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IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLMC No. 2742 of 2018

Sailendra Kumar Samal *Petitioner*
Mr. S. Sourav, Advocate
-versus-
State of Odisha (Vigilance) *Opposite Party*
Mr. N. Moharana, Standing Counsel

**CORAM:
THE CHIEF JUSTICE**

Order No.

ORDER
05.07.2023

Dr. S. Muralidhar, CJ.

08. 1. The Petitioner seeks quashing of an order dated 3rd May, 2018 passed by the Special Judge, Bhubaneswar in T.R. Case No.8 of 2018 as well as Bhubaneswar Vigilance P.S. Case No.13 of 2013 on the ground that in the absence of sanction under Section 197 Cr PC cognizance could not have been taken of the offences under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (PC Act) as well as Section 419, 420, 468, 471, 120B of the Indian Penal Code, 1860 against the Petitioner.
2. At the time of filing of the present petition in 2018, the Petitioner was 58 years old and was serving as Joint Secretary in the Revenue Department, Government of Odisha. He has since superannuated. At the relevant time, when the subject matter of the case took place i.e. 2011, the Petitioner was working as a District Sub-Registrar

(DSR). The case against him is that without correctly establishing the identity of the buyers and sellers of various properties, registration was allowed in favour of persons with fake identities, in respect of large tracts of land in district Khurda in the year 2011. The further charge against the Petitioner is that he conspired with the buyer, the seller and the witnesses to various sale deeds thereby causing wrongful gain to the buyer and cheating the original owner of the land.

3. A charge sheet was filed on 30th December, 2017 in which it was noted that the competent authority had been moved to accord the sanction for prosecution but it had been refused. Yet, by order dated 3rd May, 2018 in T.R. Case No.8 of 2018 the Special Judge, Bhubaneswar took cognizance of the aforementioned offences against the Petitioner.

4. On the previous date, learned Standing Counsel appearing for the Vigilance Department (Opposite Party) conceded that as far as the offences under Sections 13(1)(d) read with Section 13(2) of the PC Act are concerned, in the absence of sanction, cognizance could not have been taken by the concerned Court. Nevertheless, he maintained that as regards the IPC offences, cognizance could be taken without previous sanction. He sought to place reliance on a series of judgments of the Supreme Court and this Court. Learned counsel for the Petitioner, on the other hand, sought to place reliance yet another set of judgments in support of the stand that

without previous sanction, cognizance could not have been taken even in respect of IPC offences against the Petitioner. The Court then adjourned the matter to enable both the parties to file their respective notes of submissions.

5. On the side of the Petitioner, reliance is placed by Mr. S. Sourav, Advocate on the recent judgment of the Supreme Court of India dated 23rd July, 2021 in Criminal Appeal No.593 of 2021 (*Indra Devi v. State of Rajasthan*) to urge that the entire proceedings against the Petitioner should be quashed.

6. This Court has carefully perused the said judgment in *Indra Devi v. State of Rajasthan (supra)*. It appears to have turned the peculiar facts and circumstances of the case. There were two officers superior to the Petitioner in that case working in the same Municipality who were granted benefit by the High Court by not allowing the proceeding to continue continuing in absence of sanction under Section 197 Cr PC. It was noted by the Supreme Court that those orders had remained unchallenged by both the complainant and the State. It was further noted that the Government servant in question “was simply carrying out his official duties for the work allotted to him that pertained to allotment, regularization, conversion of agricultural land and all kinds of works related to land for conversion.” It was further noted that the “two key people involved in the process had already been granted protection” and

thus, “Opposite Party No.2 herein, who is duly a Lower Division Clerk, could not be denied similar protection.”

7. In the present case, however, there is nothing brought to the notice of this Court of there being any similar case against an officer senior to the Petitioner who was granted similar protection as has been sought by the Petitioner.

8. On the other hand, Mr. N. Moharana, learned counsel for the Vigilance Department, places reliance on a series of judgments of the Supreme Court including *P.K. Pradhan v. State of Sikkim (2001) 6 SCC 704* where in the context of previous sanction under 197 Cr PC for prosecuting Government servants for IPC offences, it was observed as under:

“15. Thus, from a conspectus of the aforesaid decisions, it will be clear that for claiming protection under Section 197 of the Code, it has to be shown by the accused that there is reasonable connection between the act complained of and the discharge of official duty. An official act can be performed in the discharge of official duty as well as in dereliction of it. For invoking protection under Section 197 of the Code, the acts of the accused complained of must be such that the same cannot be separated from the discharge of official duty, but if there was no reasonable connection between them and the performance of those duties, the official status furnishes only the occasion or opportunity for the acts, then no sanction would be required. If the case as put forward by the prosecution fails or the defence establishes that the act purported to be done is in discharge of duty, the proceedings will have to be

dropped. It is well settled that question of sanction under Section 197 of the Code can be raised any time after the cognizance; may be immediately after cognizance or framing of charge or even at the time of conclusion of trial and after conviction as well. But there may be certain cases where it may not be possible to decide the question effectively without giving opportunity to the defence to establish that what he did was in discharge of official duty. In order to come to the conclusion whether claim of the accused, that the act that he did was in course of the performance of his duty was reasonable one and neither pretended nor fanciful, can be examined during the course of trial by giving opportunity to the defence to establish it. In such an eventuality, the question of sanction should be left open to be decided in the main judgment which may be delivered upon conclusion of the trial.”

9. Thereafter, in ***Prakash Singh Badal v. State of Punjab (2007) 36 OCR (SC) 233***, the Supreme Court in para 57 observed as under:

“The offence of cheating under Section 420 or for that matter offences relatable to Sections 467, 468, 471 and 120B can by no stretch of imagination by their very nature be regarded as having been committed by any public servant while acting or purporting to act in discharge of official duty. In such cases, official status only provides an opportunity for commission of the offence.”

10. The Court’s attention has also been drawn to the decisions in ***Chandan Kumar Basu v. State of Bihar (2014) 13 SCC 70***; ***Rajib Ranjan v. R. Vijaya Kumar (2015) 1 SCC 513*** and ***Satyabrata Gupta v. State of Jharkhand (2020) 70 OCR (SC) 728***. In ***Rajib***

Ranjan v. R. Vijaya Kumar (*supra*), *inter alia*, it was observed as under:

“The real question therefore, is whether the acts complained of in the present case were directly concerned with the official duties of the three public servants. As far as the offence of criminal conspiracy punishable under Sections 120-B read with Section 409 of the Indian Penal Code is concerned and also Section 5(2) of the Prevention of Corruption Act, are concerned they cannot be said to be of the nature mentioned in Section 197 of the Code of Criminal Procedure. To put it shortly, it is no part of the duty of a public servant, while discharging his official duties, to enter into a criminal conspiracy or to indulge in criminal misconduct. Want of sanction under Section 197 of the Code of Criminal Procedure is, therefore, no bar.”

11. In ***Satyabrata Gupta v. State of Jharkhand*** (*supra*), the Supreme Court observed as under:

“We decline to deviate from the view taken by the High Court that the charge against the petitioner for offence punishable under the Indian Penal Code can continue irrespective of the fact that sanction in respect of offence punishable under Prevention of Corruption Act, 1988 is not forthcoming. To that extent, we find no infirmity in the conclusion reached by the High Court. Our understanding of the impugned judgment is that the High Court has made it clear that if sanction to prosecute the petitioner for offence punishable under Prevention of Corruption Act, 1988 is not or has not been granted, the question of proceeding against the petitioner for that charge does not arise. This aspect be borne in mind by the

Trial Court while proceeding with the trial against the petitioner.”

12. The ratio of the aforementioned decisions of the Supreme Court is that in the case of IPC offences will have to be examined on case to case basis whether the facts complained of actually comprised the official activities of the accused person, who happened to be a Government servant at the relevant point in time. As observed in ***P.K. Pradhan*** (supra), this position might become clear only in the course of trial. Therefore, it was observed “in such an eventuality, the question of sanction should be left open to be decided in the main judgment, which may be delivered upon the conclusion of the trial.”

13. Even in the present case, whether in fact in the transaction complained of the Petitioner was performing a role strictly in terms of his official duty or beyond the scope of his official duty will be clear only in the course of the trial. Therefore, it is too early for the Petitioner to contend at this stage that without previous sanction cognizance cannot be taken of the IPC offences for which he is sought to be prosecuted.

14. The net result of the above discussion is the impugned order of the Special Judge, Vigilance, Bhubaneswar dated 3rd May, 2018 is interfered with only to the extent that it has proceeded to take cognizance of the offences against the Petitioner under the PC Act and to that extent the said order is set aside. However, the order is

not interfered with as far as it has taken cognizance of the offences under IPC against the Petitioner.

15. The petition is disposed of in the above terms.

(Dr. S. Muralidhar)
Chief Justice

SK Jena/Secy.

