one entitled for the claim. It appears to be a conduct of



good faith. Therefore, the protection provided under Section 79 of the I.P.C. is applicable to the present case.

14. Mr. Das, learned counsel for the petitioner has relied upon the judgment of the Kerala High Court in the case of *Pappu vrs. Damodaran and others*, reported in *AIR 1968 Kerala 126*. The relevant part of the judgment reads as under:-

“17. I think, the learned Sub-Divisional Magistrate was right in holding that the accused had a claim of right to the property and the possession thereof and whoever might be the owner of the property, the accused were protected as they had no intention to cause wrongful damage in demolishing the fence or knowledge that would be the result of their act. As the accused were found to have entertained the belief—whether reasonable or not—that they were the owners of the property and were in possession and that P.W.1 has no right to construct the fence in the property, their act in demolishing the fence would not constitute the offence of mischief u/s 427.”

15. Similarly, he has also relied upon the judgment of the Hon’ble Supreme Court in the case of *Nikhil Merchant vrs. Central Bureau of Investigation and another*, reported in *AIR 2009 SC 428*. Relevant would be to reproduce paragraphs-21 & 23 of the said judgment:-

“21. The basic intention of the accused in this case appears to have been to misrepresent the financial status of the company, M/s Neemuch Emballage Limited, Mumbai, in



order to avail of credit facilities to an extent to which the company was not entitled. In other words, the main intention of the company and its officers was to cheat the Bank and induce it to part with additional amounts of credit to which the company was not otherwise entitled.

23. In the instant case, the disputes between the Company and the Bank have been set at rest on the basis of the compromise arrived at by them whereunder the dues of the Bank have been cleared and the Bank does not appear to have any further claim against the Company. What, however, remains is the fact that certain documents were alleged to have been created by the appellant herein in order to avail of credit facilities beyond the limit to which the Company was entitled. The dispute involved herein has overtones of a civil dispute with certain criminal facets. The question which is required to be answered in this case is whether the power which independently lies with this Court to quash the criminal proceedings pursuant to the compromise arrived at, should at all be exercised?

By relying upon the judgment of this Court in the case of ***State of Orissa vrs. Ram Bahadur Thapa***, reported in ***AIR 1960 Orissa 161***, Mr. Das, learned counsel for the petitioner submits that the petitioner has no criminal intention in his conduct, which could be made the basis for initiation of the criminal case against him. He has relied upon paragraph-4 of the said judgment, which reads as under:-

“4. It is not the prosecution case that the respondent had either the necessary criminal intention or knowledge and it was fairly conceded by the learned Standing Counsel that when the respondent attacked his victims he thought



he was attacking ghosts and not human beings. But it was urged that the respondent did not act with 'due care and attention' and that consequently he should have been held guilty under S. 304A, I.P.C. for having caused the death of Gelhi Majhiani and u/s 336 I.P.C."

16. On the careful scrutiny of the documents placed on record, it is apparent that the present case is basically a civil dispute of claim of the award amount having somewhat criminal facet. The only question to be ferret out from the facts of the case is that whether the petitioner has acted in good faith while accepting the award amount or he had intention to usurp someone's genuine claim having knowing the same does not belong to him. Feeling tempted by money is a natural human response, not a crime. Key is how one manages the temptation. Money is power, which is deeply ingrained human desire. Desire itself is neutral, action, determines the moral and the legal implication. Question is whether with integrity or by compromising morally or legally the temptation is managed? The question of good faith must be considered with reference to the position of the accused and the circumstances under which he has acted upon. In law, it is not expected the same standard of care and attention from all persons regardless of the position they occupied in so



far as good faith is concerned. In this case “good faith” can be read into the conduct of the petitioner because it is admitted that the name, parentage, age and address unambiguously resembles with the name, parentage, age and address of the complainant. Therefore, the confusion was obvious. In the said scenario, the only inference that could be drawn is that the petitioner has availed the benefit of the award by good faith and subsequently he has returned once he came to know regarding the genuine claim of the complainant. Returning money especially when it was received mistakenly or unfairly demonstrates bona fide. It not only reflects honesty but also a sense of ethical responsibility. In legal and moral context, such action strengthen trust and shows that person has no intention of wrongful gain. *Even in Bhagavad Gita, it is said “Realisation of guilt followed by sincere repentance and devotion leads to redemption and peace.”* In this context, the Hon’ble Supreme Court provided valuable insights in the case of ***Raj Kapoor Vs. Laxman*** reported in ***AIR 1980 SC 605*** held thus,

“The argument is irresistible that if the performance of the act which constitutes the offence is justified by law, i.e. by some other provision, then Section 79 exonerates



the doer because the act ceases to be an offence. Likewise, if the act were done by one "who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it" then also, the exception operates and the bona fide belief, although mistaken, eliminates the culpability."

17. In that view of the matter, the petitioner is not only protected by the provision of Section 79 of I.P.C. but also the case of the petitioner is covered by the judgment cited at Bar. Therefore, I am of the considered view that the petition deserves merit.

18. Accordingly, the order dated 10.09.2024 passed by the learned Special Judge (Vigilance), Cuttack in T.R. Case No.36 of 2017 is quashed and the petitioner is discharged from all the charges, he was charge-sheet for.

19. With this observation, the CRLREV is disposed of.

(S.S. Mishra)
Judge

The High Court of Orissa, Cuttack
Dated the 29th January, 2025./ Swarna

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