

A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

CRLREV No.37 of 2021

(This is an application under Section 397 read with 401 of the Code of Criminal Procedure)

Kishore Chandra Das

....

Petitioner

-versus-

State of Odisha

....

Opposite Party

For Petitioner

:

*M/s. Pitambar Acharya,
Sr. Advocate,*

For Opp. Party

:

*Mr. Sangram Das,
Additional Standing Counsel,
Vigilance Department*

JUDGMENT

Date of hearing : 29.08.2023 | Date of Judgment :02.11.2023

A.K. Mohapatra, J.

1. The above named Petitioner has filed the present criminal revision Petition under section 397 read with 401 of the Code of Criminal Procedure with a prayer to set aside the order dated 17.11.2020 passed by the learned Special Judge, Vigilance, Sundargarh on the discharge petition filed by the Petitioner under

section 239 of the Code of Criminal Procedure in CTR No.26 of 2014 corresponding to SBP Vig P.S.Case No.44 dated 30.06.2012 for alleged commission of offence under Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

2. For the sake of brevity, the factual matrix of the case has been narrated in gist. The Petitioner was serving as a Joint Secretary in the Commerce and Transport Department, Government of Odisha. It has also been mentioned that the Petitioner who had worked in different departments, in different capacities, diligently and sincerely. The service career of the Petitioner has remained unblemished till registration of the Vigilance case. On 30.06.2012 an F.I.R. was lodged against the Petitioner. It appears that the trial has not progressed substantially and such inordinate delay in conclusion of the trial has been impacting the service career of the Petitioner adversely. The F.I.R. registered against the Petitioner by the Vigilance department reveals that the Petitioner during his incumbency for the period from 09.03.2011 to 27.06.2011 as B.D.O., Bargaon Block in connivance with the co-accused namely Kundan Kumar Agarwal, Proprietor of M/S Baba Dharsu Traders, Ujalpur, Sundargarh has committed criminal misconduct by showing undue official favour in purchasing 10,000 bags of Konark cement from the

abovenamed co-accused thereby the Petitioner has caused a pecuniary loss of Rs.2,05,300/- and on the equal amount of loss to the Government. It has been alleged that the said amount of loss could have been saved, had the Petitioner been diligent in his conduct. With regard to the procedure adopted in purchasing the cement bag, it has been alleged in the F.I.R. that the Petitioner without following the proper tender procedure and without further negotiating with the co-accused had issued the supply order on different dates at a higher price, than the price which the co-accused offers to the public. It has also been alleged that the Petitioner has not taken any permission for the purchase. The Petitioner had not invited quotation from the leading cement manufacturers as well as other authorized dealers selling Konark Cement to the general public at a lesser rate.

3. Per contra, the case of the Petitioner as narrated in his Petition, is that the Petitioner was functioning as B.D.O., Bargaon for the aforesaid period. For the purpose of development work, the DRDA, Sundargarh vide letter dated 16.06.2010 had intimated all B.D.Os with regard to supply of cement and as per the terms of the agreement of the year 2010-11, the price was fixed at Rs.4980/- per M.T. i.e. Rs.249/- per bag i.e. price upto Block point including

transportation charges, all taxes and duties, loading and unloading charges, irrespective of any fluctuation in price for the agreed period from three suppliers/manufacturers, namely, OCL India Ltd, ACC Ltd. and Ultratech Limited. It has been further stated that pursuant to the aforesaid instructions vide letter dated 16.06.2010 under Annexure-2 to the Revision Petition, the Petitioner had placed the indent for procurement of materials for development work for the year 2010-11. Since there was a delay in supply of cement from the cement manufacturing companies, the Petitioner, on submission of willingness for supply of cement by M/s. Baba Dharsu Traders at Rs.248/- per bag including all taxes, transportation charges, loading and unloading and stacking charges placed the order with above named Supplier by following the official procedure. Such placement of indent is stated to be well within the authority of the Petitioner and in consonance with the guidelines under Annexure-2.

Considering the urgency of the developmental work, the Petitioner procured 10,000 bags of cement of OCL brand from the authorized dealer at a rate of Rs.248/- per bag including all costs. It is needless to mention here that the approved rate for supply of cement to all blocks/DRDA of Sundargarh for the period from 31.05.2010 to 30.05.2011 was at Rs.249/- per bag including all costs and taxes.

However, it has been further stated that on a mala fide motive on 30.06.2012 an F.I.R. bearing No.44 of 2012 was lodged by the State Vigilance authority implicating the Petitioner as an accused for alleged commission of offence under the Prevention of Corruption Act. The Petition further reveals that the Government without application of mind on 13.11.2023 accorded sanction under Section 19 of the P.C.Act, 1988 for prosecution against the Petitioner. On 14.12.2013 the Vigilance Police has mechanically filed a Charge Sheet for alleged commission of offence under Section 13(2) read with 13(1)(d) of P.C.Act read with Section 120-B of the Indian Penal Code. It is alleged that before filing Charge Sheet no preliminary enquiry as mandated by law was ever conducted.

4. Being aggrieved by the aforesaid illegal conduct of initiating a prosecution against the Petitioner without there being any legal basis, the Petitioner moved a discharge petition under section 239 Cr.P.C. before the learned Special Judge, Vigilance, Sundargarh. Learned Special Judge, Vigilance without application of mind and in a mechanical and arbitrary manner rejected the said petition vide his order dated 17.11.2020 which has been filed along with the present Petition and marked as Annexure-3.

5. Heard Mr.Pitambar Acharya, learned senior counsel appearing on behalf of the Petitioner and Mr.Sangram Das, learned Standing Counsel for the Vigilance department. Perused the case record as well as other materials either filed along with the revision petition or placed on record by the learned counsels appearing from either side. Mr.Acharya, learned senior counsel appearing on behalf of the Petitioner, at the outset, submitted that the learned court below has miserably failed to take into consideration the letter No.CFSD:AA/1/30 dated 10.11.2011 issued by the OCL India Ltd. He further submitted that the said letter is in reply to Letter No.1227/Vig.(RKL) dated 03.11.2011 of the Inspector of Vigilance, Rourkela. The OCL India Ltd has clarified that M/s. Baba Dharsu Traders is authorized to sale Konark Ordinary Portland/Slag/PS Cement (OCL brand) at any price, primarily in Sundargarh district. In such view of the matter, it was contended before this Court that the aforesaid reply of OCL India Ltd. was well within the knowledge of the vigilance authority and the same has been accepted by the prosecution and therefore, there was no dispute with regard to the position that M/S. Baba Dharsu Traders is authorized to sale Konark Ordinary Portland/Slag/PS Cement (OCL brand) at any rate within Sundargarh district.

6. Mr. Acharya, learned senior counsel further contended that the learned trial court has also failed to take note of the fact that in letter dated 05.12.2011 under Annexure-5, the Project Director, District Rural Development Agency, Sundargarh has specifically stated that due to delay in supply of cement by manufacturing company, if BDOs buy approved brand of cement from dealers at the approved rate of DRDA, no specific instruction is required for the said purpose by the B.D.O. Therefore, the purchase made by the Petitioner in the present case from the authorised dealer at the rate of Rs.248/- per bag of 50 kg. i.e., at a price lower than the sanctioned price of Rs.249/-per bag of 50 kg, the Petitioner has not violated the terms and conditions of the District Tender Committee and that such conduct of the B.D.O. was within his authority and in consonance with the decision of the DRDA.

7. Mr.Acharya, learned senior counsel further argued that the learned trial court has mechanically ignored letter No.6387/DRDA dated 15.11.2012 issued by the Project Director, DRDA, Sundargarh. In the said letter, it has been clarified to the Inspector, Vigilance in reply to the letter dated 04.10.2012 that the District Level Purchase Committee in compliance with the Rule 68(2) (a) of the Panchayat Samiti Accounting Procedure Rules, 2002 finalised the rate and

brand of cement and communicated the same to all BDOs for easy and timely execution of development works going on in the respective blocks. Moreover, DRDA has also clarified that the Block administration including execution of development work comes within the purview of the Panchayat Samiti Accounting Procedure Rules, 2002. In such view of the matter, it was emphatically contended before this Court that the Petitioner has not violated the provision or Rules relevant for the purpose of the present case.

8. In course of his argument, learned senior counsel appearing for the Petitioner placed strong reliance on the judgment in the case of ***Yogesh v. State of Maharashtra***, reported in ***(2008) 10 SCC 394*** wherein the Hon'ble Supreme Court has observed as follows:

“16. It is trite that the words “not sufficient ground for proceeding against the accused” appearing in the section postulate exercise of judicial mind on the part of the Judge to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. However, in assessing this fact, the Judge has the power to sift and weigh the material for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine a prima facie case depends upon the facts of each case and in this regard it is neither feasible nor desirable to lay down a rule of universal application. By and large, however, if two views are equally possible and the Judge is satisfied that the evidence produced before him gives rise to suspicion only as distinguished from grave suspicion, he will be fully within his right to discharge the

accused. At this stage, he is not to see as to whether the trial will end in conviction or not. The broad test to be applied is whether the materials on record if unrebutted, make a conviction reasonably possible.”

9. Most importantly, learned senior counsel appearing on behalf of the Petitioner brought it to the notice of this Court that a Disciplinary Proceeding which was initiated against the Petitioner has ended in exoneration of the Petitioner. He further elaborated that a Disciplinary Proceeding was initiated by the GA & PG department vide Memorandum No.27765/Gen dated 24.09.2018 against the Petitioner. After conducting a detailed enquiry, and after recording evidence the Disciplinary Authority has come to a conclusion to drop the proceeding and to exonerate the Petitioner from all charges vide order dated 18.06.2021.

10. It is stated by Mr.Acharya, learned senior counsel that the charges in the Disciplinary Proceeding are identical to the charges in the vigilance case. He further contended that the standard of proof in a Disciplinary Proceeding is preponderance of probability. In contrast the standard of proof followed in all criminal cases is “beyond all reasonable doubt” In the said context, it is submitted by the learned senior counsel appearing for the Petitioner that when the departmental authorities failed to establish the charges against the

Petitioner in the Disciplinary Proceeding wherein the standard of proof is preponderance of probability, which is much lesser standard, there is no chance whatsoever that the selfsame allegation against the Petitioner as involved in the vigilance case would be sustained or proved beyond all reasonable doubt, which undoubtedly is of a higher degree.

11. In the context of exoneration of the Petitioner from all charges in the Disciplinary Proceeding and the impact thereon on the criminal prosecution, learned senior counsel appearing for the Petitioner submitted that after exoneration in the Disciplinary Proceeding on self same allegation, this Court should not allow criminal prosecution to continue. He further contended that law in this regard is no more *res integra*. Referring to the landmark judgment of the Hon'ble Supreme Court in *Ashoo Surendranath Tewari v.CBI, (2020) 9 SCC 636* , learned senior counsel for the Petitioner submitted that the ratio laid down by the Hon'ble Supreme Court in the aforesaid judgment squarely applied to the fact of the present case. This Court at this juncture, would like to refer to some of the paragraph of the judgment in **Ashoo Sundranath Tewari's** case which would be relevant for adjudication of the dispute involved

in the present case. The relevant paragraphs are quoted herein below:

“12. After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheyshyam Kejriwal case (Radheshyam Kejriwal v. State of W.B.(2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721), SCC P. 598)

“38. The ratio which can be culled out from these decisions can broadly be stated as follows:

- (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
- (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
- (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
- (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
- (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or section 300 of the Code of Criminal Procedure;
- (vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and
- (vii) **In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in**

criminal cases.”

13. *It finally concluded : (Radheshyam Kejriwal case (Radheshyam Kejriwal v. State of W.B.(2011) 3 SCC 581 : (2011) 2 SCC (Cri) 721) SCC p. 598, para-39)*

“39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.”

12. Similarly, referring to the judgment in the case of ***Dr.Minaketan Pani v.State of Orissa (CRLMC No.3407 of 2010)*** deciding by this Court vide judgment dated 20.05.2022, learned senior counsel for the Petitioner submitted that the judgment in ***Dr.Minaketan Pani*** (supra) has been decided by taking into consideration the judgment of the Hon'ble Apex Court in ***Radheyshyam Kejriwal v.State of West Bengal*** and ***Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI (supra)***. In ***Dr.Minaketan Pani's*** case by referring to the aforesaid two Supreme Court judgments this Court has held that the exoneration in the Disciplinary Proceeding would result in quashing of the criminal case initiated on the self same charges since it

requires a higher standard of proof.

It would be profitable to quote relevant paragraphs-22 and 26 of the judgment in **Dr.Minaketan Pani's** case (supra):

“ 22. Then we have the other three-Judge Bench judgment, which is more recent in **Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI** (supra) which follows **Radheyshyam Kejriwal v. State of west Bengal** (supra) but does not notice **State (NCT of Delhi) v. Ajay Kumar Tyagi** (supra). It however takes note of **P.S. Rajya** (supra). The conclusion reached in **Ashoo Surendranath Tewari v. Deputy Superintendent of Police, EOW, CBI** (supra) is that the exoneration in departmental proceedings would result in the quashing of the criminal case on the same charges since it entitled a higher standard of proof. In other words, if on the lower standard of proof itself the charges were not made out, they obviously would not be made out on a higher standard of proof in a criminal case. The case was held to be covered by Clause (vii) in para 38 of **Radheyshyam Kejriwal v. State of West Bengal** (supra).

26. For all of the aforementioned reasons, in the facts and circumstances of the present case where on the same charges on which the Petitioner is facing criminal trial he has been honourably exonerated in the departmental proceedings, the Court adopts the reasoning of the decisions in **Radheyshyam Kejriwal v. State of West Bengal** (supra) and **Ashoo Surendranath Tewari v. Deputy Superintendent of police, EOW, CBI** (supra) and sets aside the impugned order dated 15th January, 2009, passed by the Sub-Divisional Judicial Magistrate (S), Cuttack in G.R. Case No.1057 of 2007.”

13. Finally, learned senior counsel appearing on behalf of the

Petitioner argued that there exist an inordinate delay in launching the prosecution as well as in concluding the trial. He further contended that such inordinate delay in launching the prosecution has remained unexplained. He further argued that although the F.I.R. is of the year 2012 however, till date the Prosecution has not been able to produce any material document in support of the prosecution case. In the aforesaid background, learned senior counsel for the Petitioner submitted before this Court that the learned trial court has miserably failed to consider the aforesaid aspect of delay and further, he has failed in his duty by not discharging the Petitioner from the criminal case. In the said context, learned counsel for the Petitioner also refers to the judgment in the case of **Santosh De v. Archna Guha, 1994 Supp (3) SCC 735**. Paragraph-13 of the said judgment, which is relevant for the purpose is quoted herein below:

“ We are not satisfied that there are any valid grounds for interference with the order of the High Court. The most glaring circumstance in the case is the delay in commencing the trial. The case was committed to sessions court on 15.07.1974 and the charges came to be framed by the sessions court only on 13.04.1983 i.e. after a lapse of about eight years. The appellant is not in a position to explain the reasons for this delay. In the order under appeal, the High Court has stated that this delay is entirely on account of the default of the prosecution. This is not a case of what is called “systemic delays”- as explained in Abdul Rehman Antulay ((1992) 1 SCC 225 : 1992 SCC (Cri) 93). In our opinion, this unexplained delay

of eight years in commencing the trial, by itself, infringes the right of the accused to speedy trial. In the absence of any material to the contrary, we accept the finding of the High Court that this delay of eight years is entirely and exclusively on account of the default of the prosecution. Once that is so there is no occasion for interference in this appeal. It is accordingly dismissed.”

14. Lastly, learned senior counsel for the Petitioner urged before this Court that due to pendency of the aforesaid criminal case, although the Disciplinary Proceeding has ended in exoneration of the Petitioner, the Petitioner, who is likely to retire very shortly is debarred from getting any promotion as well as the other service and financial benefit attached to his post. Therefore, it was argued that long pendency of the criminal case which is not likely to be concluded in near future, in the event the same is allowed to be continued by this Court, such continuance of the criminal proceeding would cause grave injustice to the Petitioner and the same would only amount to abuse of process of law by the State authority.

15. Mr.Sangram Das, learned Additional Standing Counsel, Vigilance department on the other hand contended that the learned trial Court has not committed any illegality at all in rejecting the discharge petition of the Petitioner filed under Section 239 Cr.P.C. Therefore, at the outset he contended that the revision petition is

devoid of merit and the same should be thrown out.

16. In course of his argument, Mr.Das, learned Additional Standing Counsel submitted that five points fall for determination in the present process of adjudication. Those are;

- i) Whether an accused is entitled to acquittal when investigation by an Officer who himself is informant/complaint in the case ?
- ii) Whether the question of vitiation of Sanction order can be agitated at threshold of trial or has to be raised during trial ?
- iii) Whether the defence/plea of the accused can be looked into at the stage of discharge ?
- iv) Whether the challenge to an order for framing of charge can be entertained u/s. 397 Cr.P.C. to re-appreciate the matter ?
- v) Whether the material produced by the prosecution before trial court reasonably connect the accused with the offence and disclose grave suspicion against the accused ?

17. Before adverting to deal with the points raised by the learned Additional Standing Counsel, this Court would like to clarify that so far the factual aspect of the matter is concerned, the same is not disputed by the learned Additional Standing Counsel which is evident from the note of submission submitted by the learned Additional Standing Counsel. Learned Additional Standing Counsel basically

addressed this Court on the legal questions involved in the present proceeding. In course of his argument, learned Additional Standing Counsel initially addressed with regard to the legal principle applicable to an application seeking discharge. Broadly, he has referred to 10 principles that is to be kept in mind by the Court while considering the application of discharge. He has also referred to the judgment in *P.Vijayan v. State of Kerala (2010) 2 SCC 398*, which lays down that there must exist some materials for entertaining strong suspicion which can form the basis for drawing of a charge and refusing to discharge the accused.

18. Learned Additional Standing Counsel, Vigilance also refers to the case in **State of J & K -v.- Sudershan Chakkar** reported in *(1995) 4 SCC 181* – and submits that the defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under section 227 Cr.P.C. Finally, learned Additional Standing Counsel also referred to the judgment in the case of *State of Orissa v. Debendra Nath Padhi* reported in *(2005) 1 SCC 568*. Referring to the landmark judgment in *Debendranath Padhi (supra)* learned Additional Standing Counsel submitted that it has been observed by the Hon'ble Supreme Court that the expression “record of the case” used in Section 227 Cr.P.C. is to be understood as the

documents and articles, if any produced by the Prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of charge. At the stage of framing of charge, the submission of the accused is to be confined to the materials produced by the Police.

19. In course of his argument, learned Additional Standing Counsel submitted that there is no bar in law that the informant cannot be the investigator and solely on such ground, the accused is not entitled to acquittal. In the said context he refers to the judgment of ***Mukesh Singh v.-State (Delhi)*** reported in ***(2020) 10 SCC 120***. With regard to the 2nd issue, it was contended that the sanction order can be agitated at the threshold of the trial. But the question with regard to initiation of sanction order has to be raised only during trial and in the said context, he refers to the case of ***Prakash Singh Badal v.-State of Punjab*** reported in ***(2007) 1 SCC 1 (Para-48)***

20. In reply to the 3rd issue, it was stated by the learned Additional Standing Counsel that the defence/plea of the accused is not to be looked into at the stage of discharge as has been held by the Hon'ble Supreme Court in State of J & K -v.-***Sudershan Chakkar (supra.)*** In reply to the 4th issue, he contended that the Hon'ble Supreme Court

in *Asian Resurfacing Road Agency (P) Ltd. and Another v. CBI* reported in (2018) 16 SCC 299 Hon'ble Apex Court has observed that the challenge to an order of framing charge should be entertained only in rarest of rare cases only to correct a patent error of jurisdiction and not to re-appreciate the order.

21. Finally, in reply to the 5th issue, learned Additional Standing Counsel submitted that the materials on record which was filed by the Prosecution, discloses creation of suspicion against the Petitioner and reasonably connect the accused with the offence. In the said context, he has also referred to Rule 268(2)(a) of the Panchayat Samiti Accounting Procedure Rule, 2002 and submits before this Court that the Executive Officer of Zilla Parishad is the competent authority to invite tender annually for purchase of material and that the Tender Purchase Committee is the competent authority to take a decision with regard to the price of the commodities likely to be acquired and that the B.D.O. should act on the decision of such Purchase Committee while purchasing materials.

22. He further emphatically contended that the BDO has no power to take decision with regard to purchase of materials without approval of the purchase committee/Executive Officer of the Zilla

Parishad. It was also contended that any purchase exceeding Rs.2,00,000/- by the B.D.O. requires prior approval of the Collector, as per Rule 268 (2)(c) of the said Accounting Procedure. Referring to the facts of the present case, he further contended that the accused-Petitioner purchased 10,000 bags of Konark cement from M/S Baba Dharsu Traders without approval of the Purchase Committee/Executive Officer, Zilla Parishad and the Collector, Sundargarh. As such it was submitted before this Court that he has acted illegally in the matter while purchasing 10000 bags of Konark cement from the above named traders. He also alleged that while procuring/purchasing cement from the traders the Petitioner has failed to strictly adhere to the procedure. On the factual side of the matter, learned Additional Standing Counsel while reiterating the prosecution case has narrated the F.I.R. story.

23. Broadly summarized, learned Additional Standing Counsel argued before this Court that this Court is bound by the ratio laid down by the Hon'ble Supreme Court while considering the application for discharge. Furthermore, he has alleged that the accused-Petitioner has not followed official procedure while procuring 10,000 bags of cement from the Traders as has been alleged in the F.I.R. Therefore, the entire effort of the learned

Additional Standing Counsel was to convince this Court that even if the Petitioner has been exonerated in the Disciplinary Proceeding, such exoneration would have no direct bearing on the present criminal case initiated against the Petitioner alleging misconduct.

24. It was also argued by the learned Additional Standing Counsel that the nature of evidence, documents produced by the Prosecution before the learned trial court, prima facie discloses a grave suspicion against the accused-Petitioner and as such the learned trial Court was justified in rejecting the application for discharge. He also contended that the probative value of the material cannot be gone into at this stage and a roving inquiry into pros and cons of the matter is not permissible at the stage of trial. Accordingly, learned Additional Standing Counsel justified the conduct of the learned trial court in rejecting the discharge petition filed by the Petitioner before the trial Court.

25. Having heard learned senior counsel for the Petitioner and the learned Additional Standing Counsel for the Vigilance department and on a careful examination of the record as well as the materials placed before this Court, this Court prima facie observes that in the event the Petitioner succeeds in convincing this Court that the

charges in the Disciplinary Proceeding as well as in the vigilance case are identical and self same, following the law laid down by the Hon'ble Supreme Court in *Radheyshyam Kejriwal's* case (supra) as well as *Ashoo Surendranath Tewari* (supra), the Petitioner would succeed in the present revision application. Thereafter, this Court is not required to examine the other grounds raised by the Petitioner or the reply to the same by the learned Additional Standing Counsel. With regard to the scope and ambit of this Court in interfering with an order passed by the trial court on a discharge application under section 239 Cr.P.C., this Court observes that the law is fairly settled by a catena of judgment of the Hon'ble Supreme Court as well as this Court. Therefore, such settled principles need not be reiterated here for the sake of brevity.

26. To adjudicate the aforesaid issue, this Court is required to look into the memorandum of charges dated 24.09.2018 and the Article of charges attached thereto. Such documents placed on record by the learned senior counsel for the Petitioner after serving a copy thereof on the learned Additional Standing Counsel for Vigilance department, the article of charges communicated to the Petitioner vide Annexure-1 is as follows :

ARTICLE OF CHARGE

Shri Kishore Chandra Das, OAS(S), Ex-BDO, Bargaon Block, District: Sundargarh has committed following irregularities.

Shri Kishore Chandra Das, OAS(S), Registrar, Khallikote Cluster University, Berhampur, during is incumbency from 09.03.2009 to 27.06.2011 as BDO, Bargaon Block, District: Sundergarh committed misconduct by showing undue official favour to Shri Kundan Kumar Agrawala, Proprietor of Baba Dharsu Traders, Ujalpur District Sundergarh relating to purchase of 10,000 bags of Konark Cement at a higher rate than the available market price and put the Government in a financial loss of Rs.2,05,300/-

That, Shri Das purchased the above quantity of Konark brand cement at the cost of Rs.248/- per 50 kg. bag from one Kundan Kumar Agrawal, Prop. Baba Dharsu Traders, although there was availability of 14128, 19475 and 20061 bags of cement at the Block respectively violating the agreement made between PD, DRDA, Sundargarh and Cement companies.

Thus the following articles of charge are framed against him for violation of Orissa Government Servant's Conduct Rules, 1959:-

1. Failed to maintain absolute integrity
2. Gross Misconduct
3. Devotion to duty.

27. Further, a perusal of order dated 18.06.2021 passed by the Additional Chief Secretary, GA & PG department Government of Odisha reveals that the Petitioner has been exonerated from all the charges leveled against him vide GA & PG Memo No.24.09.2018.

The relevant para-5 is quoted herein below:

“5. NOW THEREFORE, after careful consideration of the charges framed against Shri Das, his statement of defence, the findings of the Inquiring Officer, the directions of the Hon’ble Orissa High Court, Cuttack and other materials available on record, Government have been pleased to exonerate Shri Das off the charges leveled against him vide GA & PG Department Memorandum No.27765/Gen., dt.24.09.2018.”

In view of the aforesaid order, it is clear that the charges brought against the petitioner which are almost identical to the charges in the vigilance case was duly enquired into by the Disciplinary Authority. After such detailed enquiry and consideration of the facts as well as contentions of both sides, the Disciplinary Authority has finally exonerated the Petitioner.

28. The arguments advanced by the learned Additional Standing Counsel is entirely based on the procedural irregularities in procuring 10,000 cement bags by the Petitioner while he was posted as B.D.O. Such procedural irregularities were also a part of the Disciplinary Proceeding and the same has been duly considered by the Disciplinary Authority. After considering all the aspects of the matter and taking into consideration the materials available on record, the Disciplinary Authority has exonerated the Petitioner from the charges

made against the Petitioner as shown in Article of charges herein above. There is no doubt that the charges in the Article of charges are almost identical with the allegations made in the vigilance F.I.R. as well as the charge sheet.

29. Moreover, the standard of proof for the department in a Disciplinary Proceeding is of a lesser magnitude than the standard of proof for the prosecution in a vigilance case which is of a higher magnitude i.e., beyond all reasonable doubt. When the department has failed to establish the charges in the Disciplinary Proceeding with a lesser magnitude of standard of proof, it would be difficult for the prosecution to establish the charges in the criminal case beyond all reasonable doubt. Furthermore, in the Disciplinary Proceeding the Inquiring Officer must have examined the entire procedural aspect relating to the allegations made in the article of charges. Since they did not find any irregularities in the procedural aspects, the Petitioner has been exonerated of all the charges. Such development in the Disciplinary Proceeding would definitely have a direct bearing on the criminal case in the shape of vigilance case.

30. In *Ashoo Surendraath Tewari's* case (supra) the Hon'ble supreme Court by referring to *Radheyshyam Kejriwal's* case,

reaffirmed the ratio laid down by the Hon'ble Supreme Court in Paragraph-38 of **Radheyshyam Kejriwal's** case. Clause-7 of paragraph-38 of **Radheyshyam Kejriwal's** case (supra) clearly stipulates that “ in case of exoneration, however on merits where the allegation is found to be not sustainable at all and the persons held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle is the higher standard of proof in criminal cases”. Finally, in paragraph-39 of the judgment in **Radheyshyam Kejriwal's** case (supra), the Hon'ble Supreme Court has prescribed the yardstick as to whether the allegation in the adjudication proceeding as well as the proceeding for prosecution is identical and that the exoneration of the person concerned in the adjudication proceeding is on merit ? Furthermore, in the event it is found on merit, there is no contravention of the provisions of the Act in the adjudication proceeding, the trial of the person concerned shall be an abuse of the process of the court.

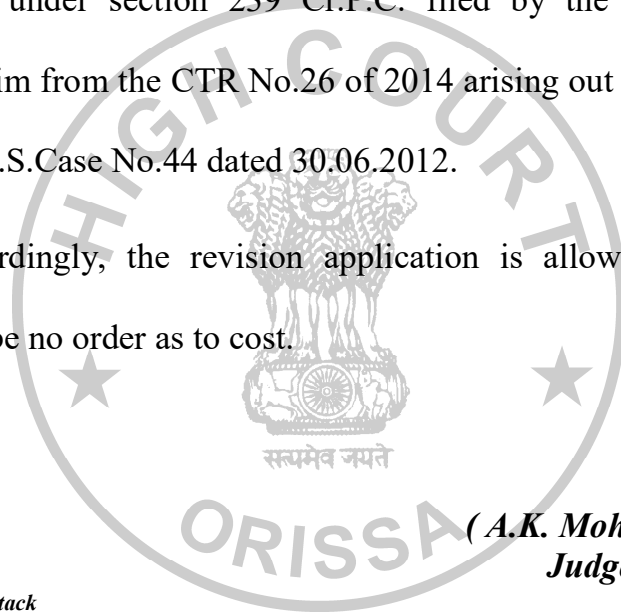
31. By applying the aforesaid well established principle of law, this Court observes that there is no dispute with regard to the fact that a disciplinary Proceeding was lawfully initiated against the present Petitioner. Thereafter, such proceeding was allowed to continue as

per the relevant service Rules. The Inquiring Officer after conducting an enquiry had submitted his report. Further, it appears that the Disciplinary Authority taking into consideration all aspects of the matter has been pleased to exonerate the Petitioner from the charges leveled against the Petitioner in the Disciplinary Proceeding which are identical to the charges in the vigilance case. It appears that the department has accepted the final verdict of the Disciplinary Authority and the same has attained finality.

32. On a careful analysis of the factual background of the present case, as well as keeping in view the law laid down by the Hon'ble Supreme Court in **Radheyshyam Kejriwal's** case as well as in **Ashoo Surendranath Tewari's** case (supra) this Court is of the considered view that the charges in both the Disciplinary Proceeding as well as in the Vigilance case are identical and based on self same facts. Moreover, the Petitioner having been exonerated from the Disciplinary proceeding which was conducted pursuant to the relevant Service Rules and the outcome of such Disciplinary Proceeding having attained finality, it would be an abuse of process of law if the criminal trial in shape of vigilance case is allowed to continue against the Petitioner. This Court further observes that the present case falls within one such rarest of rare case as has been held

by the Hon'ble Supreme Court of India in Paragrph-38 of the judgment in **Radheyshyam Kejriwal's** case. Accordingly, this Court is also of the considered view that the learned trial court has committed a gross illegality by not allowing the discharge petition of the Petitioner. Accordingly, the impugned order dated 17.11.2020 is hereby set aside. Further, this Court has no hesitation in allowing the application under section 239 Cr.P.C. filed by the Petitioner to discharge him from the CTR No.26 of 2014 arising out of Sambalpur Vigilance P.S.Case No.44 dated 30.06.2012.

33. Accordingly, the revision application is allowed, however, there shall be no order as to cost.



(**A.K. Mohapatra**)
Judge

Orissa High Court, Cuttack
The 2nd of November, 2023/ RKS