IN THE HIGH COURT OF ORISSA, CUTTACK

I.A. No.1993 of 2022

(Arising out of CRLA No.955 of 2022)

Manoj Kumar Pradhan ..... Appellant/Petitioner

-Vrs.-

State of Odisha (Vig.) ..... Respondent/Opp. Party

For Petitioner: - Mr. Sourya Sundar Das
Senior Advocate

For Opp. Party: - Mr. Sanjaya Kumar Das
Standing Counsel (Vig.)

P R E S E N T:

THE HONOURABLE MR. JUSTICE S.K. SAHOO

Date of Order: 19.12.2023

S.K. SAHOO, J. The appellant/petitioner Manoj Kumar Pradhan who was working as Marketing Officer (M.I.) and was designated as the Purchase Officer of DPC, Dharmagarh with additional charge of DPC, Koksara has filed this interim application under section 389 of Cr.P.C. for staying the order of conviction passed against him by the learned Additional Sessions Judge -cum- Special Judge (Vigilance), Bhawanipatna in G.R. (Vigilance) Case No.46 of 2010/T.R. No.11 of 2015 vide impugned judgment and order

dated 22.10.2022 under section 13(2) read with section 13(1)(c)(d) of the Prevention of Corruption Act, 1988 (hereafter '1988 Act') and sections 409/468/477-A of the Indian Penal Code (hereafter 'I.P.C.') and sentencing him to undergo rigorous imprisonment for three and half years and to pay a fine of Rs.5,00,000/- (rupees five lakhs), in default, to undergo further R.I. for one month for the offence under section 13(2) read with section 13(1)(c)(d) of the 1988 Act, R.I. for five years and to pay a fine of Rs.3,00,000/- (rupees three lakhs), in default, to undergo further R.I. for one year for the offence under section 409 of the I.P.C., R.I. for three and half years and to pay a fine of Rs.3,00,000/- (rupees three lakhs), in default, to undergo further R.I. for one year for the offence under section 468 of the I.P.C. and R.I. for three and half years and to pay a fine of Rs.3,00,000/- (rupees three lakhs), in default, to undergo further R.I. for one year for the offence under section 477-A of the I.P.C. and directing both the substantive sentences to run concurrently. The petitioner was acquitted of the charge under section 120-B of the Indian Penal Code. The learned trial Court also acquitted the co-accused persons, namely, Surya Prakash Agrawal and Ghasiram Agrawal of all the charges.

2. The prosecution case, in short, is that P.W.19 Jagannath Naik, Deputy Superintendent of Police (Vigilance), Bhawanipatna Unit lodged a written report before the Superintendent of Police (Vigilance), Koraput Division, Jeypore on 30.09.2010 stating therein that on credible information about bungling custom milling rice in respect of Rice Receiving Centres at Kusumkhunti and Ladugaon under DPC, Koksara and three rice mills, namely, M/s. Bajrang Rice Mill, Ladugaon, M/s. Suroj Agro Industries, Bongomunda and M/s. Jai Hanuman Rice Mill, Siuni, he made an enquiry and found that the petitioner was the Purchase Officer of DPC, Daramgarh and was in additional charge of DPC, Koksara for the period from 08.06.2007 to 04.11.2008. It is further alleged that as per the guidelines issued by the Commissioner -cum- Secretary to Government, Food Supplies and Consumer Welfare Department vide L. No.19886/FSCW, Bhubaneswar dated 11th October, 2007, the duty and responsibility of the Purchase Officer was to (i) ensure timely and complete delivery of resultant CMR by the Custom Millers once the paddy redelivered to them, (ii) in case of non-receipt of CMR within twenty days, the Purchase Officer shall report the same to the District Manager immediately, (iii) it shall be the duty of the Purchase Officer to submit daily/weekly procurement return and

statement of accounts in prescribed proforma regularly to the District Manager and (iv) Purchase Officer shall keep the Enforcement Officer, ACSO concerned where the mill is situated and the D.M., OSCSC Ltd. informed of the quantities of paddy delivered and rice received from the custom millers and shall also continuously and frequently visit the mill to prevent diversion/unauthorized removal of paddy/rice by custom miller. It is further alleged that in order to ensure smooth procurement of paddy and delivery of CMR under decentralized mode by the OSCSC Ltd. during KMS 2007-08, arrangement was made to operate individual DPC in the district vide Order No.781/OSCSC dated 08.11.2007 and as per the order under Koksara DPC, rice mills, namely, (1) Shree Ganapati Rice Industries Pvt. Ltd., Kusumkhunti, (2) Jai Hanuman Rice Mill, Siuni, (3) Suraj Agro Industries, Bangomunda, (4) Shri Bajrang Rice Mill, Ladugaon and (5) Om Shri Harikishan Agro Tech., Ladugaon and Dhanalaxmi Rice Mill, Ladugaon were tagged and similarly, the petitioner, Marketing Inspector was designated as Purchase Officer and was tagged to Dharamgarh, Golamunda and Koksara Block. It is further alleged that though paddy was handed over to the custom millers up to 31.01.2008, no resultant rice was received from the custom millers for which a joint physical

verification of the DPC and rice mill premises was conducted on 24.09.2008 by CSO, Kalahandi in the presence of Sub-Collector, Dharamgarh, ACSO Enforcement, ACSO, Dharamgarh and M.I., Koksara. It is further alleged that during verification, they found that the petitioner returned Q.14,807.72 of rice to the three custom millers for improvement of the quality and though the M.I. reported about return of Qtl.14,807.72 rice to the millers for improvement from 16.07.2006 to 20.07.2006, the M.I. has not checked the mill premises as required to ensure that the stock was available in the mill premises and the resultant improved rice is delivered at the DPC till the date of physical verification i.e. 24.09.2008. It is further alleged that on 23.10.2008, a surprise check was conducted by Vigilance in the three rice mills with assistance of Civil Supplies Officials and Commercial Tax Officials in presence of the petitioner and during verification, no stocks were found at DPC godown at Kusumkhunti and Ladugaon. It is further alleged that on physical verification of M/s. Bajrang Rice Mill, Ladugaon, it was ascertained that Sushil Kumar Agrawal, proprietor of the rice mill had received Qtls.39,000.00 of paddy and returned resultant rice of Qtls.26560.00 @ 68% of the paddy received to the DPC, Koksara in between 16.12.2007 to 31.05.2008 and the petitioner

returned Qtls.3488.03 kgs. of rice to the miller in July 2008 as those were not under FAQ specification for improvement and return. Till the date of search i.e. 23.10.2008, the miller had returned Qtls.1700.00 of improved boiled rice to DPC, Koksara and balance quantity of Qtls.1788.03 of boiled rice was due to return which he later on delivered as evident from the letter no.145/Crop dated 02.02.2009 of District Manager, OSCSC Ltd., Kalahandi and there is no due against M/s. Bajrang Rice Mill.

It is further alleged that during joint surprise check of Jai Hanuman Rice Mill, it revealed that co-accused Ghasiram Agrawal, proprietor M/s. Jai Hanuman Rice Mill had received Qtl.29,800.00 paddy from the DPC against which he had returned the required resultant part-boiled rice of Qtl.20,264.00 to the DPC, Koksara in between 11.12.2007 to 13.05.2008 but the petitioner had returned Qtl.5937.36 of rice to the Miller for improvement against which the Miller returned Qtl.1230.00 of rice and the miller is yet to return Qtl.4707.36 rice to the DPC and during verification by Vigilance, Qtl.14.00 of rice and paddy of Qtl.320.50 kg. were found available.

It is further alleged that on 23.10.2008, joint stock verification was made on M/s Suraj Agro Industry, Bangomunda by Vigilance with assistance of Civil Supplies Officials and during

stock verification, rice of Qtl.222.00 was found and during physical verification, it was ascertained that co-accused Surya Prakash Agrawal, the proprietor of the firm had executed agreement on 22.11.2007 with D.M., OSCSC Ltd., Bhawanipatna had received Qtl.29,500.00 of paddy against which he delivered required resultant rice of Qtl.20,060 to the DPC but the petitioner returned Qtl.5382.33 rice to the Miller for improvement out of which the miller again delivered Qtl.678.94 rice after improvement to the DPC and remaining Qtl.4503.39 rice is yet to be returned.

It is further alleged that on 22.08.2008, the petitioner reported to the District Manager intimating that the Assistant Manager, Quality Control, FCI refused to verify the stock which was lying with him at RRC, Ladugaon delivered by three Rice Millers and as the stock was not consistent with FAQ specification, the M.I. returned the CMR Stock of Qtl.5467 of rice to custom miller M/s. Suroj Agro Industry, Bangomunda, Qtl.3401.46 of rice to M/s. Bajrang Rice Mill, Ladugaon and Qtl.5939.17 of rice to M/s. Jai Hanuman Rice Mill, Siuni but on scrutiny of documents and statement of Rama Krushna Jena (P.W.17) revealed that P.W.17 had visited M/s. Dhanalaxmi Rice Mill and M/s. R.K. Agro Produce on 12/13.07.2008 but the M.I.

had neither requested him for testing of the quality of rice nor shown him the rice stock for such testing and therefore, when the stock of rice was not tested at all, there was no reason to return the said rice to the millers after keeping the same with him for more than forty five days from the date of last receipt of rice as per his stock register being dated 31.05.2008 till he returned the rice on 16.07.2008 to 20.07.2008 and as matter of Rule, the M.I. was supposed to test the quality of rice and accept on the day of receipt and under no circumstance, he can retain the rice without testing and the M.I. was also supposed to collect sample of the rice in triplicate, retain one sample with him, hand over one sample to the miller and send one such sample to the CSO which he had not observed.

It is further alleged that on verification of the rice stock register of DPC at Ladugaon, it revealed that the M.I. had shown return of Qtl.3210.00 and Qtl.3182.33 on 16.07.2008 and 17.07.2008 respectively to Suraj Agro Industries, Qtl.5138.14 and Qtl.4501.58 on 18.07.2008 and 19.07.2008 respectively to Jai Hanuman Rice Mill and Qtl.3488.03 on 20.07.2008 to Bajrang rice mill and therefore, total quantity of returned rice comes to Qtl.19,520.08 whereas the M.I. in his report dated 04.06.2008 had shown return of Qtl.14,807.22 rice only making the

discrepancy of Qtl.4712.38 rice excess return contradicting his own reports. It is further alleged that the computerized statement of progressive delivery of paddy and C.M.R. submitted by the M.I. on 04.06.2008 for the period as on 01.06.2008 shows that there was no due of rice to return to the DPC by the custom millers and the computerized statements on progressive delivery of paddy and C.M.R. submitted by the M.I. dated 28.08.2008 by making a correction of the date i.e. 28.08.2008 in place of 01.06.2008 showing that there was no due of rice to be returned to the DPC by the custom millers but the M.I. had manipulated by making additions in his own handwriting showing that the stock of Qtl.14,807.72 rice was returned to the Millers for improvement and there was also mentioned of report of improved rice of Qtl.758.94 after 20.07.2008 and as per letter no.145/Corp. dated 02.02.2009 of District Manager, OSCSC Ltd., Kalahandi, two rice millers, namely, M/s. Jai Hanuman Rice Mill, Siuni and M/s. Suraj Agro Industries, Bongomunda had not yet returned Qtl.4732.36 and Qtl.4403.39 rice to the DPC after improvement and thereby misappropriated Rs.69,99,208/- and Rs.65,12,658/- respectively.

It is further alleged that the petitioner showed undue official favour to the millers by falsely showing receipt of rice

from them and violating the guidelines of the paddy purchase for which the miller got the opportunity to misappropriate the custom milling rice to the tune of 9135.75 quintals, worth Rs.1,35,11,866/- including the cost of paddy, milling charges, transportation and surcharge @ Rs.0.20 paise per quintal per day for failing to deliver the rice after lapse of twenty five days of receipt of paddy.

On receipt of such written report, P.W.8 Sushanta Kumar Biswal, the O.I.C., Koraput Vigilance police station, Jeypore registered Koraput P.S. Case No.46 dated 30.09.2010 under section 13(2) read with section 13(1)(d) of the 1988 Act and sections 468/477-A/420 of the I.P.C.

After the F.I.R. was lodged, investigation was taken up by P.W.19 as per the direction of the Superintendent of Police, Vigilance, Koraput Division, Jeypore, who in course of his investigation, examined the P.W.8 and P.W.17. On 19.11.2010, he seized the documents as per seizure list Ext.3, obtained the copy of guideline regarding procurement of paddy of Kharif Marketing Season (KMS) for 2007-08 and the original memorandums prepared during surprise check of M/s. Jaya Hanuman Rice Mill, M/s. Suraj Agro Industry, M/s. Bajrang Rice Mill and M/s. Sri Ram Rice Mill, Ladugaon. He also obtained

original memorandum of surprise check of premises and godown of Rice Receiving Centre I & II (RRC) taken on rent at Kusumkhunti. On 30.03.2011, he seized inspection report dated 02.08.2008 of Ram Krushna Jena (P.W.17), Manager, Quality Control, F.C.I. at Sriram godown, Ladugaon and eleven documents as per seizure list Ext.4 and on 31.03.2011, he prepared forwarding report for the examination of documents by expert and he sent the original documents to A.I.G. of Vigilance (Document Examination Cell), Cuttack for examination and opinion. On 16.04.2011, he seized the original files of M/s. Suraj Agro Industry, M/s. Jaya Hanuman Rice Mill, M/s Bajrang Rice Mill along with original correspondent of DPC, Part-I & II for Kharif Marketing Season for the year 2007-08 as per seizure list Ext.5 and on 28.05.2011, he handed over charge of investigation to his successor (P.W.20) on his transfer.

P.W.20 during his investigation, received reply from the Government Examiner of Questioned Document (GEQD) of Directorate of Vigilance, Cuttack and he placed requisition to the Manager, Quality Control, FCI, Titlagarh to obtain information as to whether the Marketing Inspector, Koksara has given any requisition in the year 2006-07 and 2007-08 to check the specification of rice received from three industries, namely, Jaya

Hanuman Rice Mill at Siuni, M/s. Suraj Agro Industries at Bangomunda and M/s. Bajrang Rice Mill at Ladugaon. P.W.20 issued requisition to M/s. Jaya Hanuman Rice Mill at Siuni and M/s. Suraj Agro Industries at Bangomunda to submit some information and also issued notice to the petitioner to produce transit pass/gate pass as to in which vehicle the custom rice was carried. He received two letters vide Ext.47 and Ext.48 from Civil Supply Officer (CSO) -cum- District Manager, OSCSC, Kalahandi and he seized some documents on production by P.W.2 Niranjan Sahu vide seizure list Ext.2. He collected the specimen handwriting and admitted handwriting and forwarded the same to GEQD, Vigilance Directorate, Cuttack and received opinion. He was accorded sanction order through the Superintendent of Police, Vigilance, Koraput by Commissioner -cum- Secretary, Food and Civil Supplies Department, Government of Odisha and on completion of investigation, submitted charge sheet against the petitioner and two others under section 13(2) read with section 13(1)(c)(d) of the 1988 Act and sections 406/468/477-A/120-B of the I.P.C. to stand trial in the Court of law.

3. The learned trial Court in its impugned judgment has been pleased to hold that the allegation of the prosecution regarding forgery of record and falsification of accounts relating

to the CMR received by him are well established. However, the prosecution has not placed any admissible evidence to the effect that the petitioner made the aforesaid forgery at the instance of or in connivance with the co-accused persons. The co-accused persons are not proved to have committed forgery or falsification of any account maintained by them with regard to the transaction of rice with the petitioner and the DPC and therefore, charge under sections 468/477-A read with section 120-B of the I.P.C. cannot be sustained against the co-accused persons but the above proved conduct and positive act of forgery, falsification of accounts, subsequent interpolation of documents by the petitioner, makes him liable for the offence under sections 468/477-A of the I.P.C. Learned trial Court further held that it can safely be said that the petitioner is solely responsible for causing loss to the Government to the tune of Rs.1,44,34,621/-, i.e. the cost of 9085.75 quintals of CMR @ Rs.1,588.71 paise per quintal and he being the custodian of the CMR and having domain over that property, in the facts and circumstances, is proved to have committed criminal breach of trust and as such liable for punishment under section 409 of the I.P.C. and the charge under the said provision is established against the petitioner, but it could not be established against the co-accused

persons. Learned trial Court further held that the petitioner did not follow the Government guideline in the manner as required by the law. The learned trial Court was of the further view that the petitioner did not take any positive action to prevent the loss of such huge amount and evidence was forthcoming that he was involved in manipulation of records and therefore, the petitioner was held guilty under section 13(2) read with section 13(1)(c)(d) of the 1988 Act.

4. Mr. Sourya Sundar Das, learned Senior Advocate appearing for the petitioner contended that the learned trial Court has illegally convicted the petitioner under section 13(2) read with section 13(1)(c)(d) of the 1988 Act and sections 409/468/477-A of the I.P.C. He argued that the conviction has been arrived at by the learned trial Court solely on the basis of Ext.38, Ext.18 and Ext.C-1. While dealing with the above three exhibits, the learned trial Court observed that the Vigilance Officer entertained doubt regarding correctness of certain entries in the stock register (Ext.18). The learned trial Court dealt with the opinion of Government Examiner (Ext.42), who had opined that the signature of the petitioner on the admitted documents tallied with the signatures on the statement of progress delivery (Ext.38) and stock register (Ext.18). The trial Court also held

that the entries regarding return of specific quantity of CMR for improvement as mentioned in Ext.38 was not proved by the Examiner to be that in the handwriting of the petitioner and then the learned trial Court jumped into a conclusion on the basis of assumption that it is crystal clear that there has been manipulation, correction and insertion of words, expressions and figures. The learned trial Court further held that when Ext.18 was maintained by the petitioner, he is the best person to say how such type of manipulations and insertions were made in the relevant entries and the petitioner has not preferred to explain the circumstances. Mr. Das further argued that one document closely similar to Ext.38 was available on record and was marked as Ext.C-1. While comparing these documents with Ext.38, the learned trial Court found that the printed part of Ext.38 is same as in Ext.C-1 which appeared to have been copied from the original by Xerox process. It is argued that the petitioner has not been put any question with regard to Ext.18, Ext.38 and Ext.C-1 in the accused statement. Since no specific questions have been put on these three documents in the accused statement, the learned trial Court should not have used this document against the petitioner as the petitioner did not get any opportunity to offer explanation as regards the incriminating material surfaced

against him. The learned counsel further argued that in the sanction order Ext.50, the sanctioning authority accorded sanction for prosecution of the petitioner concerning alleged misappropriation of rice amounting to Rs.1,44,747/- from RRC, Kusumkhunti. It is argued that since there is no order of sanction from RRC, Ladugaon, the petitioner could not be convicted for any kind of allegation concerning the said RRC. The learned counsel further argued that there has been alteration of charge and the misappropriation amount has been changed from Rs.1,44,747/- to Rs.1,44,34,621/-. It is argued that the smaller amount was for RRC, Kusumkhunti for which sanction was accorded and the bigger amount being for RRC, Ladugaon, there has been no sanction. It was argued that since there is statutory infraction with regard to sanction and alteration of charge, the conviction cannot be sustained particularly when the two co-accused persons have been acquitted of all the charges. He further argued that had the learned trial Court considered the evidence on record in favour of the petitioner and not ignored the same, the impugned order of conviction would not have come into existence. The finding recorded by the learned trial Court is out and out perverse and without any application of its judicial mind and therefore, the impugned judgment is bad in the

eye of law. He further submitted that the exceptional and special circumstances which exist in the facts of the case sufficiently indicate that the present litigation is luxury litigation on the part of the prosecution at the cost of the petitioner. He argued that there is no chance of early hearing of the appeal on merit and therefore, when the prosecution has not proved the guilt of the petitioner to the hilt and that the petitioner has fair chance of acquittal and he has made out an exceptional case, this Court may be pleased to pass an order of stay of conviction. He placed reliance in the case of **Shyam Narain Pandey -Vrs.- State of U.P. reported in (2014) 8 Supreme Court Cases 909** wherein it was held that unless there are exceptional circumstances, the appellate Court shall not stay the conviction, though the sentence may be suspended. There is no hard and fast rules or guidelines as to what are those exceptional circumstances.

Mr. Sanjaya Kumar Das, learned Standing Counsel for the Vigilance Department appearing for the opposite party vehemently opposed the prayer for stay of conviction and also filed his objection to such petition. It was contended that the learned trial Court after going though the evidence on record has rightly found the petitioner guilty and since stay of conviction

should be exercised only in exceptional circumstances and in rare cases where failure to stay conviction would lead to injustice and irreversible consequences, nothing having been pointed out by the learned counsel for the petitioner in that respect, no favourable order should be passed in his favour. It is further contended that it has become a contagious disease in the society, which needed social reforms and judicial inference to get rid of the same. He further submitted that so far as the contentions of suspension/stay of conviction and sentence of the petitioner are concerned, the interim application is liable to be dismissed because of his conviction and sentence for committing the offence under the Prevention of Corruption Act. He further submitted that as the law is equal to all and to be judged impartially, the petitioner does not stand in a different footing to be considered in any special circumstances, when he has been found guilty for adopting corruption by thinking it to be his official act. He further contended that in the event, the petitioner succeeds in the criminal appeal preferred by him before this Court, he would be at liberty to claim all of his consequential benefits from the Government and in view of the above, the I.A. should be dismissed.

5. First, let me deal with the ambit and scope of section 389(1) of Cr.P.C. relating to stay of judgment and order of conviction by the appellate Court.

In the case of **K.C. Sareen -Vrs.- C.B.I., Chandigarh reported in (2001) 6 Supreme Court Cases 584**, it is held as follows:-

> "11. The legal position, therefore, is this: though the power to suspend an order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, its exercise should be limited to very exceptional cases. Merely because the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at tall aspects including the ramifications of keeping such conviction in abeyance. It is in the light of the above legal position that we have to examine the question as to what should be the position when a public servant is convicted of an offence under the PC Act. No doubt when the appellate Court admits the appeal filed in challenge of the conviction and sentence for the offence under the PC Act, the superior Court should normally suspend the sentence of imprisonment until disposal of the appeal, because refusal thereof would render the very appeal otiose unless such appeal could be heard

soon after the filing of the appeal. But suspension of conviction of the offence under the PC Act, dehors the sentence of imprisonment as a sequel thereto, is different matter.

12. Corruption by public servants has now reached a monstrous dimension in India. Its tentacles have started grappling even the institutions created for the protection of the republic. Unless those tentacles are intercepted and impeded from gripping the normal and orderly functions of the public offices, through strong legislative, executive as well as judicial exercises, the corrupt public servants could even paralyse the functioning of such institutions and thereby hinder the democratic policy. Proliferation of corrupt public servants could garner momentum to cripple the social order if such men are allowed to continue to manage and operate public institutions. When a public servant was found guilty of corruption after a judicial adjudicatory process conducted by a Court of law, judiciousness demands that he should be treated as corrupt until he is exonerated by a superior Court. The mere fact that an appellate Court or revisional forum has decided to entertain his challenge and to go into the issues and findings made against such public servants once again should not even temporarily absolve him from such findings. If such a public servant becomes entitled to hold public office

and to continue to do official acts until he is judicially absolved from such findings by reason of suspension of the order of conviction, it is public interest which suffers and sometimes even irreparably. When a public servant who is convicted of corruption is allowed to continue to hold public office, it would impair the morale of the other persons manning such office, and consequently that would erode the already shrunk confidence of the people in such public institutions besides demoralising the other honest public servants who would either be the colleagues or subordinates of the convicted person. If honest public servants are compelled to take orders from proclaimed corrupt officers on account of the suspension of the conviction, the fall out would be one of shaking the system itself. Hence, it is necessary that the Court should not aid the public servant who stands convicted for corruption charges to hold only public office until he is exonerated after conducting a judicial adjudication at the appellate or revisional level. It is a different matter if a corrupt public officer could continue to hold such public office even without the help of a Court order suspending the conviction."

In the case of **State of Maharastra through C.B.I. -Vrs.- Balakrishna Dattatrya Kumbhar reported in (2012) 53 Orissa Criminal Reports (SC) 1233**, it is held as follows:-

"12. Thus, in view of the aforesaid discussion, a clear picture emerges to the effect that, the Appellate Court in an exceptional case, may put the conviction in abeyance along with the sentence, but such power must be exercised with great circumspection and caution, for the purpose of which, the applicant must satisfy the Court as regards the evil that is likely to befall him, if the said conviction is not suspended. The Court has to consider all the facts as are pleaded by the applicant, in a judicious manner and examined whether the facts and circumstances involved in the case are such, that they warrant such a course of action by it. The court additionally, must record in writing, its reasons for granting such relief. Relief of staying the order of conviction cannot be granted only on the ground that an employee may lose his job, if the same is not done.

xx xx xx xx xx

14. The aforesaid order is therefore, certainly not sustainable in law if examined in light of the aforementioned judgments of this Court. Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights' violation in itself, as it leads to systematic economic crimes. Thus, in the aforesaid backdrop, the High Court should not have passed the said order of suspension of

sentence in a case involving corruption. It was certainly not the case where damage if done, could not be undone as the employee/Respondent if ultimately succeeds, could claim all consequential benefits. The submission made on behalf of the Respondent, that this Court should not interfere with the impugned order at such a belated stage, has no merit for the reason that this Court, vide order dated 9.7.2009 has already stayed the operation of the said impugned order."

In the case of **State of Punjab -Vrs.- Deepak Mattu reported in A.I.R. 2008 Supreme Court 35**, it is held as follows:-

"7. While passing the said Order, the High Court did not assign any special reasons. Possible delay in disposal of the appeal and there are arguable points by itself may not be sufficient to grant suspension of a sentence. The High Court while passing the said Order merely noticed some points which could be raised in the appeal. The grounds so taken do not suggest that the Respondent was proceeded against by the State, mala fide or any bad faith…."

In the case of **Pruthwiraj Lenka -Vrs.- State of Odisha (Vigilance) reported in (2022) 85 Orissa Criminal Reports 667**, it is held that law is well settled that possible

delay in disposal of the appeal and/or presence of arguable points in the appeal by itself may not be sufficient in staying the order of conviction of the trial Court without assigning any special reasons. An order granting stay of conviction is not the Rule but is an exception to be resorted to in rare cases depending upon the facts of a case. Where the execution of the sentence is stayed, the conviction continues to operate. But where the conviction itself is stayed, the effect is that the conviction will not be operative from the date of stay. As order of stay, of course, does not render the conviction non-existent, but only non-operative.

In the case of **Om Prakash Sahani -Vrs.- Jai Shankar Chaudhary and another etc. reported in (2023) 91 Orissa Criminal Reports (SC) 84**, it is held as follows:-

> "33.…The Appellate Court should not reappreciate the evidence at the stage of section 389 of the Cr.P.C. and try to pick up few lacunas or loopholes here or there in the case of the prosecution. Such would not be a correct approach.
>
> 34. In the case on hand, what the High Court has done is something impermissible. High Court has gone into the issues like political rivalry, delay in lodging the F.I.R., some over-writings in the First Information Report etc. All these

aspect, will have to be looked into at the time of the final hearing of the appeals filed by the convicts. Upon cursory scanning of the evidence on record, we are unable to agree with the contentions coming from the learned Senior Counsel for the convicts that, either there is absolutely no case against the convicts or that the evidence against them is so weak and feeble in nature, that, ultimately in all probabilities the proceedings would terminate in their favour….."

In the case of **A.B. Bhaskara Rao -Vrs.- Inspector of Police, CBI, Visakhapatnam reported in A.I.R. 2011 Supreme Court 3845**, it is held as follows:-

"19. From the analysis of the above decisions and the concerned provisions with which we are concerned, the following principles emerge:

a) When the Court issues notice confining to particular aspect/sentence, arguments will be heard only to that extent unless some extraordinary circumstance/material is shown to the Court for arguing the matter on all aspects.

b) Long delay in disposal of appeal or any other factor may not be a ground for reduction of sentence, particularly, when the statute prescribes minimum sentence. In other cases where no such minimum sentence is prescribed, it is open to the Court to consider the delay and its effect and the ultimate decision.

c) In a case of corruption by public servant, quantum of amount is immaterial. Ultimately it depends upon the conduct of the delinquent and the proof regarding demand and acceptance established by the prosecution.

d) Merely because the delinquent lost his job due to conviction under the Act may not be a mitigating circumstance for reduction of sentence, particularly, when the Statute prescribes minimum sentence."

The appreciation of evidence in detail at the final stage of hearing of criminal appeal is not to be adopted at the stage of dealing with interim application for stay of judgment and order of conviction inasmuch any finding on the merits of the case by way of appreciation of evidence at the stage of consideration of interim application for stay of conviction is likely to prejudice either of the parties.

There is no doubt that in view of settled position of law, the petitioner has to make out a rare and exceptional case for the grant of stay against conviction under section 389 of Cr.P.C. There must be special and compelling circumstances in justification for the grant of such stay against conviction. There should be irreversible consequences leading to injustice and irretrievable damages in the event of non-grant of stay against

conviction. The impugned judgment of conviction should be based on no evidence or against the weight of evidence, which must prima facie appear on the face of it without conducting a detailed analysis into the merit of the case. Possible delay in disposal of the appeal and that there are arguable points by itself may not be sufficient to grant stay of conviction.

6. The petitioner has been convicted under section 409 of the Indian Penal Code. The essential ingredients of the offence are that the accused must be a public servant and that he must have been entrusted, in such capacity, with property and that he must have committed breach of trust in respect of such property. Once entrustment is proved, it is for the accused to prove how the property entrusted was dealt with. Misappropriation of money or property can be temporary and it can be permanent. The prosecution need not prove the actual mode of misappropriation.

The petitioner has also been convicted under section 468 of the Indian Penal Code which deals with forgery for the purpose of cheating. If it can be proved that the purpose of the offender in committing the forgery is to obtain property dishonestly or if his guilty purpose comes within the definition of cheating, he can be punished under this section. Therefore, the

prosecution must prove that the document is a forged document and that the accused forged the document and that he did so with an intention that the forged document would be used for the purpose of cheating.

The petitioner has also been convicted under section 477-A of the Indian Penal Code which deals with falsification of accounts. The ingredients of the offence are as follows:-

(i) The person coming within its purview must be a clerk, officer, or servant or acting in the capacity of a clerk, officer, or servant

(ii) He must willfully and with intent to defraud-

(a) destroy, alter, mutilate, or falsify any book, paper, writing, valuable security, or account which belongs to, or is in possession of, his employer; or has been received by him for or on behalf of his employer; or

(b) make or abet the making of any false entry in, or omit or alter or abet the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security, or account.

'Willfully' means that the act is done deliberately and intentionally, not by accident or inadvertency, so that the mind

of the person who does the act goes with it. The term 'with intent to defraud' means either an intention to deceive and by means of deceit to obtain an advantage or an intention that injury should befall some person or persons. Advantage which is intended must relate to some future occurrence or, in other words, must be of a prospective nature. Making false entries in the measurement book in order to conceal fraudulent or bogus acts, falls within the purview of section 477-A of I.P.C. It is necessary to show not merely false entries in the books of accounts, but that such false entries were made with intent to defraud. Even if the intention with which the false entries were made was to conceal a fraudulent or dishonest act previously committed, the intention will be to defraud. Making a false document with a view to enable the persons who committed misappropriation to retain the wrongful gain which they had secured also amounts to the commission of a fraud and the act brings the case under this section.

So far as the offence under section 13(2) read with section 13(1)(c)(d) of the 1988 Act is concerned, the accusation against the petitioner is that he committed criminal misconduct by abusing his position as a public servant and caused loss to the

Government by corrupt and illegal means and obtained pecuniary advantage of Rs.1,44,34,621/-.

The main contention raised by the learned counsel for the petitioner regarding the defect in the accused statement is that no questions were put on Ext.38, Ext.18 and Ext.C-1. Failure in drawing the attention of the accused to the incriminating evidence and inculpatory materials brought in by prosecution specifically, distinctly and separately may not by itself render the trial against the accused void and bad in law. Firstly, if having regard to all the questions put to him, he was accorded an opportunity to explain what he wanted to say in respect of prosecution case against him and secondly, such omission has not caused prejudice to him resulting in failure of justice, the trial cannot be held to be void and bad in law. The burden is on the accused to establish that by not apprising him of the incriminating evidence and the inculpatory materials that had come in the prosecution evidence against him, a prejudice has been caused resulting in miscarriage of justice. (**Ref.: Alister Anthony Pareira -Vrs.- State of Maharashtra : (2012) 2 S.C.C. 648**)

At this stage, it would not be proper to discuss in detail about the omissions of some documents in the accused

statement and its effect and whether the accused has been prejudiced in any manner. As many as sixty two questions have been put in the accused statement and the petitioner has answered to each of such questions and further stated in answer to question no.61 that he had not violated any guidelines and that since he reported against the millers, the criminal case was initiated against them. At the final stage of hearing, it can be adjudicated about the effect of omission of relevant questions, if any, with respect to any particular document/documents.

Similarly, though argument has been advanced relating to the alteration of charge by the learned trial Court, it seems that initially so far as the amount is concerned, in the first, fourth and fifth charge which relates to offence under section 13(2) read with section 13(1)(c)(d) of the 1988 Act, section 477(A) of the Indian Penal Code and 120-B of the Indian Penal Code respectively, the misappropriation amount was mentioned to be Rs.1,44,747/- and vide order dated 13.07.2022, the same was corrected to Rs.1,44,34,621/-. The order dated 13.07.2022 of the learned trial Court indicates that one petition was filed by the learned Special Public Prosecutor prayed for rectification of the amount of misappropriation as mentioned in the charges and the learned counsel representing the parties did

not object to the same rather fully admitted about the arithmetic mistake and accordingly, the learned trial Court after perusing the charge sheet, came to hold that it is an arithmetic mistake or which can be turned as typographical mistake and hence, on the consent of both the sides, the same needed to be rectified and accordingly, the amount of Rs.1,44,747/- was corrected as Rs.1,44,34,621/-. There is no dispute that under section 216 of Cr.P.C., the Court has power to alter the charge or add to any charge at any time before the judgment is pronounced. Sub-section (3) of section 216 states that if the alteration or addition to a charge is such that proceeding immediately with the trial is not likely in the opinion of the Court, to prejudice the accused in his defence or the prosecutor in the conduct of the case, the Court may, in its discretion, after such alteration or addition has been made, proceed with the trial as if the altered or added charge had been the original charge.

In the case in hand, when the learned counsel for the parties did not object and fully admitted about the arithmetic mistake and the learned trial Court held that there would be no prejudice caused to the parties if the amount is corrected, passed the order for correcting the amount in the charge portion as per order dated 13.07.2022, the contention of the learned

counsel for the petitioner at this stage that the alteration of the charge has not happened in consonance with section 216 Cr.P.C. and there is infraction of the provision of law, is very difficult to be accepted, however it is kept open to be adjudicated at the final stage of hearing of the criminal appeal.

Similarly, though the learned counsel pointed out certain error in the sanction order, however section 19(3) of 1988 Act clearly states that no finding, sentence or order passed by a Special Judge shall be reversed or altered, inter alia, by a Court in appeal on the ground of any error, omission or irregularity in the sanction order unless in the opinion of the Court, a failure of justice had, in fact, been occasioned thereby.

7. After carefully and meticulously analyzing the finding of the learned trial Court, the submission made by the learned counsel for the respective parties and the evidence on record, I am of the humble view that at this stage, it cannot be said that it is a case of no evidence against the petitioner. Whether the evidence available on record would be sufficient to uphold the impugned judgment and order of conviction of the petitioner and whether on the basis of defects pointed out by the learned counsel for the petitioner in the accused statement, in the framing of charge and in the sanction order etc. or on the basis

of points raised by the learned counsel for the petitioner, benefit of doubt is to be extended to the petitioner is to be adjudicated at the final stage when the appeal would be heard on merit. Giving any finding on the merits of the case is likely to cause prejudice to either of the parties. This Court will certainly have a duty to make deeper scrutiny of the evidence and decide the acceptability or creditworthiness of the evidence of witnesses at the final stage of hearing of the appeal on merit. At this stage, reappreciation of evidence by conducting detailed analysis and trying to pick up lacunas or loopholes in the case of the prosecution is not permissible. No extraordinary circumstance/material is shown to this Court for granting the desired relief to the petitioner.

Therefore, I am of the humble view that for the limited purpose of ascertaining whether stay of order of conviction be granted or not, I find that the petitioner has failed to make out a very exceptional case or special reasons for keeping the conviction in abeyance and as such, in the facts and circumstances of the case, the relief sought for by the petitioner for staying the order of conviction cannot be granted.

Accordingly, the interim application being devoid of merits, stands dismissed.

By way of abundant caution, I would like to place it on record that whatever has been stated hereinabove in this order has been so said only for the purpose of disposing of the prayer for staying the order of conviction of the petitioner. Nothing contained in this order shall be construed as expression of a final opinion on any of the issues of fact or law arising for decision in the case which shall naturally have to be done at the final stage of the hearing of the criminal appeal on merit.

Urgent certified copy be granted on proper application.

.....

S. K. Sahoo, J.

Orissa High Court, Cuttack
The 19th December 2023/RKMishra